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Title 3—The President

EXECUTIVE ORDER 11827

Continuance of Certain Federal Advisory Committees

Under the provisions of Section 14 of the Federal Advisory Committee Act (5 U.S.C. App. I), each advisory committee created by the President or any other officer of the Executive Branch and subject to the provisions of this Act—in existence on the effective date of the Act, January 5, 1973—will terminate on January 5, 1975, unless renewed by the President or other appropriate officer.

During the period elapsed since the Federal Advisory Committee Act was enacted, all Federal advisory committees subject to that Act have been thoroughly examined and reexamined to determine whether they should be continued, modified, abolished, or allowed to terminate. In that period, more than 300 Federal advisory committees have been abolished or allowed to terminate.

All advisory committees created by the President before the effective date of the Act and subject to the provisions of the Act have been carefully examined. I have determined that those listed in Section 1 of this Order should be continued until January 5, 1977, unless terminated sooner. I have also determined that the advisory committees listed in Section 2 of this Order, created after the effective date of the Federal Advisory Committee Act—expiring under the terms of that Act before January 5, 1977—should be continued until that date, unless terminated sooner.

NOW, THEREFORE, I, GERALD R. FORD, by virtue of the authority vested in me as President of the United States of America, particularly by the Federal Advisory Committee Act, do hereby order as follows:

SECTION 1. The following-listed advisory committees are hereby continued until January 5, 1977, unless otherwise sooner terminated—

(1) Citizens' Advisory Committee on Environmental Quality—Executive Order No. 11472 of May 29, 1969, as amended (Council on Environmental Quality).

(2) Quetico-Superior Committee—Executive Order No. 11342 of April 10, 1967 (Department of Agriculture).

(3) Advisory Council for Minority Enterprise—Executive Order No. 11625 of October 13, 1971 (Department of Commerce).

(4) Consumer Advisory Council—Executive Order No. 11583 of February 24, 1971, as amended (Department of Health, Education, and Welfare).

(5) President's Council on Physical Fitness and Sports—Executive Order No. 11562 of September 25, 1970 (Department of Health, Education, and Welfare).

(6) Committee for the Preservation of the White House—Executive Order No. 11145 of March 7, 1964, as amended (Department of the Interior).

(7) Citizens' Advisory Council on the Status of Women—Executive Order No. 11126 of November 1, 1963, as amended (Department of Labor).

(8) President's Advisory Committee on the Environmental Merit Awards Program—Executive Order No. 11667 of April 19, 1972 (Environmental Protection Agency).

(9) National Health Resources Advisory Committee—Executive Order No. 11415 of June 24, 1968, as amended (General Services Administration).

(10) President's Committee on the National Medal of Science—Executive Order No. 11287 of June 28, 1966, as amended (National Science Foundation).

(11) President's Commission on White House Fellowships—Executive Order No. 11183 of October 3, 1964, as amended (Civil Service Commission).

SEC. 2. The following-listed advisory committees are hereby continued until January 5, 1977, unless terminated sooner—

(1) President's Export Council—Executive Order No. 11753 of December 20, 1973 (Department of Commerce).

(2) President's Committee on Mental Retardation—Executive Order No. 11776 of March 28, 1974 (Department of Health, Education, and Welfare).

(3) Federal Advisory Council on Occupational Safety and Health—Executive Order No. 11807 of September 28, 1974 (Department of Labor).

(4) Energy Research and Development Advisory Council—Presidential Announcement of June 29, 1973 (National Science Foundation).

(5) Ad Hoc Advisory Group on Puerto Rico—Presidential Announcement of September 27, 1973 (Domestic Council).

SEC. 3. The department or agency listed after the advisory committees listed in Section 1 and Section 2 of this Order shall perform such functions with respect to the committee involved as may be required by the Federal Advisory Committee Act.

SEC. 4. Advisory committees created by the President before January 5, 1973, which are subject to the provisions of the Federal Advisory Committee Act, and which have not been continued by Section 1 of this Order, will, unless sooner terminated under the provisions of the Federal Advisory Committee Act, terminate as of January 5, 1975.

Gerald R. Ford

THE WHITE HOUSE,
January 4, 1975.

[FR Doc.75-674 Filed 1-6-75;9:49 am]

EXECUTIVE ORDER 11828

Establishing a Commission on CIA Activities Within the United States

The Central Intelligence Agency as created by the National Security Act of 1947 fulfills intelligence functions vital to the security of our nation, and many of its activities must necessarily be carried out in secrecy. Such activities are nevertheless subject to statutory limitations. I have determined that in order to insure scrupulous compliance with these statutory limitations, while fully recognizing the statutory missions of the Agency, it is advisable to establish a Commission on CIA Activities Within the United States.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, I hereby order as follows:

SECTION 1. *Establishment of the Commission.* There is hereby established a Commission on CIA Activities Within the United States (hereinafter referred to as the "Commission"), to be composed of a Chairman and other members to be appointed by the President.

SEC. 2. *Functions of the Commission.* The Commission shall:

(a) Ascertain and evaluate any facts relating to activities conducted within the United States by the Central Intelligence Agency which give rise to questions of compliance with the provisions of 50 U.S.C. 403;

(b) Determine whether existing safeguards are adequate to prevent any activities which violate the provisions of 50 U.S.C. 403;

(c) Make such recommendations to the President and to the Director of Central Intelligence as the Commission deems appropriate.

SEC. 3. *Cooperation by and with Executive Departments and Agencies.* The Commission is authorized to request, at the direction of the Chairman, from any executive department or agency, any information and assistance deemed necessary to carry out its functions under this order. Each department or agency shall furnish such information and assistance to the Commission, to the extent permitted by law. The Commission shall furnish to the Attorney General any evidence found by the Commission which may relate to offenses under the statutes of the United States.

SEC. 4. *Compensation, Personnel, and Finance.* (a) Each member of the Commission may receive compensation for each day he or she is engaged upon the work of the Commission at not to exceed the daily rate now or hereafter prescribed by law for persons and positions in GS–18, as authorized by law and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service intermittently employed.

(b) The Commission shall have an Executive Director who shall be designated by the President and shall receive such compensation as may hereafter be specified. The Commission is authorized to appoint and fix the compensation of such other personnel as may be necessary to enable

it to carry out its functions, and is authorized to obtain services in accordance with the provisions of 5 U.S.C. 3109.

(c) All necessary expenses incurred in connection with the work of the Commission shall be paid from the appropriation for "Unanticipated Personnel Needs" P.L. 93–381, 88 Stat. 617, or from such other funds as may be available.

SEC. 5. *Administrative Services.* The General Services Administration shall provide administrative services for the Commission on a reimbursable basis.

SEC. 6. *Report and Termination.* The Commission shall present its final report to the President not later than three months from the date of this order. It shall terminate within one month after presenting its final report.

Gerald R. Ford

THE WHITE HOUSE,
January 4, 1975.

[FR Doc.75–675 Filed 1–6–75;9:50 am]

MEMORANDUM OF DECEMBER 30, 1974

Funds for Salaries and Expenses

Memorandum for Chairman, Atomic Energy Commission, and Administrator-Designate, Energy Research and Development Administration

THE WHITE HOUSE,
Washington, December 30, 1974.

Memorandum for Hon. Dixy Lee Ray, Chairman, Atomic Energy Commission; Hon. Robert C. Seamans, Jr., Administrator-Designate, Energy Research and Development Administration.

Under the provisions of Section 312(a) of the Energy Reorganization Act of 1974 (Public Law 93–438), the use of any funds available to the Atomic Energy Commission for salaries and expenses is hereby approved for the purpose of paying the compensation and expenses of the Administrator of the Energy Research and Development Administration.

This memorandum shall be published in the FEDERAL REGISTER.

Gerald R. Ford

[FR Doc.75-677 Filed 1-6-75;10:24 am]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 352—REEMPLOYMENT RIGHTS

Equalization Allowance Due Federal Employee Transferred to International Organizations

Part 352 is amended to change the method used to calculate the Equalization Allowance due Federal employees transferred to international organizations. The new method will counteract the adverse effect which a recent change in the U.N. gross salary would have had on Equalization Allowance received by transferred employees.

Effective January 1, 1975, § 352.310(a)(1) is amended as set out below:

§ 352.310 Equalization allowance.

(a) * * *

(1) To determine the difference, the Department of State defines pay (i) for the Federal Government, as the amount paid an employee before the deduction of State and local taxes, but after the deduction of hypothetical U.S. Federal tax using the standard deduction considering the number of exemptions and appropriate tax table prescribed by the Department; (ii) for international organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies, as the amount actually paid to the employee after the deduction of the Staff Assessment; (iii) for other international organizations, as the amount actually paid to the employee. In cases where pay is subject to State and local taxes, this shall be the pay before the deduction of the taxes.

((5 U.S.C. 3584); E.O. 11552, 3 CFR 1970 Comp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75-428 Filed 1-6-75;8:45 am]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 301—DOMESTIC QUARANTINE NOTICES

Japanese Beetle; Regulated Areas

This document amends the supplemental regulation which lists regulated areas for purposes of the Federal Japanese Beetle Quarantine (7 CFR 301.48) by adding to the generally infested areas all or parts of the following previously nonregulated counties: Carroll, Coweta, Greene, Jones, Monroe, and Rockdale in Georgia; Effingham and Macon in Illinois; Bourbon, Garrard, Jackson, Jessamine, Lincoln, Nicholas, Pulaski, Robertson, Rockcastle, Trimble, Wayne, and Woodford in Kentucky; Miami, Putnam, and Shelby in Ohio; Fairfield and Newberry in South Carolina; and Hancock in Tennessee; and by adding to the suppressive areas part of the previously nonregulated county of Muscogee in Georgia. This document further amends said regulation by extending the generally infested areas in the following previously regulated counties: Bartow, Bibb, Burke, Cherokee, Clarke, De Kalb, Elbert, Fannin, Fayette, Gilmer, Gordon, Henry, Murray, Newton, Oconee, Oglethorpe, Paulding, and Walton in Georgia; Cook, Du Page, Iroquois, and Kankakee in Illinois; Clay, Dearborn, Dubois, Greene, Jennings, Ohio, Orange, Parke, Putnam, Switzerland, and Washington in Indiana; Auglaize, Clark, and Preble in Ohio; Union in South Carolina; and Cocke, Greene, Hawkins, Loudon, Roane, and Sevier in Tennessee; and by extending the suppressive areas in the counties of Cleburne, Jackson, and Lee in Alabama. This also amends said regulation by removing from the suppressive areas a part of Wayne County in Michigan. Regarding the area removed from regulations, the provisions of the regulations with respect to the interstate movement of regulated articles from regulated areas in quarantined States will not apply to the interstate movement of such articles from the specified counties but the provisions with respect to the interstate movement of regulated articles from nonregulated areas in the quarantined States will be applicable.

Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), and § 301.48-2 of the Japanese Beetle Quarantine regulations (7 CFR 301.48-2, as amended); the supplemental regulation designating regulated areas, 7 CFR 301.48-2a, is hereby amended to read as follows:

§ 301.48-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as Japanese beetle regulated areas within the meaning of the provisions of this subpart, and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

ALABAMA

(1) *Generally infested area.* None.

(2) *Suppressive area.*

Calhoun County. Sections 35 and 36, T. 15 S., R. 7 E.; and secs. 1, 2, 11, and 12, T. 16 S., R. 7 E.

Cleburne County. T. 16 S., R. 10 E.; S½ T. 15 S., R. 10 E.; secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30 T., 31, 32, 16 S., R. 11 E.; and secs. 19, 20, 29, 30, 31, 32, T. 15 S., R. 11 E.

Jackson County. Secs. 7, 8, 9, 16, 17, 18 T. 3 S., R. 5 E., and that portion of the county lying within the corporate limits of the city of Scottsboro.

Jefferson County. Secs. 5, 6, 7, 8, 17, 18, 19, and 20, T. 17 S., R. 1 W.; and secs. 1, 12, 13, and 24, T. 17 S., R. 2 W.

Lee County. That portion of the county lying within the corporate limits of the city of Opelika.

Winston County. Secs. 6 and 7, T. 10 S., R. 10 W.

CONNECTICUT

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

DELAWARE

(1) *Generally infested area.* The entire State.

(2) *Suppresive area.* None.

DISTRICT OF COLUMBIA

(1) *Generally infested area.* The entire District.

(2) *Suppressive area.* None.

GEORGIA

(1) *Generally infested area.*

Banks County. The entire county.

Barrow County. The entire county.

Bartow County. The entire county, except Georgia Militia Districts 851, 1471, and 1472.

Bibb County. That portion of the county lying within Georgia Militia Districts 514, 481, 520, 1085, 564, and 716.

Burke County. That portion of the county lying within Georgia Militia Districts 65, 66, and 67; that portion of Georgia Militia Districts 69 and 72 lying within a circle having a radius of 3 miles with the center at the intersection of Savannah and Atlanta Railroad and the Georgia and Florida Railroad.

Carroll County. That portion of the county lying within Georgia Militia Districts 1542 and 1297.

Cherokee County. The entire county.

Clarke County. The entire county.

Clayton County. The entire county.

Cobb County. The entire county.

Columbia County. That portion of the county lying south of I-20 and east of Little Kiokee Creek.

Coweta County. That portion of the county lying within Georgia Militia Districts 742, 746, and 645.

Dawson County. The entire county.

De Kalb County. The entire county.

Douglas County. That portion of the county lying within Georgia Militia Districts 1273, 784, 736, and 1272.

Elbert County. That portion of the county lying within Georgia Militia Districts 201, 197, 315, 199, 202, and 196.

Fannin County. The entire county except that portion of Georgia Militia District 1130 lying west of Tumbling Creek and that portion of Georgia Militia District 980 lying west of Jacks River.

Fayette County. The entire county, except that portion lying within Georgia Militia District 1293.

Forsyth County. The entire county.

Franklin County. The entire county.

Fulton County. The entire county.

Gilmer County. The entire county.

Gordon County. That portion of the county lying within Georgia Militia Districts 1057, 874, 1063, 1235, 1056, and 973.

Greene County. That portion of the county lying within Georgia Militia District 147.

Gwinnett County. The entire county.

Habersham County. The entire county.

Hall County. The entire county.

Hart County. The entire county.

Henry County. That portion of the county lying within Georgia Militia Districts 888, 775, 622, 486, 1477, 491, 723, and 498.

Jackson County. The entire county.

Jones County. That portion of the county lying within Georgia Militia District 305.

Lumpkin County. The entire county.

Madison County. The entire county.

Monroe County. That portion of the county lying within Georgia Militia District 618.

Murray County. That portion of the county lying within Georgia Militia Districts 825, 972, 1291, and 984.

Newton County. That portion of the county lyng within Georgia Militia Districts 462, 1249, and 1525.

Oconee County. The entire county.

Oglethorpe County. That portion of the county lying within Georgia Militia Districts 226, 1303, 235, 236, 227, 233, and 237.

Paulding County. That portion of the county lying within Georgia Militia Districts 1596, 942, 1080, 1081, and 1087.

Pickens County. The entire county.

Rabun County. The entire county.

Richmond County. The entire county.

Rockdale County. That portion of the county lying within Georgia Militia District 561 and that portion of Georgia Militia District 475 lying north of Hightower Road.

Spalding County. That portion of the county lying within the corporate limits of the city of Griffin and that area south of city to the county line lying east of Carver Road and west of Potato Creek.

Stephens County. The entire county.

Towns County. The entire county.

Union County. The entire county.

Walton County. That portion of the county lying within Georgia Militia Districts 250, 415, 421, 419, 1663, 417, 416, 503, and 454.

White County. The entire county.

(2) *Suppressive area.*

Muscogee County. That portion of Georgia Militia District 668 lying south of Georgia Highway 22 and Georgia Highway 103, and that portion of Georgia Militia District 921 lying north of Bull Creek.

ILLINOIS

(1) *Generally infested area.*

Coles County. Secs. 1, 2, 3, 11, and 12, T. 12 N., R. 7 E.; secs. 25, 34, 35, and 36, T. 13 N., R. 7 E.; secs. 6, 7, and 18, T. 12 N., R. 8 E.; secs. 30 and 31, T. 13 N., R. 8 E., and all of the City of Mattoon not described above; secs. 2, 3, and that portion of sec. 11 outside the City of Charleston, T. 12 N., R. 9 E.; secs. 34 and 35, T. 13 N., R. 9 E.

Cook County. That portion of the county bounded by a line beginning at a point where York Road-Touhy Avenue intersect, thence east along Touhy Avenue to the Lake Michigan shore line, thence in a southerly direction along the Lake Michigan shore line to its intersection with the Indiana State line, thence south along Indiana State line to the Cook-Will County line, thence west along Cook-Will County line to its intersection with Cicero Avenue (State Highway 50), thence north along Cicero Avenue (State Highway 50) to its intersection with the Tri-State Tollway (Interstate 294), thence in a northwesterly direction along the Tri-State Tollway (Interstate 294) to its intersection with Cook-Du Page County line, thence north and west along the Cook-Du Page County line to its intersection with York Road, thence north along York Road to the point of beginning.

Du Page County. That portion of the county bounded by a line beginning at a point where Busse Road (State Highway 83) intersects the Cook-Du Page County line, thence east and south along the Cook-Du Page County line to North Avenue (State Route 64), thence west along North Avenue (State Route 64) to Busse Road (State Route 83), thence north along Busse Road to the point of beginning.

Edgar County. Section 6 and that portion of sec. 7 west of Indian boundary line T. 13 N., R. 11 W.; Sec. 31, T. 14 N., R. 11 W.; secs. 1, 2, 3, 10, 11, and 12, T. 13 N., R. 12 W.; secs. 34, 35, and 36, T. 14 N., R. 12 W., including all of the city of Paris and secs. 11, 12, 13, and 14, T. 13 N., R. 11 W., including all of the town of Vermillion.

Effingham County. Sections 19, 20, 21, 28, 29, 30, 31, and 32, T. 8 N., R. 6 E.

Fayette County. Sections 7, 8, 9, 16, 17, 18, 19, 20, 21, 29, and 30, T. 6 N, R. 1 E., including all of the city of Vandalia; and secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, and 24, T. 6 N., R. 1 W.

Iroquois County. That portion of the county lying east of State Highway 49. Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, and 14, T. 26, N., R. 10 E.; secs. 23, 24, 25, 26, 27, 33, 34, 35, and 36, T. 27 N., R. 10 E.; secs. 6, 7, and N1/2 of 18, T. 26 N., R. 11 E.; secs. 19, 30, and 31, T. 27 N., R. 11 E.; sec. 6, T. 25 N., R. 13 W.; secs. 30 and 31, T. 26 N., R. 13 W.; secs. 18, 19, 30, and 31, T. 27 N., R. 13 W.; secs. 30 and 31, T. 28 N., R. 13 W.; secs. 1 and 2, T. 25 N., R. 14 W.; secs. 4, 5, 6, 7, 8, 25, 34, 35, and 36, T. 26 N., R. 14 W.; secs. 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T. 27 N., R. 14 W.

Kankakee County. Secs. 6 and 7, T. 29 N., R. 10 W.; secs. 19, 30, and 31, T. 30 N., R. 10 W.; secs. 1, 2, 3, 10, 11, and 12, T. 29 N., R. 11 W.; secs. 22, 23, 24, 25, 26, 27, 34, 35, and 36, T. 30 N., R. 11 W.; secs. 25, 26, 35, and 36, T. 31 N., R. 11 E.; secs. 28, 29, 30, 31, 32, and 33, T. 31 N., R. 12 E.; and secs. 1 and 2, T. 30 N., R. 14 W.

La Salle County. Sections 13, 14, 23, 24, 25, 26, 35, and 36, T. 31 N., R. 3 E.; and secs. 18, 19, 30, and 31, T. 31 N., R. 4 E.

Macon County. Sections 1, 2, 11, 12, 13, and 14, T. 16 N., R. 2 E.; secs. 5, 6, 7, 8, and 18, T. 16 N., R 3 E, all in the city of Decatur and its environs.

Tazewell County. Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T. 26 N., R. 4 W.; and secs. 3, 4, 5, and 6, T. 25 N., R. 4 W., including most of the city of East Peoria and the village of Creve Coeur.

Vermilion County. Secs. 6, 7, and 18, T. 23 N., R. 10 W.; secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, T. 23 N., R. 11 W.; and secs. 1, 2, 22, 12, 13, and 14, T. 23 N., R. 12 W., including the towns of Cheneyville and Hoopeston.

Will County. Secs. 13 and 24, T. 34 N., R. 13 E.; and secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, T. 34 N., R. 14 E. including all of the town of Crete and the south part of Steger.

(2) *Suppressive area.*

Madison County. T. 3 N., R. 9 W., including the cities of Granite City, Madison, and Venice; and T. 3 N., R. 10 W.

Rock Island County. Beginning at a point where a northerly extension of Third Street intersects the Mississippi River; thence northeast along the Mississippi River to the East Moline City limits line; thence east and south along the East Moline City limits line to First Street Road; thence south along First Street Road to State Route 84; thence in a southerly direction along State Route 84 to Colona Road; thence west along Colona Road, 42d Avenue and 23d Avenue to its intersection with John F. Kennedy Drive; thence north along John F. Kennedy Drive to its intersection with Third Street; thence north along Third Street and a northerly extension of Third Street to the point of beginning.

St. Clair County. All of Canteen, Centreville, and Stites Townships; and that part of Caseyville Township lying west of State Route 159.

INDIANA

(1) *Generally infested area.*

Allen County. The entire county.

Benton County. The entire county.

Boone County. The entire county.

Carroll County. The entire county.

Cass County. The entire county.

Clark County. That portion of the county bounded by a line beginning at a point where State Highway 62 intersects the Floyd-Clark County line; thence extending northeastward along said highway to the point where it junctions with State Highway 131; thence northeastward along said highway to the point where it intersects Interstate Highway I65; thence continuing in a northeastward direction along the bituminous surfaced road located on the northern boundary of secs. 20 and 21 to the point where it junctions with Allison Lane; thence southeastward along said lane to the Ohio River; thence westward along the Ohio River to the point where it intersects the Floyd-Clark County line; thence north along said line to the point of beginning.

Clay County. N2/3, T. 13 N., R. 6 W.; secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, T. 12 N., R. 7 W.; secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 26, 27, 28, 33, 34, and 35, T. 13 N., R. 7 W.

Clinton County. The entire county.

Daviess County. The entire county.

Dearborn County. The entire county.

De Kalb County. The entire county.

Delaware County. Secs. 2, 3, 10, 11, 14, and 15, T. 20 N., R. 10 E.

Dubois County. T. 1 N., R. 3 W.; T. 1 N., R. 4 W.; T. 1 N., R. 5 W.; T. 1 N., R. 6 W.; T. 1 S., R. 3 W.; Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, T. 2 S., R. 3 W.; T. 1 S., R. 4 W., excluding secs. 19, 30, and 31; secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, T. 1 S., R. 5 W.; secs. 1, 2, 3, 10, 11, and 12, T. 1 S., R. 6 W.

Elkhart County. The entire county.

Fulton County. The entire county.

Greene County. T. 6 N., R. 3 W., secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T. 6 N., R. 4 W.

Hendricks County. Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, and 24, T. 15 N., R. 1 E.; and secs. 5, 6, 7, 8, 17, 18, 19, and 20, T. 15 N., R. 2 E.

Huntington County. The entire county.

Jackson County. Secs. 1, 2, 11, 12, 13, 14, 23, and 24, T. 4 N., R. 2 E.; secs. 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, T. 5 N., R. 2 E.; secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, and 24, T. 4 N., R. 3 E.; secs. 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, and 34, T. 5 N., R. 3 E.; secs. 7, 18, and 19, T. 4 N., R. 4 E.; secs. 12, 13, and 24, T. 6 N., R. 5 E; and secs. 7, 8, 9, 16, 17, 18, 19, 20, and 21, T. 6 N., R. 6 E.

Jasper County. The entire county.

Jefferson County. Secs. 1, 2, 11, 12, 13, 24, and 25, T. 3 N., R. 9 E.; secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30, T. 2 N., R. 10 E.; secs. 2, 3, 4, 5, 6, 7, 8, 18, 19, 30, 31, and 32, T. 3 N.,

R. 10 E.; secs. 20, 21, 22, 27, 28, 29, 32, 33, 34, and 35, T. 4 N., R. 10 E.; sec. 2, T. 3 N., R. 11 E.; and secs. 26, 27, 34, and 35, T. 4 N., R. 11 E.

Jennings County. E5/6 of T. 6 N., R. 7 E.; secs. 22, 23, 25, 26, 27, 28, 32, 33, 34, 35, and 36, T. N., R. 7 E.; sec. 6, T. 5 N., R. 8 E.; secs. 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, and 31, T. 6 N., R. 8 E.; secs. 27, 28, 29, 30, 31, 32, 33, and 34, T. 7 N., R. 8 E.; secs. 28, 29, 32, and 33, T. 7 N., R. 9 E.

Kosciusko County. The entire county.

Lagrange County. The entire county.

Lake County. The entire county.

La Porte County. The entire county.

Lawrence County. That portion of the county lying west and south of a line starting at the intersection of State Highway 37 and the Lawrence-Monroe County line, thence southerly along State Highway 37 to the junction of State Highways 37 and 58, thence southeasterly along said highway to the junction of State Highway 50, thence easterly along State Highway 50 to its intersection with the Lawrence-Jackson County line.

Marion County. The entire county.

Marshall County. The entire county.

Martin County. The entire county.

Miami County. The entire county.

Montgomery County. The entire county.

Newton County. The entire county.

Noble County. The entire county.

Ohio County. All that area east of the west boundary line of 2 W.

Orange County. All that area west of State Highway 37, and north of State Highway 56; and secs. 6 and 7, T. 1 S., R. 1 E.

Parke County. Secs. 9 through 36, T. 14 N., R. 6 W.; secs. 7, 18, 19, and S1/3, T. 14 N., R. 7 W.; secs. 12 through 36, T. 14 N., R. 8 W.; secs. 11, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, and 36, T. 14 N., R. 9 W.

Porter County. The entire county.

Pulaski County. The entire county.

Putnam County. Secs. 4, 5, 6, 7, 8, 9, T. 16 N., R. 3 W.; secs. 1, 2, 3, 10, 11, 12, T. 16 N., R. 4 W.; secs 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, T. 13 N., R. 5 W.; secs. 14, 23, 26, 35, and W2/3, T. 14 N., R. 5 W.

St. Joseph County. The entire county.

Starke County. The entire county.

Steuben County. The entire county.

Sullivan County. Secs. 2, 3, 4, 5, and 6, T. 8 N., R. 9 W.; secs. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T. 9 N., R. 9 W.; sec. 1, T. 8 N., R. 10 W.; secs. 25 and 36, T. 9 N., R. 10 W.

Switzerland County. Secs. 5, 6, 7, 8, 30, and 31, T. 2 N., R. 1 E.; secs. 29, 30, 31, and 32, T. 3 N., R. 1 E.; sec. 6, T. 1 N., R. 1 W.; secs. 1, 2, 3, 4, 5, 6, 11, 12, 13, 14, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, T. 2 N., R. 1 W.; S1/3, T. 3 N., R. 1 W.; secs. 1 through 9, and 18, T. 1 N., R. 2 W.; secs. 1 and 2, T. 2 N., R. 2 W.; secs. 25, 26, 35, and 36, T. 3 N., R. 2 W.; secs. 1, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 27, and 28, T. 2 N., R. 3 W.

Tippecanoe County. The entire county.

Vanderburgh County. The entire county.

Vermillion County. Secs. 10, and 15, and 22, T. 14 N., R. 9 W.

Vigo County. The entire county.

Wabash County. The entire county.

Washington County. Secs. 1, 2, and 3, T. 1 N., R. 2 E.; secs. 1, 2, 25, 26, 27, 34, 35, and 36, T. 2 N., R. 2 E.; secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 35, and 36, T. 3 N., R. 2 E.; T. 4 N., R. 2 E.; secs. 4, 5, 6, 7, 8, 9, T. 2 N., R. 3 E.; secs. 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, T. 3 N., R. 3 E.; secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T. 4 N., R. 3 E.

Wayne County. The entire county.

Wells County. The entire county.

White County. The entire county.

Whitley County. The entire county.

(2) *Suppressive area.* None.

KENTUCKY

(1) *Generally infested area.*

Bath County. The entire county.

Bell County. The entire county.

Boone County. The entire county.

Bourbon County. That portion of the county lying east of U.S. Highway 68, excluding the city limits of Paris and Millersburg.

Boyd County. The entire county.

Bracken County. The entire county.

Breathitt County. The entire county.

Campbell County. The entire county.

Carroll County. The entire county.

Carter County. The entire county.

Casey County. The entire county.

Clark County. The entire county.

Clay County. The entire county.

Daviess County. That portion of the county bounded by a line beginning at the junction of the L. & N. Railroad and the sewage treatment plant; thence east to the Ohio River; thence along the south bank of the Ohio River to the northeast boundary of the Elmer Smith powerplant; thence south and east along said boundary to the junction of U.S. Highway 60; thence south along U.S. Highway 60 to the junction of the L. & N. Railroad spur; thence south along the L. & N. Railroad spur to the L. & N. Railroad main line; thence west and north along the L. & N. Railroad main line to the point of beginning.

Edmondson County. That portion of the county within the bounds of the Mammoth Cave National Park.

Elliott County. The entire county.

Estill County. The entire county.

Fayette County. The entire county.

Fleming County. The entire county.

Floyd County. The entire county.

Gallatin County. The entire county.

Garrard County. The entire county.

Grant County. The entire county.

Greenup County. The entire county.

Hardin County. That portion of the county bounded by a line beginning at a point where the Hardin-Meade County line meets the Ohio River; thence east along the Ohio River to the Salt River; thence upstream along the Salt River to U.S. Highway 31W; thence southwest along U.S. Highway 31W to the Hardin-Meade County line; thence north along the Hardin-Meade County line to the point of beginning.

Harlan County. The entire county.

Jackson County. The entire county.

Jefferson County. The entire county.

Jessamine County. The entire county.

Johnson County. The entire county.

Kenton County. The entire county.

Knott County. The entire county.

Knox County. The entire county.

Laurel County. The entire county.

Lawrence County. The entire county.

Lee County. The entire county.

Leslie County. The entire county.

Letcher County. The entire county.

Lewis County. The entire county.

Lincoln County. The entire county.

Madison County. The entire county.

Magoffin County. The entire county.

Martin County. The entire county.

Mason County. The entire county.

McCreary County. The entire county.

Menifee County. The entire county.

Montgomery County. The entire county.

Morgan County. The entire county.

Nicholas County. That portion of the county lying east of U.S. Highway 68.

Oldham County. The entire county.

Owsley County. The entire county.

Perry County. The entire county.

Pike County. The entire county.

Powell County. The entire county.

Pulaski County. The entire county.

Robertson County. The entire county.

Rockcastle County. The entire county.

Rowan County. The entire county.

Trimble County. The entire county.

Wayne County. The entire county.

Whitley County. The entire county.

Wolfe County. The entire county.

Woodford County. The entire county.

(2) *Suppressive area.* None.

MAINE

(1) *Generally infested area.*

Androscoggin County. The entire county.

Cumberland County. The entire county.

Kennebec County. The entire county.

Lincoln County. The entire county.

Oxford County. The entire county.

Sagadahoc County. The entire county.

York County. The entire county.

(2) *Suppressive area.* None.

MARYLAND

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

MASSACHUSETTS

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

MICHIGAN

(1) *Generally infested area.*

Barry County. Secs. 18, 19, 27, 28, 29, 30, 31, 32, 33, 34, T. 1 N., R. 7 W.; and secs. 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T. 1 N., R. 8 W.

Berrien County. Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, and 24, T. 8 S., R. 17 W.; and secs. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, T. 8 S., R. 18 W.; and secs. 13, 14, 15, 22, 23, and 24, T. 8 S., R. 19 W.

Calhoun County. T. 1 S., R. 7 W.; T. 2 S., R. 7 W.; T. 1 S., R. 8 W.; T. 2 S., R. 8 W.; secs. 19, 30, 31, 32, 33, 34, and 35, T. 1 S., R. 6 W.; secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, T. 2 S., R. 6 W.; secs. 6 and 7, T. 3 S., R. 6 W.; all of T. 3 S., R. 7 W. except sec. 36; secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, T. 4 S., R. 7 W.; all of T. 3 S., R. 8 W. except secs. 30 and 31; and secs. 1 and 12, T. 4 S., R. 8 W.

Cass County. Secs. 5, 6, 7, 8, 17, 18, 19, and 20, T. 7 S., R. 13 W.; secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, T. 8 S., R. 14 W.; secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, T. 8 S., R. 15 W.; secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, T. 7 S., R. 16 W.; secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, T. 8 S., R. 16 W.

Kalamazoo County. Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, T. 1 S., R. 9 W.; secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, T. 2 S., R. 9 W.; secs. 1, 2, 3, 11, 12, 13, 14, 23, and 24, T. 3 S., R. 9 W.; sec. 36, T. 1 S., R. 10 W.; and sec. 1, T. 2 S., R. 10 W.

Lenawee County. T. 9 S., R. 4 E.; T. 8 S., R. 5 E.; T. 9 S., R. 5 E.; secs. 24, 25, 35, and 36, T. 7 S., R. 4 E.; E2/3 and secs. 17, 20, 29, and 32 of T. 8 S., R. 4 E.; and S1/2 of T. 7 S., R. 5 E.

Macomb County. Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, and 17, T. 1 N., R. 12 E.; W1/2, sec. 3, and that portion of sec. 10 lying north of State Highway M-53, T. 2 N., R. 12 E.; and secs. 27, 28, 29, 30, 31, 32, 33, and 34, T. 3 N., R. 12 E.

Monroe County. Tps. 8 and 9 S., Rs. 6, 7, and 8 E., S1/2 of T. 7 S., Rs. 6 and 7 E., and S1/4 and secs. 22 and 27 and that portion lying east of U.S. Highway 24 and south of Woodchuck Creek, T. 7 S., R. 8 E.; and that portion lying east of U.S. Highway 24 and south of Woodchuck Creek, T. 7 S., R. 9 E.

Oakland County. Secs. 1, 2, 11, 12, and 13, T. 2 N., R. 11 E.; and secs. 25, 26, 35, 36, T. 3 N., R. 11 E.

Washtenaw County. Secs. 1, 2, 11, 12, 13, and that portion of 14 north of Interstate 94, T. 3 S., R. 7 E.

Wayne County. Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 21, T. 3 S., R. 8 E.

(2) *Suppressive area.*

Allegan County. All that area lying within the city limits of the City of Allegan.

Berrien County. That portion of the Cities of Benton Harbor and St. Joseph west of State Highway M-139.

Washtenaw County. That portion of the City of Ypsilanti and vicinity bounded by a line beginning at a point where Clark Road intersects Prospect Street; thence east along Clark Road to its intersection with Harris Road; thence south along Harris Road to its intersection with Interstate 94; thence west along Interstate 94 to its intersection with Prospect Street; thence north along Prospect Street to the point of beginning.

MISSOURI

(1) *Generally infested area.* None.

(2) *Suppressive area.*

City of St. Louis. That part of the city bounded by a line beginning at a point where the Mississippi River intersects an imaginary line extended from Humboldt Avenue; thence southwesterly along said imaginary line and Humboldt Avenue to a second projected imaginary line extending southwesterly from Humboldt Avenue across Bellefontaine Cemetery to a point where the second imaginary line intersects West Florissant Avenue and Kingshighway Memorial Boulevard; thence southerly along said boulevard to its intersection with Shaw Boulevard; thence easterly along Shaw Boulevard to its intersection with Grand Boulevard; thence southerly along Grand Boulevard to its intersection with Russell Boulevard; thence easterly along Russell Boulevard to its intersection with Russell Avenue; thence easterly along said avenue and a projected imaginary line to a point where the imaginary line intersects the Mississippi River; thence northerly along said river to point of beginning.

That part of the city bounded by a line beginning at a point where Utah Street intersects Gustine Street; thence southerly along Gustine Street to its intersection with Taft Street; thence westerly along Taft Street to its intersection with Gravois Avenue; thence southerly along Gravois Avenue to its intersection with Neosho Street; thence westerly along Neosho Street to its intersection with Ridgewood Avenue; thence northerly along Ridgewood Avenue to its intersection with Chippewa Street; thence west on Chippewa Street to its intersection with Kingshighway Memorial Boulevard; thence northerly along said boulevard to the intersection with Fyler Street; thence east along Fyler Street to its intersection with Morganford Road; thence north on Morganford Road to its intersection with Utah Street; thence east on Utah Street to the point of beginning.

That part of the city bounded by a line beginning at a point where the city limits intersect Southwest Avenue; thence easterly along Southwest Avenue to its intersection with Watson Road; thence southwesterly along Watson Road to its intersection with Pernod Avenue; thence westerly along Pernod Avenue and a projected imaginary line to a point where the imaginary line intersects the city limits; thence northerly along said city limits to point of beginning.

St. Louis County. That part of the county bounded by a line beginning at a point where the county line—St. Louis city limits intersect Southwest Avenue; thence westerly along Southwest Avenue to its intersection with Manchester Avenue; thence west along Manchester Avenue to its intersection with Laclede Station Road; thence south along Laclede Station Road to Deer Creek; thence easterly along Deer Creek to its intersection with the county line—St. Louis city limits thence northerly along said county line—city limits to point of beginning.

That part of the county bounded by a line beginning at a point where the Chicago, Rock Island and Pacific Railroad intersects U.S. Routes 40 and 61; thence northeasterly along the said railroad to its intersection with City Road; thence southeasterly along City Road to its intersection with Olive Boulevard; thence southwesterly along Olive Boulevard to its intersection with White Road; thence southeasterly along White Road to its intersection with Conway Road; thence westerly along Conway Road to its intersection with U.S. Routes 40 and 61; thence northwesterly along U.S. Routes 40 and 61 to point of beginning.

NEW HAMPSHIRE

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

NEW JERSEY

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

NEW YORK

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

NORTH CAROLINA

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

OHIO

(1) *Generally infested area.*
Adams County. The entire county.
Allen County. The entire county.
Ashland County. The entire county.
Ashtabula County. The entire county.
Athens County. The entire county.
Auglaize County. The entire county.
Belmont County. The entire county.
Brown County. The entire county.
Butler County. The entire county.
Carroll County. The entire county.
Champaign County. The entire county.
Clark County. The entire county.
Clermont County. The entire county.
Clinton County. The entire county.
Columbiana County. The entire county.
Coshocton County. The entire county.
Crawford County. The entire county.
Cuyahoga County. The entire county.
Defiance County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Fairfield County. The entire county.
Fayette County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Gallia County. The entire county.
Geauga County. The entire county.
Greene County. The entire county.
Guernsey County. The entire county.
Hamilton County. The entire county.
Hancock County. The entire county.
Hardin County. The entire county.
Harrison County. The entire county.
Henry County. The entire county.
Highland County. The entire county.
Hocking County. The entire county.
Holmes County. The entire county.
Huron County. The entire county.
Jackson County. The entire county.
Jefferson County. The entire county.
Knox County. The entire county.
Lake County. The entire county.
Lawrence County. The entire county.
Licking County. The entire county.
Logan County. The entire county.
Lorain County. The entire county.
Lucas County. The entire county.
Madison County. The entire county.
Mahoning County. The entire county.
Marion County. The entire county.
Medina County. The entire county.
Meigs County. The entire county.
Miami County. The entire county.
Monroe County. The entire county.
Montgomery County. The townships of Butler, Harrison, Mad River, Miami, Washington, and Wayne and the Cities of Dayton, Kettering, Oakwood, and Vandalia.
Morgan County. The entire county.
Morrow County. The entire county.
Muskingum County. The entire county.
Noble County. The entire county.
Ottawa County. The entire county.
Perry County. The entire county.
Picaway County. The entire county.
Pike County. The entire county.
Portage County. The entire county.
Preble County. The townships of Jackson and Jefferson.
Putnam County. The entire county.
Richland County. The entire county.
Ross County. The entire county.
Sandusky County. The entire county.
Seneca County. The entire county.
Scioto County. The entire county.
Shelby County. The entire county.
Stark County. The entire county.
Summit County. The entire county.
Trumbull County. The entire county.
Tuscarawas County. The entire county.
Union County. The entire county.
Van Wert County. The entire county.
Vinton County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Williams County. The entire county.
Wood County. The entire county.
Wyandot County. The entire county.
(2) *Suppressive area.* None.

PENNSYLVANIA

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

RHODE ISLAND

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

SOUTH CAROLINA

(1) *Generally infested area.*
Aiken County. The entire county.
Anderson County. That portion of the county lying north of Interstate Highway 85.
Calhoun County. That portion of the county lying north and west of U.S. Highway 601.
Cherokee County. The entire county.
Chester County. That portion of the county bounded by a line beginning at a point where the Broad River junctions with the Chester-York County line; thence extending east along said county line to its intersection with U.S. Highway 321; thence south along said highway to its junction with State Primary Highway 9; thence in a northwesterly direction along said highway to its intersection with Broad River; thence in a northerly direction along said river to the point of beginning, excluding the area within the corporate limits of the town of Lowrys.
Chesterfield County. That portion of Chesterfield County bounded by a line beginning at a point where Thompson Creek junctions with the Great Pee Dee River; thence in a southerly direction along said river to its junction with the Chesterfield-Darlington County line; thence in a southwesterly direction along said county line to

its intersection with State Secondary Highway 80; thence in a northwesterly direction along said highway to its junction with U.S. Highway 1; thence northeast along said highway to its intersection with Thompson Creek; thence in an easterly direction along said creek to the point of beginning, excluding the area within the corporate limits of the town of Patrick.

Darlington County. That portion of Darlington County bounded by a line beginning at a point where the Great Pee Dee River junctions with the Chesterfield-Darlington County line; thence extending in a southeasterly direction along said river to its intersection with State Primary Highway 34; thence in a southwesterly direction along said highway to its intersection with State Secondary Highway 228; thence northwest along said highway to its junction with State Secondary Highway 133; thence in a northeasterly direction along said highway to its junction with State Secondary Highway 717; thence in a northwesterly direction along said highway to its junction with State Secondary Highway 411; thence southwest along said highway to its intersection with Horse Creek; thence northwest along said creek to its intersection with U.S. Highway 52; thence in a northerly direction along said highway to its junction with State Secondary Highway 327; thence in a northwesterly direction along said highway to its intersection with the Darlington-Chesterfield County line; thence in a northeasterly direction along said county line to the point of beginning.

Dillion County. The entire county.

Fairfield County. That portion of the county bounded by a line beginning at a point where U.S. Highway 321 intersects the Fairfield-Chester County line; thence extending south along said highway to its junction with State Primary Highway 34; thence south and east along said highway to its intersection with U.S. Highway 21; thence south along said highway to its intersection with the Fairfield-Richland County line; thence west and south along said county line to its junction with the Broad River; thence northwest and north along said river to its junction with the Fairfield-Chester County line; thence east along said county line to the point of beginning.

Florence County. The entire county.

Greenville County. The entire county.

Horry County. That portion of the county bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line; thence southeast along said line to its intersection with a dirt road, said dirt road being 0.8 mile northwest of the intersection of State Secondary Highway 144 with the South Carolina-North Carolina State line; thence west for 0.7 mile along said dirt road to its junction with a second dirt road; thence northwest along said dirt road to its junction with State Secondary Highway 746; thence west along said highway to its junction with State Secondary Highway 664; thence in a westerly direction along said highway to its junction with State Primary Highway 9; thence northwest along said highway to its junction with State Secondary Highway 348; thence south along said highway to its junction with State Secondary Highway 112; thence northwest along said highway to its junction with State Secondary Highway 19; thence northwest along said highway to its intersection with State Primary Highway 410; thence northeast along said highway to its junction with State Secondary Highway 33; thence north along said highway to the point of beginning.

Lancaster County. That area bounded by a line beginning at a point where State Primary Highway 9 (Business) junctions with U.S. Highway 521 (Business) and State Primary Highway 200, said junction being approximately 1 mile southeast of the intersection of State Primary Highway 9 (Bypass) and U.S. Highway 521; thence extending south and southwest along State Primary Highway 200 to its junction with State Primary Highway 914 and State Secondary Highway 25; thence northwest along State Primary Highway 914 to its junction with State Primary Highway 9 (Business); thence northeast along said highway to the point of beginning.

Lexington County. The entire county.

Marion County. The entire county.

Marlboro County. The entire county.

McCormick County. The entire county.

Newberry County. That portion of the county lying north of Interstate Highway 26.

Oconee County. The entire county.

Pickens County. The entire county.

Richland County. The entire county.

Spartanburg County. The entire county.

Union County. The entire county.

York County. The entire county.

(2) *Suppressive area.* None.

TENNESSEE

(1) *Generally infested area.*

Blount County. That portion of the county lying southeast of the Fotthills Parkway Highway.

Campbell County. The entire county except the City of La Follette and that portion of the county bounded on the north by Tennessee Highway 63 and on the west by Big Creek.

Carter County. The entire county.

Claiborne County. That portion of the county lying east of the Southern Railway and north of the Powell River.

Cocke County. The entire county.

Greene County. That portion of the county bounded by a line beginning at a point where State Highway 70 intersects the Greene-Hawkins County line; thence southerly along said highway to its intersection with State Highway 34; thence easterly along State Highway 34 to its intersection with State Highway 107; thence easterly along State Highway 107 to its intersection with the Greene County line; thence southerly, northwesterly, and northeasterly along said county line to the point of beginning.

Hamblen County. That portion of the county lying east of Tennessee Highway 66 and south of U.S. Highway 11 East.

Hancock County. The entire county.

Hawkins County. The entire county.

Jefferson County. That portion of the county lying southeast of a line beginning at a point where Tennessee Highway 66 intersects the Hamblen County line; thence southwest along said highway to its intersection with U.S. Highway 70; thence west along said highway to its intersection with Tennessee Highway 92; thence southeast along said highway to Douglas Lake; thence southwest along said lake to its intersection with the Sevier County line.

Johnson County. The entire county.

Knox County. All of the corporate city limits of Knoxville and that portion of the county bounded on the north by Federal Aid Secondary Road 2412 and on the south by U.S. Highway 11 E.

Loudon County. The entire county.

McMinn County. That portion of the county lying east of U.S. 411 and including all of the Etowah city limits.

Monroe County. The entire county.

Morgan County. That portion of the county bounded by a line beginning at a point where the Emory River intersects the Morgan-Roane County line; thence north along said river to the White Oak Creek; thence northwest along said creek where it terminates; thence diagonally across the Federal Aid Secondary Road 2590 to the first northbound gravel road; thence north along said road to where it junctures with the boundary of the Catoosa Wild Life Management Area; thence east along boundary of said Catoosa Wild Life Management Area to the point where it meets the Emory River at the point of the juncture of the Crooked Fork Creek; thence north along said creek to the point where it intersects U.S. Highway 27; thence south along said highway to the Morgan-Roane County line; thence west along said county line to the point of beginning.

Polk County. The entire county.

Roane County. The entire county.

Sevier County. The entire county except that portion lying north of the French Broad River.

Sullivan County. The entire county.

Unicoi County. The entire county.

Washington County. The entire county.

Weakley County. All of the area within the incorporated boundary of the City of Greenfield.

(2) *Suppressive area.* None.

VERMONT

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

VIRGINIA

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

WEST VIRGINIA

(1) *Generally infested area.* The entire State.

(2) *Suppressive area.* None.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477; 38 FR 19140; 7 CFR 301.48-2, as amended.)

The Deputy Administrator of the Plant Protection and Quarantine Programs has determined that the Japanese Beetle has been found or there is reason to believe it is present in the civil division and parts of civil divisions listed as regulated areas or that it is necessary to regulate such areas because of their proximity to Japanese beetle infestation or their inseparability for quarantine enforcement purposes from Japanese beetle infested localities. Further, he has also determined that the areas designated as suppressive and generally infested areas are eligible for such designation under § 301.48-1, as amended.

The Deputy Administrator has also determined that each of the quarantined States, wherein only portions of the State are designated as regulated areas, has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the

quarantine and regulations in this subpart, and that the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the Japanese beetle. Therefore, such civil divisions and parts of civil divisions listed above are designated as Japanese beetle regulated areas.

To the extent that these amendments relieve certain restrictions heretofore imposed, they should be made effective promptly in order to be of maximum benefit to the persons subject to the restrictions that are being relieved. To the extent that these amendments impose restrictions they are necessary in order to prevent the spread of the Japanese beetle and should be made effective promptly to accomplish their purpose in the public interest. Also, it does not appear that additional information would be made available to the Department by public participation in rulemaking proceedings on the amendment. Accordingly, it is found, under the administrative procedure provisions of 5 U.S.C. 553, that notice of rulemaking and other public procedure with respect to these amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. These amendments shall become effective on January 7, 1975.

Done at Washington, D.C., this 2nd day of January 1975.

JAMES O. LEE, Jr.,
Acting Deputy Administrator, Plant Protection and Quarantine Programs.

[FR Doc.75-426 Filed 1-6-75;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 332, Amdt. 1]

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

Limitation of Handling

This regulation increases the quantity of California-Arizona navel oranges that may be shipped to fresh market during the weekly regulation period December 27, 1974–January 2, 1975. The quantity that may be shipped is increased due to improved market conditions for navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

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

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 332 (39 FR 44737). The marketing picture now indicates that there is a greater demand for navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of navel oranges to fill the current market demand thereby making a greater quantity of navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

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

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (iii) of § 907.632 (Navel Orange Regulation 332) (39 FR 44737) are hereby amended to read as follows:

§ 907.632 Navel Orange Regulation 332.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 790,000 cartons

* * * * *

(iii) District 3: 60,000 cartons.

* * * * *

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

Dated: December 31, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75-377 Filed 1-6-75;8:45 am]

[Lemon Reg. 672, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period December 29, 1974–January 4, 1975. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

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

(2) The need for an increase in the quantity of lemons available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 672 (39 FR 44738). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

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

(b) *Order, as amended.* Paragraph (b)(1) of § 910.972. (Lemon Regulation 672 (39 FR 44738) is hereby amended to read as follows:

§ 910.972 Lemon Regulation 672.

* * * * *

(b) * * *

(1) The quantity of lemons grown in California and Arizona which may be handled during the period December 29, 1974, through January 4, 1975, is hereby fixed at 190,000 cartons.

* * * * *

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

Dated: January 2, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75-376 Filed 1-6-75;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.3]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Rural Housing Loan Policies, Procedures, and Authorizations

Subpart B of Part 1822 of Title 7, Code of Federal Regulations (38 FR 12901; 38 FR 30998) is revised to further improve the operation and administration of the section 504 Rural Housing Loan Program. This revision makes the following changes and additions.

1. Section 1822.23 is changed to increase maximum loan amount from $3,500 to $5,000.

2. Section 1822.25(e) is changed to provide that if funds are included in the loan for a water or waste disposal system, the system must meet local health department requirements.

3. Section 1822.29 is changed to authorize loans to be amortized over a period of not more than 20 years instead of the present 10 years, in accordance with the Housing and Community Development Act of 1974.

4. Section 1822.30 is changed to permit loans of less than $2,500, instead of the present $1,500, to be evidenced by a Promissory Note only, in accordance with the Housing and Community Development Act of 1974.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553(a)(2) with respect to such rules. See the Secretary of Agriculture's statement setting forth the policy on public participation in rulemaking 36 FR 13804, dated July 24, 1971. These regulations, however, are not published for proposed rulemaking because one change merely clarifies existing regulations and the others implement provisions of the Housing and Community Development Act of 1974 and for that reason publication for comment is unnecessary. Furthermore, the changes will enable Farmers Home Administration to expedite needed benefits of the Act to the public and to delay issuance of such regulations by publishing for public comment would be contrary to the public interest. Interested persons may submit written comments, suggestions, data or arguments to the Office of the Deputy Administrator Comptroller, Farmers Home Administration, United States Department of Agriculture, Room 5007, South Building, Washington, D.C. 20250, on or before February 6, 1975. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. However, this Subpart B of Part 1822 shall remain effective until it is amended in order to permit the public business to proceed expeditiously.

Subpart B, as revised, reads as follows:

Subpart B—Section 504 Rural Housing Loan Policies, Procedures, and Authorizations

Sec.

1822.21 General.
1822.22 Objectives.
1822.23 Amount of section 504 loan.
1822.24 Eligibility requirements.
1822.25 Loan purposes.
1822.26 Evaluating application and determining need for section 504 loans.
1822.27 Limitations.
1822.28 Evidence of ownership.
1822.29 Terms and rates.
1822.30 Security.
1822.31 Approval of loan.
1822.32 Supervised bank accounts.

AUTHORITY: 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart B—Section 504 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1822.21 General.

This subpart sets forth the policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans under section 504(a) of the Housing Act of 1949 (section 504 loans). A section 504 loan will be made in accordance with the provisions of Subpart A of this part, as supplemented and modified by this regulation.

§ 1822.22 Objectives.

The basic objectives of the Farmers Home Administration (FmHA) in making section 504 loans is to assist owner-occupants in rural areas who do not qualify for section 502 loans to repair or improve their dwellings in order to make such dwellings safe and sanitary and to remove hazards to the health of the occupants, their families, or the community.

§ 1822.23 Amount of section 504 loan.

No initial or subsequent section 504 loan may be made which will cause the total amount of section 504 loan or grant assistance extended to an applicant to exceed $5,000. Transferees assuming a section 504 loan are limited to subsequent loans in an amount not to exceed the difference between the unpaid principal balance of the debt assumed and $5,000. Information will be compiled and retained indefinitely for all borrowers who have received section 504 financial assistance.

§ 1822.24 Eligibility requirements

To be eligible for a section 504 loan, an applicant must own and occupy a dwelling located in a rural area and meet the other eligibility requirements of Subpart A of this part, except that he must:

(a) Be without sufficient income to qualify for a section 502 loan and have no reasonable prospect of improving his income to the extent that a section 502 loan to improve his housing could be repaid.

(b) Have sufficient income, including any welfare-type payments, to repay the section 504 loan and have a good reputation for paying his debts promptly, except that if his income is not sufficient to pay the loan, he may qualify for the loan by obtaining a cosigner or cosigners in accordance with §§ 1822.4(d) and 1822.12(d).

(c) Need to make minor repairs and improvements to the dwelling which he owns and occupies in order to make it safe and sanitary and to remove hazards to the health of the applicant, his family, or the community.

§ 1822.25 Loan purposes.

Section 504 loan funds may be used for paying the cost of minor repairs and improvements such as:

(a) Repairing roofs.

(b) Supplying screens.

(c) Repairing or providing structural supports.

(d) Adding a room to an existing dwelling in special cases when clearly necessary to remove hazards to the health of the family.

(e) Providing a sanitary water and waste disposal system. If funds are included in the loan for a water or waste disposal system, the system must meet local health department requirements.

(f) Providing other simlar repairs or improvements.

(g) Paying fees and expenses in accordance with § 1822.6(a)(14).

§ 1822.26 Evaluating application and determining need for section 504 loans.

(a) Before a loan may be made, the County Supervisor must document the evidence that the applicant meets all requirements of eligibility to receive such loan.

(b) The County Supervisor will visit the home of each applicant who appears to be eligible to determine whether the applicant can meet the requirements of § 1822.24(c). During the visit, information will be recorded in the loan docket on the following items and any additional pertinent facts:

(1) The nature of the health or safety hazard and how the proposed loan will remove such hazard.

(2) The specific repairs to be made and a list of materials and labor to be provided with the proposed loan.

(c) Itemized cost estimates will be obtained for all work to be performed. If in the judgment of the County Supervisor the cost estimate is not reasonable, additional cost estimates will be obtained.

(d) Information about cosigners will be obtained in accordance with § 1822.12(d).

§ 1822.27 Limitations.

A section 504 loan may not be made to:

(a) Assist in the construction of new dwellings.

(b) Improve the appearance of a dwelling or make facilities in the dwelling

more convenient unless such changes are directly associated with removing hazards to health or safety.

(c) Make repairs to a dwelling of such poor condition and quality that when the repairs are completed, it would likely continue to be a substantial hazard to the health and safety of the family.

§ 1822.28 Evidence of ownership.

Each applicant will be required to submit evidence of ownership of his farm or nonfarm tract. This may be the original or a certified or photostatic copy of his deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether the applicant is a qualified owner, the County Supervisor will take such actions as he considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the Office of the General Counsel regarding the evidence of ownership submitted, and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807 of this Chapter. It may consist of evidence which, considered as a whole, would be sufficient to convince a reasonably well informed and prudent person that the applicant is probably the owner. It may include for example, such evidence as the levy and payment in the applicant's name of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner.

§ 1822.29 Terms and rates.

A section 504 loan will be scheduled for repayment in accordance with the applicant's ability to pay. Loans of not more than $1,500 may be amortized over a period not to exceed 10 years. Loans of more than $1,500 but not more than $2,500 may be amortized over a period not to exceed 15 years, and loans of more than $2,500 may be amortized over a period not to exceed 20 years from the date of the note. The interest rate for section 504 loans is 1 percent per annum.

§ 1822.30 Security.

Section 504 loans of $2,500 or more will be secured by a mortgage on the borrower's real estate. Real estate security will also be taken for loans of less than $2,500 whenever the loan approval official determines that such security may be needed to reasonably assure repayment of the loan. For all section 504 loans, the title requirements of Part 1807 of this chapter will not apply. However, the County Supervisor will use all practical means to verify that title and lien information furnished by the applicant is complete and accurate.

§ 1822.31 Approval of loan.

Section 504 loans may be approved in accordance with the authorizations of Subpart B of Part 1810 of this chapter.

§ 1822.32 Supervised bank accounts.

A supervised bank account will be used for each section 504 loan.

Effective date. This revision is effective on January 7, 1975.

Dated: December 27, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-427 Filed 1-6-75;8:45 am]

Title 10—Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Interim Delegations of Commission Authorities and Designation of Key Personnel

Notice is hereby given that the Atomic Energy Commission (AEC) has appointed individuals to key positions in an acting capacity and has delegated certain authorities for the interim period until formal activation of the Energy Research and Development Administration (ERDA), or February 8, 1975, whichever occurs first, so as to provide continuity in exercise of Commission authority and programs for such interim period.

Accordingly, effective as of close of business December 31, 1974, the following new § 1.127 is added to Subpart B—Headquarters, of Part I, Title 10, Code of Federal Regulations:

§ 1.127 Transitional delegations of authority.

(a) Notwithstanding anything to the contrary in the foregoing, the following delegation of authority is made to the General Manager or Acting General Manager as the case may be, under the circumstances stated:

(1) In the event that the number of members of the Commission becomes and remains insufficient to constitute a quorum for the transaction of business:

(2) All functions of the Commission (other than its licensing and regulatory functions) which are not excepted from delegation by section 161 n. of the Atomic Energy Act of 1954, as amended, are delegated to the General Manager or to such officer of the Commission as the Commission may appoint to serve as Acting General Manager, subject to the following provisions:

(i) Delegations of functions by the Commission to other officers of the Commission which are now in effect shall remain in effect.

(ii) Any function of the Commission which has been reserved to the Commission by rule or regulation or which has not been heretofore delegated to the General Manager by actions of the Commission identified in AECM 0115-03 and described in AECM 0115-04 shall be exercised by the General Manager or by such other officer appointed by the Commission to serve as Acting General Manager after consultation with members of the Commission unless they cannot be communicated with prior to the time for taking the action.

(b) The following acting appointments have been made to key administrative positions:

(1) R. D. Thorne, Manager, San Francisco Operations Office, as Acting General Manager;

(2) Thomas A. Nemzek, Director, Division of Reactor Research & Development, as Acting Assistant General Manager for Energy & Development Programs;

(3) Frank P. Baranowski, Director, Division of Production & Materials Management, as Acting Assistant General Manager for Production & Management of Nuclear Materials;

(4) Robert A. Kohler, Executive Assistant to the General Manager, as Acting Assistant General Manager for Administration;

(5) M. C. Greer, Assistant Controller for Budgets, as Acting Assistant General Manager, Controller.

(c) The foregoing appointments are effective as of close of business December 31, 1974, and shall continue in effect until ERDA is formally activated pursuant to the provisions of Pub. L. 93-438.

Dated at Germantown, Md. this 31st day of December, 1974.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.75-412 Filed 1-6-75;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. 2 (Rev. 5)]

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Financing Equity Securities Through Underwriters by Small Business Investment Companies

On November 5, 1974, Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (39 FR 39058) concerning amendments to 13 CFR §§ 107.3 and 107.504(b)(3) [1974] to allow purchases of securities from underwriters by small business investment companies. Interested persons were invited to submit written comments on or before December 5, 1974. After considering the comments received, the proposed amendments are being adopted with certain modifications, as set forth below.

Effective Date. Amendment 2 to Revisions 5 shall be effective January 7, 1975.

Information. The amendment changes the existing regulations by removing the authority of licensees to purchase from or through an underwriter of small business securities, from § 107.504(b)(3), and redefining the term "Financing" in § 107.3 to include purchases of equity securities through or from an underwrit-

er thereof who is not associated with the Licensee. The definition of "Associate of a Licensee" in § 107.3 remains unchanged. The effect of this change is to remove the quantitative limitation which § 107.504 imposed.

Under the proposed regulation, such purchases would have been made at the public offering price only. Comments received suggested that this be broadened to permit purchases at less (but not more) than that price, and this suggestion has been adopted.

The proposed regulation would have required the entire offering to be made on behalf of the issuer. The suggestion to permit the inclusion of some outstanding securities has been adopted. Only 80 percent of the total offering is required to consist of new securities.

The proposed regulation would have limited the aggregate price of the entire offering to $5 million. The suggestion that this aggregate be increased to $10 million has been adopted.

Part 107 has been amended by revising §§ 107.3, 107.301(e)(2) and 107.504(b)(3) to read as follows:

§ 107.3 Definition of terms.

Financing. "Financing" or "Financed" means outstanding financial assistance provided to a Small Concern by a Licensee, whether through (a) loans, (b) guaranties, (c) equity investments, (d) commitments, or (e) purchases through or from a non-Associate underwriter of Equity Securities (see § 107.302(b)) of a Small Concern, within 90 days after a public offering is first lawfully made: *Provided, however*, That such purchases may not be made at more than the original public offering price, that at least 80 percent of the proceeds of the issue (less reasonable and customary underwriting and related charges) are received by the Small Concern, and that the aggregate offering price does not exceed $10 million. See also § 107.301(e) regarding size status and nondiscrimination certification.

§ 107.301 General.

* * * * *

(e) * * *

(2) The Small Concern has certified on SBA Form 652-D that it will not illegally discriminate in its operations, employment practices or facilities as set forth in Part 113 of this chapter. Such forms shall be kept available for SBA's examination: *Provided, however*, That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering, (see § 107.3, "Financing"), in which event the Licensee shall keep the prospectus showing the small size status of the issuer, if available, as part of its records for SBA's examination.

§ 107.504 Other Permissible Financing.

* * * * *

(b) * * *

(3) *Securities purchased from nonissuer.* Securities of a Small Concern purchased from a seller other than the issuer or his underwriter (see § 107.3, "Financing"), when such acquisition constitutes a reasonably necessary part of the overall sound financing of such concern pursuant to the Act or when the securities are acquired to finance a change of ownership pursuant to § 107.812. See also § 107.301(e) regarding size status and nondiscrimination certification.

Dated: December 31, 1974.

THOMAS S. KLEPPE,
Administrator.

[DR Doc.75-354 Filed 1-6-75;8:45 am]

[Amdt. 3 (Rev. 5)]

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Performance of Advisory or Technical Services

On November 12, 1974, Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (39 FR 39897) concerning amendments to 13 CFR § 107.601 (a) and (b) [1974] to clarify the Small Business Administration's (SBA) requirements when a licensee or its associates perform management services of any kind for small business concerns.

Interested persons were invited to submit written comments on or before December 13, 1974.

Following consideration of the comments received, the proposed amendments are being adopted without change, except for editorial modifications.

Effective Date. Amendment 3 to Revision 5 shall be effective January 7, 1975.

Information. The amendment specifies that management services which are deemed to be merely advisory, and provided by the licensee to the portfolio concern, do not need prior SBA approval, but records of time and charges must be kept and charges must be comparable to those of other professional consultants. Advice is defined as recommendations subject to rejection by the small concern, to distinguish it from the actual performance of technical services.

Technical services by a licensee to a portfolio concern must be performed pursuant to a written contract, require annual advance approval by the portfolio concern and by SBA, and also require recordkeeping and reasonable charges.

All services performed by an associate of the licensee for a portfolio concern must have prior SBA approval, and the licensee must keep records for the SBA's review. The prior approval requirement stems from the close involvement by the SBIC or its associate with the business activity of a portfolio concern, which could give rise to control or conflict-of-interest situations. The recordkeeping requirement makes it possible for SBA to review the services performed and the fees charged to small concerns.

Part 107 has been amended by revising § 107.601(a) and (b) to read as follows:

§ 107.601 Management services.

(a) *General.* Management services may be advisory only or may, subject to § 107.901, include performance of any technical service relating to the financial, management, administrative, or operating activity of a Small Concern. Services shall be deemed "advisory only" where the Small Concern is free to accept or reject the advice rendered.

(b) *Conditions.* (1) Where a Licensee directly or indirectly provides management services to a Small Concern and such services are advisory only, no SBA approval is required. The Licensee shall maintain a record for examination by SBA of the time spent and charges made for such services and such charges shall not exceed comparable charges by established professional non-Licensee consultants.

(2) Where a Licensee directly or indirectly provides management services to a Small Concern that is being Financed by it and such services are not advisory only, such services shall be performed pursuant to a written contract with such Small Concern and the contract shall be approved annually in advance by the board of directors or principals of the Small Concern and by SBA. An agreement to perform such services for a Small Concern that is not being Financed by the Licensee shall not require such annual approval. Records shall be kept and charges made in accordance with subparagraph (1) of this paragraph.

(3) Where an Associate of a Licensee provides management services to a Small Concern that is being Financed by such Licensee and such services are advisory only, such advice shall be rendered pursuant to a written contract, and the contract shall be approved annually in advance by the board of directors or the principals of the Small Concern and by SBA. The Licensee shall maintain records of time spent and charges made in accordance with subparagraph (1) of this paragraph. Such services rendered to a Small Concern not being Financed by such Licensee are not subject to regulation by SBA until such time as Financing is provided.

(4) Where an Associate of a Licensee provides management services to a Small Concern that is being Financed by such Licensee and such services are not advisory only, such services shall be performed pursuant to a written contract, and the contract shall be approved annually in advance by the board of directors or the principals of the Small Concern and by SBA. Records shall be kept and charges made in accordance with subparagraph (1) of this paragraph. Such services rendered to a Small Concern not being Financed by the Licensee are not subject to regulation by SBA until such time as Financing is provided.

Dated: December 31, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.75-355 Filed 1-6-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 14235; Amdt. 39-2066]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Models PA-28 and PA-32 Airplanes

Pursuant to the authority delegated to me by the Administrator, an airworthiness directive (AD) was adopted on November 25, 1974, and made effective immediately upon receipt of the airmail letter AD as to all known United States operators of Piper Aircraft Corporation Models PA-28-140, PA-28-150, PA-28-160, PA-28-180, PA-28-235, PA-32-260, and PA-32-300 airplanes, modified by installing a large nose wheel fork (Tibbetts-Herre Airmotive P/N PA-32-1) and an 8.00-6 nose wheel tire in accordance with Supplemental Type Certificate SA281AL, because of reported failures of the nose wheel fork assembly. The AD requires inspection of the nose wheel fork assembly, repair or replacement as needed, and chamfering and heat treating of the nose wheel fork.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known U.S. operators of Piper Models PA-28-140, PA-28-150, PA-28-160, PA-28-180, PA-28-235, PA-32-260, and PA-32-300 airplanes, modified by installing a large nose wheel fork (Tibbetts-Herre Airmotive P/N PA-32-1) and an 8.00-6 nose wheel tire in accordance with Supplemental Type Certificate SA281AL, by airmail letter dated November 26, 1974. These conditions still exist and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

PIPER AIRCRAFT CORPORATION. Applies to Piper Models PA-28-140, PA-28-150, PA-28-160, PA-28-180, PA-28-235, PA-32-260 and PA-32-300 airplanes, modified by installing a large nose wheel fork (Tibbetts-Herre Airmotive P/N PA-32-1) and an 8.00-6 nose wheel tire in accordance with Supplemental Type Certificate SA281AL, certificated in all categories.

Compliance is required prior to the accumulation of 25 landings after the effective date of this AD, unless already accomplished.

To prevent possible failure of the nose wheel fork assembly, accomplish the following:

(a) Visually inspect the nose wheel fork for bends in the legs which are not part of the STC design.

(b) Straighten any bends found in the inspection required by paragraph (a) of this AD, prior to the inspection required by paragraph (c) of this AD.

(c) Inspect those nose wheel forks that have at any time been straightened in the past for cracks in the vicinity of the nose wheel axle holes, using a standard dye or fluorescent penetrant inspection procedure. To determine whether a nose wheel fork has been straightened in the past—

(1) Check the aircraft maintenance records; and

(2) Visually inspect the fork for any evidence of it having been straightened.

(d) If no cracks are found in the inspection required by paragraph (c) of this AD, or the nose wheel fork is a fork excepted from the inspection required by paragraph (c) of this AD, chamfer and heat treat the nose wheel fork before further flight in accordance with paragraphs (f) and (g) of this AD.

(e) If cracks are found in the inspection required by paragraph (c) of this AD, before further flight, replace the nose wheel fork with a serviceable nose wheel fork of the same part number which has been chamfered and heat treated in accordance with paragraphs (f) and (g) of this AD.

(f) Chamfer the outside edge of each nose wheel fork axle hole at 45 degrees to a minimum depth of 1/32-inch prior to heat treating.

(g) Heat treat the nose wheel fork to an F_{tu} of 180,000 PSI in accordance with MIL-H-6875 or an FAA approved equivalent.

(h) Permanently stamp the letter "H" on each nose wheel fork heat treated in accordance with paragraph (g) of this AD, adjacent to the serial and part number stamps.

(i) Replace each Piper P/N 20825-00 cap assembly with a Tibbetts-Herre P/N PA-32-5 cap assembly or an equivalent approved by the Chief, Engineering and Manufacturing Field Office, FAA, Alaskan Region.

(j) Replace the Tibbetts-Herre P/N PA-32-4 axle rod with a Tibbetts-Herre P/N PA-32-6 axle rod or equivalent approved by the Chief, Engineering and Manufacturing Field Office, FAA, Alaskan Region, using AN365-624 nuts and AN960-616 washers.

NOTE. For the purpose of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type.

This amendment is effective upon publication in the FEDERAL REGISTER as to all persons except those persons to whom it was made effective upon receipt of the airmail letter dated November 26, 1974, that contained this amendment.

Issued in Washington, D.C. on December 27, 1974.

C. R. MELUGIN, JR.,
Acting Director,
Flight Standards Service.

[FR Doc.75-419 Filed 1-6-75;8:45 am]

(Docket No. 14232; Amdt. No. 949)

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

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

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue, SW, Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

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

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

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, effective February 13, 1975.

Houma, La.—Huma-Terrebonne Arpt., VOR Rwy 12, Amdt. 6.
Houma, La.—Houma-Terrebonne Arpt., VOR/DME Rwy 30 Amdt. 5.
Knoxville, Tenn.—McGhee Tyson Arpt., VOR/DME Rwy 4R, Orig.
London, Ky.—London-Corbin MaGee Field, VOR Rwy 5, Amdt. 9.
London, Ky.—London-Corbin MaGee Field, VOR/DME Rwy 23, Amdt. 1.
Sault Ste. Marie, Mich.—Sault Ste. Marie City-County Arpt., VOR Rwy 32, Amdt. 9.

* * * effective January 16, 1975.

Bainbridge, Ga.—Commodore Decatur Arpt., VOR-A, Orig.
Bainbridge, Ga.—Decatur County Industrial Arpt., VOR-A, Orig.
Donalsonville, Ga.—Donalsonville Municipal Arpt., VOR Rwy 27, Orig.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, effective February 13, 1975.

Indianapolis, Ind.—Indianapolis Municipal/Weir-Cook Arpt., LOC(BC) Rwy 22R, Amdt. 13.
Tampa, Fla.—Tampa Int'l. Arpt., LOC(BC) Rwy 18R, Amdt. 3.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, effective February 13, 1975.

Albertville, Ala.—Albertville Municipal Arpt., NDB Rwy 23, Amdt. 1, cancelled.
Albertville, Ala.—Albertville Municipal Arpt., NDB-A, Orig.
Freeport, Ill.—The Albertus Arpt., NDB Rwy 24, Amdt. 4.
Houma, La.—Houma-Terrebonne Arpt., NDB Rwy 17, Amdt. 2.
Sault Ste. Marie, Mich.—Sault Ste. Marie City-County Arpt., NDB Rwy 32, Amdt. 5.

* * * effective January 16, 1975.

Perry, Fla.—Perry-Foley Arpt., NDB Rwy 36, Orig.

4. Section 97.29 is amended by originating, or canceling the following ILS SIAPs, effective February 13, 1975.

Atlanta, Ga.—Fulton County Arpt., ILS Rwy 8R, Amdt. 6.
Milwaukee, Wisc.—General Mitchell Field, ILS Rwy 19R, Amdt. 1.
Pago Pago, Tutuila Island American Samoa—Pago Pago Int'l. Arpt., ILS/DME Rwy 5, Amdt. 3.

* * * effective January 16, 1975

Atlantic City, N.J.—NAFEC Atlantic City Arpt., ILS Rwy 13, Orig.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, effective February 13, 1975.

West Palm Beach, Fla.—Palm Beach Int'l. Arpt., Radar-1, Amdt. 4.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; (49 U.S.C. 1438, 1354, 1421, 1510). Sec. 6(c) Department of Transportation Act, (49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1)))

Issued in Washington, D.C., on December 24, 1974.

JAMES M. VINES,
Chief, Aircraft Programs Division.

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

[FR Doc.75-420 Filed 1-6-75;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

[Regulation SPR-81, Amdt. 9]

SUBCHAPTER D—SPECIAL REGULATIONS

PART 372a—TRAVEL GROUP CHARTERS

Technical Amendment

By Special Regulation SPR-61 [1] the Board adopted the Travel Group Charter (TGC) rule, which includes provisions requiring the TGC organizer to make security arrangements for the protection of participants' advance payments. These provisions, which are patterned after the security provisions applicable to operators of Inclusive Tour Charters (ITC's), give the TGC organizers the option of making arrangements for either a surety bond only (§ 372a.25(a)) or a surety bond combined with a bank depository agreement (§ 372a.25(b)).

By its petition filed on November 18, 1974, the National Air Carriers Association (NACA) has requested that the TGC requirement applicable to the "bond-only" option be amended, so that the provision for variable minimum amounts depending on the duration of the TGC would not apply to TGC's which do not include a land "package." NACA notes that since a TGC, unlike an ITC, need not include ground accommodations, the duration of a TGC which in fact involves only the cost of air transportation is irrelevant in determining the amount of security needed to protect customers' deposits. NACA further argues that this distinction, which is reflected in the TGC rules' provision for the "bond-escrow" option, should also be reflected in the provision for the "bond-only" option.

No answers to the petition have been filed.

Upon consideration, the Board has determined that, since § 372a.25(a) inadvertently fails to reflect the distinction noted by the petition between TGC's which include land packages and those which do not, the amendment requested by NACA should be made.

Since the within amendment to § 372a.25(a) is a technical amendment which relieves a burden, the Board finds that notice and public procedure hereon are unnecessary and would not be in the public interest, and that it may become effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 372a of its Special Regulations (14 CFR Part 372a), effective January 2, 1975, as follows:

Amend § 372a.25(a), the amended paragraph (a) to read as follows:

§ 372a.25 Surety bond and depository agreement.

(a) Except as provided in paragraph (b) of this section, a charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise jurisdiction), before selling or offering to sell, soliciting or advertising any charter flight, shall furnish and file with the Board a surety bond in an amount of not less than the charter price for the air transportation, if only air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a surety bond in one of the following minimum amounts dependent upon length of the charter or series of charters: (1) For a charter or series of charters of 2 weeks or less, a bond in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters; (2) for a charter or series of charters of more than 2 weeks but less than 4 weeks, a bond in an amount of not less than twice the charter price; or (3) for a charter or series of charters of 4 weeks or more, a bond in an amount of not less than three times the charter price: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by him to the charter organizer with respect to the charter.

Effective date: January 2, 1975.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, as amended; (49 U.S.C. 1324).)

Adopted: January 2, 1975.
By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-417 Filed 1-6-75;8:45 am]

[1] Adopted September 27, 1972; 37 FR 20808, October 4, 1972.

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-....)

Subpart G—Filing of Applications and Other Forms

On September 26, 1974, there was published in the FEDERAL REGISTER (39 FR 34562) a Notice of Proposed Rule Making with proposed amendments to Subpart G, Regulations No. 4. The proposed regulations revise and update Subpart G to include provisions of Pub. L. 89-97 and Pub. L. 92-603, current requirements, policies, and procedures not already incorporated into the regulations. Interested persons were given 30 days within which to submit written comments or suggestions thereon. The proposed regulations made the following revisions and additions:

1. Section 404.601 (meaning of terms) is revised to include entitlement to hospital insurance benefits and special age 72 payments among those benefits for which an application must be filed subject to the requirements set forth in Subpart G.

2. Section 404.603 (execution of applications) is revised to permit a parent or one who stands in the place of a parent to execute an application for child's benefits on behalf of an individual who is over the age of 18 but under the age of 22. Also, an individual who is qualified to receive an underpayment may apply for disability insurance benefits on behalf of a disabled worker who died before filing for benefits.

3. Paragraph (a) of § 404.606 (filing of application for monthly benefits before the first month for which individual may become entitled to such benefits) and § 404.607a (filing of application for the establishment of a period of disability) are revised to reflect the provisions of section 328 of Pub. L. 89-97. These provisions make valid an application filed before the first month in which the requirements for entitlement are satisfied if such requirements are satisfied before a final decision on the application is made.

4. Paragraph (b) of § 404.607 (filing of application for monthly benefits after

first month for which individual may become entitled to such benefits) is revised and a new paragraph (e) is added to § 404.607a to reflect the provisions of section 118 of Pub. L. 92-603. That section provides that an application for disability insurance benefits or to establish a period of disability may be filed on behalf of a deceased individual within three months after the month in which such individual died.

5. A new section (404.608a) is added permitting an applicant to change his first month of entitlement after adjudication of his claim, and listing the requirements for approval by the Social Security Administration.

6. Section 404.615a (cancellation of request for withdrawal) is revised to indicate that where the Social Security Administration has approved a request for cancellation of a withdrawal request, a notice of such approval will be sent to the applicant.

7. Section 404.616 (filing of proof of support or application for lump-sum death payment after 2-year period) is revised to reflect the provisions of section 324 of Pub. L. 89-97. This provision permits the filing of proof of support or an application for the lump-sum death payment at any time after the expiration of the statutory 2-year period if good cause is found for failure to file within the 2-year period.

The comment period has expired and no adverse comments were received.

Accordingly, the regulations are adopted without change as set forth below.

(Secs. 202, 205, 216, 223, 228, and 1102, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; (42 U.S.C. 402, 405, 416, 423, 428, and 1302))

Effective date: These amendments will be effective January 7, 1975.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; 13.805, Social Security—Survivor's Insurance)

Dated: December 23, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved December 31, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.601 is revised to read as follows:

§ 404.601 Meaning of terms.

(a) *Claimant defined.* The term "claimant" for purposes of this subpart refers to the individual who has filed on his own behalf, or on whose behalf a proper party under § 404.603 has filed, an application for monthly benefits, a lump-sum death payment, the establishment of a period of disability, entitlement to hospital insurance benefits, or special age 72 payments.

(b) *Applicant defined.* The term "applicant" for purposes of this subpart refers to the individual who has filed an application on his own behalf or on behalf of another for monthly benefits, a lump-sum death payment, the establishment of a period of disability, special age 72 payments, or entitlement to hospital insurance benefits.

(c) *Application defined.* Unless otherwise specified, the term "application" refers only to an application on a form prescribed in § 404.602 and includes an application for monthly benefits, a lump-sum death payment, the establishment of a period of disability, special age 72 payments, and entitlement to hospital insurance benefits.

(d) *Filing of application on prescribed form.* Except as provided in §§ 404.611, 404.613, and 404.614, an individual has not "filed an application" for purposes of sections 202, 216(i), 223, 226, or 228 of the Act until an application on a form prescribed in § 404.602 has been filed in accordance with the provisions of this Subpart G.

(e) *Execution of application, written statement, requests, or notice; defined.* The term "to execute an application" (or a written statement, request, or notice (see §§ 404.610 and 404.613)), means the completion and signing of the application (or written statement, request, or notice). Irrespective of who may have completed the items on the application (or written statement, request, or notice), the document is considered to have been executed by or on behalf of such claimant when it is signed by the claimant (or an individual authorized to do so on his behalf under § 404.603).

2. Section 404.603 is amended by revising paragraph (a), revising and redesignating present paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

§ 404.603 Execution of applications.

The Social Security Administration determines who is the proper party to execute an application for benefits in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the application, the application shall be executed by him except that, if he has not yet attained age 22 and the application is for child's insurance benefits, such application may be executed by his parent or a person standing in place of the parent. Where, however, paragraph (d) of this section applies, the application may also be executed by the claimant's legal guardian, committee, or other representative.

* * * * *

(g) When a disabled individual dies prior to filing an application for disability insurance benefits or a disability freeze, an application for such benefits may be executed within 3 months after the month in which such individual died by an individual who would be qualified to receive an underpayment in accordance with § 404.503(b).

(h) For good cause shown, the Social Security Administration may accept an application executed by a person other than one described in paragraphs (a) through (g) of this section.

3. Section 404.605 is revised to read as follows:

§ 404.605 Claimant must be alive when application is filed.

Except as provided in §§ 404.603(g), 404.607(b)(2), and 404.607a(e), the claimant must be alive at the time a properly executed application (see § 404.603) is filed with the Social Security Administration (see § 404.608) in order for such application to be considered effectively filed. (See § 404.362 where a person potentially equitably entitled to the lump-sum death payment dies before filing an application. See also § 404.613 relating to the filing of a prescribed application form after submittal of a written statement.)

4. Section 404.606 is revised to read as follows:

§ 404.606 Filing of application for monthly benefits before the first month for which individual may become entitled to such benefits.

(a) *Effective as of July 30, 1965.* An application for monthly benefits filed before the first month in which the claimant meets all conditions of entitlement for such benefits will be deemed a valid application if such conditions are met before the Secretary makes a final decision on such application. (See paragraph (c) of this section for exception in case of special age 72 payments.) If upon final decision by the Secretary or decision by a court on review of the Secretary's decision, the claimant is found to have met such conditions, the application will be deemed to have been filed in the first month in which he met such conditions. These provisions apply with respect to:

(1) Applications filed on or after July 30, 1965;

(2) Applications as to which the Secretary had not made a final decision before July 30, 1965; and

(3) Applications as to which there had been no final judicial decision before July 30, 1965, in cases where civil action for review of the Secretary's decision was commenced under section 205(g) of the Act (see § 422.210 of this chapter) before such date.

(b) *Effective before July 30, 1965*—(1) *Old-age and survivors insurance benefits.* Except as provided in paragraph (a) of this section, an application for monthly benefits (other than an application for disability insurance benefits) will be accepted as an application for such benefits if it is filed not more than 3 months prior to the first month for which the claimant could become entitled to such benefits. Any such application filed within such 3-month period shall be deemed filed in the first month for which the claimant could be entitled to such benefits.

(2) *Disability insurance benefits*—(i) *Application filed prior to March 1960.* Except as provided in paragraph (a) of

this section, an application for disability insurance benefits filed after September 1956 and prior to March 1960 will be accepted as an application for such benefits if it was filed not more than 9 months prior to the first month for which the claimant could become entitled to such benefits and while the claimant was under a disability.

(ii) *Application filed after February 1960.* Except as provided in paragraph (a) of this section, an application for disability insurance benefits filed after February 1960 will be accepted as an application for such benefits for months no earlier than September 1960 if it is filed not more than 9 months prior to the month for which the claimant could become entitled to such benefits; except that, where cause (ii) of section 223(a)(1) of the Act (concerning prior entitlement to disability insurance benefits and/or a prior period of disability) is applicable, an application for disability insurance benefits may not be filed more than 6 months prior to the first month for which the claimant could become entitled to such benefits. An application filed within the 9-month or 6-month period, whichever is appropriate, shall be deemed filed in the first month for which the claimant could be entitled to such benefits, but no earlier than September 1960.

(c) *Special age 72 payments.* An application for special age 72 payments may be filed no earlier than 3 months prior to the first month for which the applicant could become entitled to payments.

(d) *Specific dates.* Where any of the provisions in this Part 404 become effective on the basis of an application filed on or after a specific date, this section shall apply only if the application is filed on or after that date.

5. In § 404.607, paragraph (c) is revoked, paragraph (d) is redesignated as paragraph (c), and paragraph (b) is revised to read as follows:

§ 404.607 Filing of application for monthly benefits after first month for which individual may become entitled to such benefits.

* * * * *

(b) *Disability insurance benefits*—(1) *Disabled individual is alive.* An application for disability insurance benefits filed while the claimant was under a disability and at any time after the first month for which he could have become entitled to such benefits will be accepted as an application for such benefits beginning with 12 months immediately preceding the month in which such application is filed but not before the first month for which he could become entitled, provided he was under a disability in such first month and such disability continued until the time such application was filed. However, it may not be accepted as an application for any month prior to July 1957, the first month for which disability insurance benefits were payable. For purposes of determining whether the individual has met all conditions of entitlement in such prior months, the application shall have the same effect as though it had been filed in such months.

(2) *Disabled individual is deceased*—(i) *Disabled individual died after December 31, 1969, and before October 30, 1972.* An application for disability insurance benefits filed on behalf of an individual who died after December 31, 1969, but before October 30, 1972, will be accepted as an application for such benefits beginning with 12 months immediately preceding the month in which such individual died but not before the first month for which such individual could have been entitled had he filed timely: *Provided,* That such application on behalf of such deceased individual is filed before February 1, 1973, by an individual who would be qualified for an underpayment in accordance with § 404.503(b).

(ii) *Disabled individual died after October 29, 1972.* An application for disability insurance benefits filed by an individual who would be qualified for an underpayment in accordance with § 404.503(b) on behalf of an individual who died after October 29, 1972, will be accepted as an application for such benefits beginning with 12 months immediately preceding the month in which such application is filed but not before the first month in which such individual could have been entitled had he filed timely: *Provided,* That such application on behalf of such deceased individual is filed no later than the last day of the third month following the month in which the individual died.

* * * * *

6. Section 404.607a is revised to read as follows:

§ 404.607a Filing of application for the establishment of a period of disability.

(a) *Applications filed after June 1965 or on which there had been no final decision before July 1965.* Except as provided in paragraph (e) of this section, an application to establish a period of disability filed after June 1965, or an application to establish a period of disability filed before July 1965 to which the provisions of § 404.312a(a)(2) are applicable, is effective to establish a period of disability if it is filed no later than 12 months after the month in which the period of disability may end.

(b) *Application to establish period of disability which ended after January 1968.* Except as provided in paragraph (e) of this section, an application to establish a period of disability which ended after January 1968 may be filed up to 36 months after the cessation of disability provided: (1) The claimant is alive at the time of filing; and (2) his failure to file a timely application was due to a physical or mental condition which made him incapable of executing an application.

(c) *Application filed before beginning of period of disability*— (1) *Application filed prior to March 1960.* An application filed after December 31, 1954, and prior to March 1960 to establish a period of disability will be accepted as an application for such purpose if it was filed while the claimant was under a disability and not more than 3 months before the first day on which a period of disability may begin for the claimant.

(2) *Application filed after February 1960.* An application filed after February 1960 to establish a period of disability will be accepted as an application for such purpose if it is filed not more than 3 months before the first day on which a period of disability may begin for the claimant; except that, where clause (ii) of section 223(a)(1) of the Act (concerning prior entitlement to disability insurance benefits and/or a prior period of disability) is applicable, an application for such purpose may be filed as early as 6 months prior to the first month for which the claimant becomes entitled to disability insurance benefits. An application filed within such 3-month or 6-month period shall be deemed filed on the first day of such 3-month period or in the first month of such 6-month period, whichever is appropriate. Where the 6-month period is applicable in connection with clause (ii) of section 223(a)(1) of the Act, the period of disability may begin no earlier than September 1960.

(d) *Application filed after beginning of period of disability.* Except as provided in paragraph (e) of this section, where a claimant files an application to establish a period of disability beginning prior to the date the application is filed and has been continuously disabled from such time up to the time of filing, a period of disability may be established commencing prior to the date of filing subject to the following rules:

(1) *Application filed prior to July 1, 1962.* An application filed after December 31, 1954, and prior to July 1, 1962, may be used to establish a period of disability commencing no earlier than October 1, 1941.

(2) *Application filed after June 30, 1962.* An application filed after June 30, 1962, may be used to establish a period of disability commencing no earlier than 18 months prior to the date such application is filed.

(e) *Application to establish period of disability on behalf of deceased individual.* Notwithstanding any other provision of this section or § 404.605, an application to establish a period of disability on behalf of an individual who died after December 31, 1969, filed by an individual who would be qualified for an underpayment in accordance with § 404.503(b) will be accepted as an application for such purpose provided that:

(1) If such individual died before October 30, 1972, such application is filed no later than January 31, 1973; or

(2) If such individual died after October 29, 1972, such application is filed no later than the last day of the third month following the month in which such individual died.

7. Following § 404.608, a new § 404.608a is added to read as follows:

§ 404.608a Changing first month of entitlement after adjudication of claim.

After adjudication of a claim based on an application for monthly benefits,

the claimant who filed the application may change his first month of entitlement to any month within the retroactive period of his original application or to the month in which he filed his application if :

(a) He files a request in writing to change his first month of entitlement; and

(b) He is alive when the request is filed; and

(c) Any other person whose entitlement would be adversely affected by such change of month of entitlement consents in writing or written consent is given on behalf of such other person by an individual authorized to execute an application on his behalf under § 404.603; and

(d) There is repayment of any amount previously paid which would not be payable based upon the change in first month of entitlement or it can be established to the satisfaction of the Social Security Administration that repayment of any such amount is assured.

8. Section 404.615a is revised to read as follows:

§ 404.615a Cancellation of request for withdrawal.

Before or after a written request for withdrawal has been approved by the Social Security Administration, the claimant (or a person who is authorized under § 404.603 to execute an application on his behalf) may request that the "request for withdrawal" be canceled and that the withdrawn application or request for revision of earnings be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved by the Social Security Administration, no later than 60 days after mailing of notice to the individual of such approval. The claimant must be alive at the time the request for cancellation of the "request for withdrawal" is filed with the Social Security Administration. Where the request for cancellation of the withdrawal is approved, notice of approval shall be sent to such individual.

9. Section 404.616 is revised to read as follows:

§ 404.616 Filing of proof of support or application for lump-sum death payment after 2-year period.

In any case in which the proof of support required to be filed under § 404.316 (a)(4), § 404.331(a)(6), or § 404.338(a)(6), or the application for the lump-sum death payment required to be filed under § 404.355(b), is not filed within the 2-year period prescribed by the appropriate section, such proof of support or application shall nevertheless be deemed to have been filed within such 2-year period if it is determined, as provided in § 404.617, that there was good cause for failure to file such proof or application within the initial 2-year period.

[FR Doc.75-423 Filed 1-6-75;8:45 am]

Title 21—Food and Drugs

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Exempt Chemical Preparations

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting that several chemical preparations containing controlled substances be granted the exemptions provided for in § 1308.24 of Title 21 of the Code of Federal Regulations.

The Administrator hereby finds that each of the following chemical preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to a human being or other animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the package quantity does not present any significant potential for abuse, (b) contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of researchers, chemical analysts, and suppliers of these products.

Therefore, pursuant to section 202(d) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812(d)), and under the authority vested in the Attorney General by sections 301 and 501(b) of the Act (21 U.S.C. 821 and 871(b) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations (see 38 FR 18380, July 2, 1973) the Administrator hereby orders that Part 1308 of Title 21 of the Code of Federal Regulations be amended as follows:

a. By amending § 1308.24(i) by adding the following chemical preparations:

§ 1308.24 Exempt chemical preparations.

* * * * * *

(i) * * *

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
Abbott Laboratories	HTSH RIA Diagnostic, Kit No. 7504	Kit: 50 units	Sept. 23, 1974
Amersham/Searle Corp.	T-3 RIA Kit Catalog No. IM. 74	Kit	Nov. 4, 1974
Do.	Pheno [2—^{14}C] barbital Catalog No. CFA. 537.	Ampoule: 50 microcuries	Nov. 5, 1974
Do.	do.	Ampoule: 250 microcuries	Do.
Do.	[15, 16(n)—^{3}H] Etorphine, Catalog No. TRK. 476.	Ampoule: 250 microcuries	Nov. 19, 1974
Ortho Diagnostics	Ortho Control Urine II, No. 9040	Vial: 25 ml Lyophilized	Oct. 10, 1974
Oxford Laboratories	StaT4 Adsorbent, Catalog No. 901	Bottle: 95 ml	Oct. 28, 1974
Do.	StaT4 Adsorbent, Catalog No. 902	Bottle: 315 ml	Do.
Supelco, Inc.	Cannabichromene, No. 04-9220	Ampoule: 1 ml	Nov. 27, 1974
Do.	Cannabidiol, No. 04-9221	do	Do.
Do.	Cannabidiolic Acid, No. 04-9222	do	Do.
Do.	Cannabigerol, No. 04-9223	do	Do.
Do.	Cannabinol, No. 04-9225	do	Do.
Do.	Cannabinol Acetate, No. 04-9226	do	Do.
Do.	Δ^{1}—THC, No. 04-9227	do	Do.
Do.	Δ^{6}—THC, No. 04-9228	do	Do.

Effective date. This order is effective January 7, 1975. Any person interested may file written comments on or objections to the order on or before February 6, 1975. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke or amend his original order as he determines appropriate.

Dated: December 30, 1974.

JOHN R. BARTELS, Jr.,
Administrator,
Drug Enforcement Administration.

[FR Doc.75-235 Filed 1-6-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7342]

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Special Rules With Respect to Section 501(c)(3) Organizations

The prior regulations under section 508 of the Internal Revenue Code of 1954 generally allow certain contributors to organizations who have notified the Commissioner of Internal Revenue that they are not private foundations to rely upon such notice with respect to grants, contributions, and distributions made before January 1, 1975. The amendment to the regulations which appears below

extends the period of reliance to grants, contributions, and distributions made before January 1, 1976. This will permit grantors, contributors, and distributors who make grants, contributions, and distributions during 1975 generally to rely upon the claimed public charity status of such organizations.

The Income Tax Regulations (26 CFR Part 1) are amended as follows:

1. Paragraph (b)(4) of § 1.508–1 is amended to read as follows:

§ 1.508–1 Notices.

* * * * *

(b) *Presumption that old and new organizations are private foundations.* * * *

(4) *Effect of notice upon grantors or contributors to the filing organization.* In the case of grants, contributions, or distributions made prior to January 1, 1976, any organization which has properly filed the notice described in section 508(b) prior to March 22, 1973 will not be treated as a private foundation for purposes of making any determination under the internal revenue laws with respect to a grantor, contributor or distributor (as for example, a private foundation distributing all of its net assets pursuant to a section 507(b)(1)(A) termination) thereto, unless the organization is controlled directly or indirectly by such grantor, contributor or distributor, if by the 30th day after the day on which such notice is filed, the organization has not been notified by the Commissioner that the notice filed by such organization has failed to establish that such organization is not a private foundation. See paragraph (b)(6) of this section for the effect of an adverse notice by the Internal Revenue Service. For purposes of this subparagraph, an organization which has properly filed the notice described in section 508(b) prior to March 22, 1973, and which has claimed recognition of its status under only one paragraph of section 509(a) in such notice, will be treated only for purposes of grantors, contributors or distributors as having the classification claimed in the notice if the provisions of this subparagraph are otherwise satisfied.

Because this Treasury decision, extends certain transitional rules and because of the need for immediate guidance with respect to the provisions contained in the Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under section 553 (b) of title 5 of the United States Code, or subject to the effective date of limitations of subsection (d) of such section.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 31, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.75–438 Filed 1–6–75;8:45 am]

[T.D. 7341]

PART 3—CAPITAL CONSTRUCTION FUND

Deposits

This document contains proposed amendments to the regulations in § 3.1 of Part 3 of 26 CFR Chapter I dealing with capital construction funds under section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), as amended by section 21 (a) of the Merchant Marine Act of 1970 (Pub. L. 91–469, 84 Stat. 1026). The present regulations were published on December 31, 1970 (T.D. 7082), and amended by further regulations published on June 5, 1971 (T.D. 7124), December 30, 1971 (T.D. 7156), November 10, 1972 (T.D. 7219), December 30, 1972 (T.D. 7245), and January 2, 1974 (T.D. 7303).

The outstanding regulations, as amended, provide transitional rules for the execution of capital construction fund agreements (between citizens of the United States owning or leasing one or more vessels defined by the Act to be eligible and the Secretary of Commerce) and the deposit of funds under such agreements for taxable years beginning during 1970, 1971, 1972, and 1973. As a general rule, those outstanding regulations provide that the agreement must be executed and entered into on or prior to the due date, with extensions, for the filing of the tax return in order to be effective for the year to which that return relates. Deposits must also be made on or before that date, or within 60 days after the date of execution of the agreement, whichever is later, in order to be effective for such taxable year.

For taxable years beginning during 1970 and 1971, special rules applied to extend the time within which an effective agreement could have been executed and entered into, and within which deposits could have been made. These special rules are contained in § 3.1 (b) and (c) of Part 3 of 26 CFR Chapter I.

This document would further amend the regulations by extending the rules established by the outstanding regulations, as amended, to taxable years beginning during 1974.

The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary or his delegate and prescribed by the Secretary of Commerce or his delegate. These regulations have been issued jointly by the Secretary of the Treasury and the Secretary of Commerce and also appear under 46 CFR Part 390 (Maritime) and 50 CFR Part 259 (Fisheries).

In order to extend the provisions of the regulations under section 21 (a) of the Merchant Marine Act of 1970 to taxable years beginning in 1974, § 3.1 of Chapter I of 26 CFR is amended by revising so much of such § 3.1 as precedes paragraph (a) thereof and by revising paragraph (d) thereof as follows:

§ 3.1 Capital construction fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1975, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

* * * * *

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1975.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d).

(This Treasury decision is issued under the authority contained in section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) as amended by section 21 (a) of the Merchant Marine Act of 1970 (84 Stat. 1026), and under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 31, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

ROBERT W. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

ROBERT J. BLACKWELL,
Assistant Secretary of Commerce for Maritime Affairs.

[FR Doc.75–439 Filed 1–6–75;8:45 am]

[T.D. 7340]

INCOME, ESTATE AND GIFT TAX

Charitable Deduction for Contributions, Bequests, or Gifts of Guaranteed Annuity Interests or Unitrust Interests

By a notice of proposed rule making appearing in the FEDERAL REGISTER on April 2, 1971 (36 FR 6082), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform those regulations to section 201 (a), relating to charitable contributions, and section 201 (f), relating to bargain sales to a charitable organization, of the Tax Reform Act of 1969 (Pub. L. 91–172, 83 Stat 549, 564). So much of those proposed regulations as was contained in § 1.170A–6 (c) (2), relating to the definition of annuity trust interest and unitrust interest, was withdrawn, and an amendment in lieu of the withdrawn portion was proposed, by a notice of proposed rule making appearing in the FEDERAL REGISTER on April 21, 1972 (37 FR 7890). The purpose of the amendment of the Income Tax Regulations proposed on April 21, 1972, was to conform to cor-

responding provisions in the proposed amendment of the Gift Tax Regulations (26 CFR Part 25) contained in § 25.2522 (c)-3 (c) (2) (v) and (vi), as published in the FEDERAL REGISTER on April 21, 1972 (37 FR 7900), with notice of proposed rule making.

The proposed amendment of § 25.2522 (c)-3 (c) (2) (v) and (vi) was adopted with certain changes by T.D. 7318, as published in the FEDERAL REGISTER on July 11, 1974 (39 FR 25459). Consistently with those changes, and after consideration of all such relevant matter as was presented by interested persons regarding the amendment of the Income Tax Regulations proposed on April 21, 1972, that amendment is adopted by this document, subject to certain changes.

The rules on annuity trust interests and unitrust interests have been revised by changing the term "annuity trust interest" to "guaranteed annuity interest" and by making clear that an individual whose life determined the payment of a guaranteed annuity interest must be living at the date of contribution, and to permit selection of valuation dates in the case of a unitrust interest. In addition, the rules on payments by a split-interest trust for private purposes have been revised to eliminate their application to payments of guaranteed annuities or unitrust amounts for a private purpose, provided, however, that the obligation to pay the guaranteed annuity or unitrust amount for a charitable purpose begins as of the date of creation of the trust and that the obligation to pay the guaranteed annuity or unitrust amount for a private purpose does not precede in point of time the obligation to pay any guaranteed annuity or unitrust amount for a charitable purpose and provided that the governing instrument of the trust does not provide for any preference or priority in respect of any payment for a private purpose as opposed to any payment for a charitable purpose. In addition, new examples have been added to § 1.170A-6 and certain technical changes have been made in that section. Very minor technical changes have also been made in §§ 1.170A-1 and 1.170A-10 of the Income Tax Regulations. Changes have also been made to correct an error in the statement of facts in example (3) in § 20.2055-2(f) (2) (iv) of the Estate Tax Regulations and in § 25.2522(c)-3 (d) (2) (iv) of the Gift Tax Regulations.

In view of the foregoing, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

1. Section 1.170A-1 is amended by deleting subparagraph (8) of paragraph (h) and by redesignating subparagraphs (9), (10), and (11) of paragraph (h) as subparagraphs (8), (9), and (10), respectively.

2. The amendment of § 1.170A-6, as set forth in the notice of proposed rule making, is changed by adding amendments of paragraph (c) (1), paragraph (c) (3) (i), (ii), and (iii), examples (1) and (3) (a) in paragraph (c) (5), and paragraph (d) (3), and by revising paragraph (c) (2), as follows:

§ 1.170A-6 Charitable contributions in trust.

* * * * *

(c) *Charitable contribution of an income interest in trust*—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the income interest is either a guaranteed annuity interest or a unitrust interest, as defined in paragraph (c) (2) of this section, and the grantor is treated as the owner of such interest for purposes of applying section 671, relating to grantors and others treated as substantial owners. See section 4947(a) (2) for the application to such income interests in trust of the provisions relating to private foundations and section 508(e) for rules relating to provisions required in the governing instruments.

(2) *Definitions.* For purposes of this paragraph—

(i) *Guaranteed annuity interest.* (A) An income interest is a "guaranteed annuity interest", only if it is an irrevocable right pursuant to the governing instrument of the trust to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of transfer and can be ascertained at such date. For example, the annuity may be paid for the life of A plus a term of years. An amount is determinable if the exact amount which must be paid under the conditions specified in the governing instrument of the trust can be ascertained as of the date of transfer. For example, the amount to be paid may be a stated sum for a term, or for the life of an individual, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index. In further illustration, the amount to be paid may be expressed in terms of a fraction or percentage of the cost of living index on the date of transfer.

(B) An income interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. For example, if the income interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a guaranteed annuity interest.

(C) Where a charitable interest is in the form of a guaranteed annuity interest, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charitable organization. Nevertheless, the amount of the deduction under section 170(f) (2) (B) shall be limited to the fair market value of the guaranteed annuity interest as determined under paragraph (c) (3) of this section. For a rule relating to treatment by the grantor of any contribution made by the trust in excess of the amount required to pay the guaranteed annuity interest, see paragraph (d) (2) (ii) of this section.

(D) If the present value on the date of transfer of all the income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in the trust (after the payment of liabilities), the income interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired such assets. The requirement in this subdivision (D) for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired the assets shall not apply to a transfer in trust made on or before May 21, 1972

(E) An income interest consisting of an annuity transferred in trust after May 21, 1972, will not be considered a guaranteed annuity interest if any amount other than an amount in payment of a guaranteed annuity interest may be paid by the trust for a private purpose before the expiration of all the income interests for a charitable purpose, unless such amount for a private purpose is paid from a group of assets which, pursuant to the governing instrument of the trust, are devoted exclusively to private purposes and to which section 4947 (a) (2) is inapplicable by reason of section 4947(a) (2) (B). The exception in the immediately preceding sentence with respect to any guaranteed annuity for a private purpose shall apply only if the obligation to pay the annuity for a charitable purpose begins as of the date of creation of the trust and the obligation to pay the guaranteed annuity for a private purpose does not precede in point of time the obligation to pay the annuity for a charitable purpose and only if the governing instrument of the trust does not provide for any preference or priority in respect of any payment of the guaranteed annuity for a private purpose as opposed to any payment of any annuity for a charitable purpose. For purposes of this subdivision (E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1 (c) of this chapter (Foundation Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a) (2) to segregated amounts in a split-interest trust.

Example. In 1975, E. transfers $75,000 in trust with the requirement that an annuity of $5,000 a year, payable annually at the end of each year, be paid to B, an individual, for a period of 5 years and thereafter an annuity of $5,000 a year, payable annually at the end of each year, be paid to M Charity for a

period of 5 years. The remainder is to be paid to C, an individual. No deduction is allowed under subparagraph (1) of this paragraph with respect to the charitable annuity because it is not a "guaranteed annuity interest" within the meaning of this subdivision.

(F) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the guaranteed annuity interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(ii) *Unitrust interest.* (A) An income interest is a "unitrust interest" only if it is an irrevocable right pursuant to the governing instrument of the trust to receive payment, not less often than annually, of a fixed percentage of the net fair market value of the trust assets, determined annually. In computing the net fair market value of the trust assets, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income of the trust. The net fair market value of the trust assets may be determined on any one date during the year or by taking the average of valuations made on more than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Where the governing instrument of the trust does not specify the valuation date or dates, the trustee shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the trust is required to file. Payments under a unitrust interest may be paid for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of transfer and can be ascertained at such date. For example, the unitrust interest may be paid for the life of A plus a term of years.

(B) An income interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if the income interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(C) Where a charitable interest is in the form of a unitrust interest, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charitable organization. Nevertheless, the amount of the deduction under section 170(f)(2)(B) shall be limited to the fair market value of the unitrust interest as determined under paragraph (c)(3) of this section. For a rule relating to treatment by the grantor of any contribution made by the trust in excess of the amount required to pay the unitrust interest, see paragraph (d)(2)(ii) of this section.

(D) An income interest in the form of a unitrust interest will not be considered a unitrust interest if any amount other than an amount in payment of a unitrust interest may be paid by the trust for a private purpose before the expiration of all the income interests for a charitable purpose, unless such amount for a private purpose is paid from a group of assets which, pursuant to the governing instrument of the trust, are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). The exception in the immediately preceding sentence with respect to any unitrust interest for a private purpose shall apply only if the obligation to pay the unitrust interest for a charitable purpose begins as of the date of creation of the trust and the obligation to pay the unitrust interest for a private purpose does not precede in point of time the obligation to pay the unitrust interest for a charitable purpose and only if the governing instrument of the trust does not provide for any preference or priority in respect of any payment of the unitrust interest for a private purpose as opposed to any payments of any unitrust interest for a charitable purpose. For purposes of this subdivision (D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter (Foundation Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(E) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the unitrust interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(3) *Valuation of income interest.* (i) The deduction allowed by section 170(f)(2)(B) for a charitable contribution of a guaranteed annuity interest is limited to the fair market value of such interest on the date of contribution, as computed under § 20.2031-10 of this chapter (Estate Tax Regulations).

(ii) The deduction allowed under section 170(f)(2)(B) for a charitable contribution of a unitrust interest is limited to the fair market value of the unitrust interest on the date of contribution. The fair market value of the unitrust interest shall be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(iii) If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under paragraph (c)(1) of this section only for the minimum amount it is evident the charity will receive. The application of this subdivision may be illustrated by the following examples:

Example (1). In 1972, B transfers $20,000 in trust with the requirement that M Church be paid a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $4,000, payable annually at the end of each year for 9 years, and that the residue revert to himself. Since the fair market value of an annuity of $4,000 a year for a period of 9 years, as determined under Table B in § 20.2031-10(f) of this chapter, is $27,206.80 ($4,000 x 6.8017), it appears that M will not receive the beneficial enjoyment of the income interest. Accordingly, even though B is treated as the owner of the trust under section 673, he is allowed a deduction under subparagraph (1) of this paragraph for only $20,000, which is the minimum amount it is evident M will receive.

Example (2). In 1975, C transfers $40,000 in trust with the requirement that D, an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of $5,000 each a year for a period of 5 years is $42,124 ([$5,000 x 4.2124] x 2), as determined under Table B in § 20.2031-10(f) of this chapter. The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to $20,000, which is the minimum amount it is evident X will receive.

Example (3). In 1975, D transfers $65,000 in trust with the requirement that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in subparagraph (2)(i) of this paragraph) of $5,000 a year, payable annually at the end of each year, be paid to W, his wife, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000 x 6.7754), as determined pursuant to § 20.2031-10(e) of this chapter and by the use of factors involving one life and a term of years as published in Publication 723A (12-70). The fair market value of the charitable annuity is $36,800.50 ($5,000 x 7.3601), as determined under Table B in § 20.2031-10(f) of this chapter. It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the wife and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction under subparagraph (1) of this paragraph with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident Y will receive.

* * * * *

(5) *Illustrations.* * * *

Example (1). On January 1, 1970, A contributes to a church in trust a 9-year irrevocable income interest in property. Both A and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to A. By reference to Table B in § 20.2031-10

(f) of this chapter, it is found that the figure in column (2) opposite 9 years is 6.8017. The present value of the annuity is therefore $3,400.85 ($500 x 6.8017). The present value of the income interest and A's charitable contribution for 1970 is $3,400.85.

* * * * *

Example (3). (a) On January 1, 1970, C contributes to a church in trust a 9-year irrevocable income interest in property. Both C and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is a guaranteed annuity interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to C. C's charitable contribution for 1970 is $3,400.85, determined as provided in example (1). The trust earns income of $600 in 1970, $400 in 1971, and $500 in 1972, all of which is taxable to C under section 671. The church is paid $500 at the end of 1970, 1971, and 1972, respectively. On December 31, 1972, C dies and ceases to be treated as the owner of the income interest under section 673.

* * * * *

(d) *Denial of deduction for certain contributions by a trust.* * * *

(3) Although a deduction for the fair market value of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust is disallowed under section 170 because such interest is not a guaranteed annuity interest, or a unitrust interest, as defined in paragraph (c)(2) of this section, the donor may be entitled to a deduction under section 671 and § 1.671–2(c) for any charitable contributions made by the trust if he is treated as the owner of such interest for purposes of applying section 671.

* * * * *

3. Section 1.170A–10 is amended by revising paragraph (c)(2)(ii)(*a*) to read as follows:

§ 1.170A–10 Charitable contributions carryovers of individuals.

* * * * *

(c) *30-percent charitable contributions carryover of individuals.* * * *

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* * * *

(ii) * * *

(*a*) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations,

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

4. Section 20.2055–2 is amended by revising example (3) in paragraph (f)(2)(iv) to read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(f) *Valuation of charitable interest.* * * *

(2) *Certain decedents dying after July 31, 1969.* * * *

(iv) * * *

Example (3). In 1975, D dies bequeathing $65,000 in trust with the requirement that a guaranteed annuity interest (as defined in paragraph (e)(2)(v) of this section) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (e)(2)(v) of this section) of $5,000 a year, payable annually at the end of each year, be paid to W, his widow, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000 x 6.7754), as determined pursuant to § 20.2031–10 (e) and by the use of factors involving one life and a term of years as published in Publication 723A (12–70). The fair market value of the charitable annuity is $36,800.50 ($5,000 x 7.3601), as determined under Table B in § 20.2031–10 (f). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the widow and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

5. Section 25.2522(c)–3 is amended by revising example (3) in paragraph (d)(2)(iv) to read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(d) *Valuation of charitable interest.* * * *

(2) *Certain transfers after July 31, 1969.* * * *

(iv) * * *

Example (3). In 1975, D transfers $65,000 in trust with the requirement that a guaranteed annuity interest (as defined in paragraph (c)(2)(v) of this section) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (c)(2)(v) of this section) of $5,000 a year, payable annually at the end of each year, be paid to W, his wife, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000 x 6.7754), as determined pursuant to § 25.2512–9(e) and by the use of factors involving one life and a term of years as published in Publication 723A (12–70). The fair market value of the charitable annuity is $36,800.50 ($5,000 x 7.3601), as determined under Table B in § 25.2512–9(f). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the wife and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

* * * * *

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 31, 1974.

ERNEST S. CHRISTIAN, Jr.,
Acting Assistant Secretary of the Treasury.

[FR Doc.75–437 Filed 1–6–75;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

[T.D. ATF–12; Reference Notice No. 259]

PART 4—LABELING AND ADVERTISING OF WINE

Metric Standards of Fill

Correction

In FR Doc. 74–30426 appearing in the issue for Tuesday, December 31, 1974 make the following changes:

Section 4.37(b)(1) on page 45220 in the third column, and also appearing on page 45222 in the middle column should read as follows:

(1) For the metric standards of fill:

3 liters	(101 fl. oz.)
1.5 liters	(50.7 fl. oz.)
1 liter	(33.8 fl. oz.)
750 milliliters	(25.4 fl. oz.)
375 milliliters	(12.7 fl. oz.)
187 milliliters	(6.3 fl. oz.)
100 milliliters	(3.4 fl. oz.)

Title 32—National Defense

CHAPTER XIV—THE RENEGOTIATION BOARD

PART 1459—COSTS ALLOCABLE TO AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

PART 1470—INFORMATION REQUIRED OF CONTRACTORS

Miscellaneous Amendments

Correction

In FR Doc. 74–30009, appearing at page 44450 in the issue for Tuesday, December 24, 1974, make the following changes:

In § 1459.1:

a. In the 11th line in the first column on page 44451, insert the word "section." between the words "this" and "Except".

b. In the 8th line of paragraph (b)(2)(ii), delete the word "subsection".

c. The 15th line of paragraph (b)(5), now reading "in the determination of taxable income" should be deleted and the phrase "deductible or excludable from income" should be inserted in its place.

d. In the 19th line of paragraph (b)(5), the word "determinatoin" should be spelled "determination".

e. In paragraph (b)(6), the 10th and 11th lines were switched. The line begin-

ning "such costs for . . ." should appear immediately above the line beginning "Thus, a cost . . .".

f. In the 12th line of paragraph (b) (6), the word "pro-" should be changed to read "Pro-".

g. In the 13th line of paragraph (b) (6), the word "regulation" should be changed to read "Regulation".

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

SUBPART A—PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION

Termination of Incompetency

On pages 40176 and 40177 of the FEDERAL REGISTER of November 14, 1974, there was published a notice of proposed regulatory development to delete an obsolete provision in § 3.353(b), Title 38, Code of Federal Regulations relating to determinations of incompetency and competency. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

One written comment on the proposed change was received. This comment was directed to § 3.353 as it might affect elderly citizens and urged retention of safeguards for the fundamental rights of payees. However, the regulatory amendment as published did not propose any procedural changes and does not in any way affect the rights of claimants. The change is editorial in nature, made solely to delete language which had been made obsolete by prior statutory and regulatory changes. For this reason the proposed amendment is hereby adopted without change and is set forth below.

Effective date. Section 3.353(b) is effective July 1, 1974.

Approved: December 31, 1974.

By direction of the Administrator,

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

1. Section 3.352 is revised to read as follows:

§ 3.352 Determination of permanent need for regular aid and attendance and "permanently bedridden".

(a) *Basic criteria.* The following will be accorded consideration in determining the need for regular aid and attendance: inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. "Total blindness" as well as "bedridden," will be a proper basis for the determination. For the purpose of this section "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations that the veteran is so helpless, solely by reason of service-connected compensable disease or injuries (38 U.S.C. 310 and 331) or without regard to service connection (38 U.S.C. 511 and 512) as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others. If the claimant is able to be out of bed and can walk around entirely unassisted by others, he or she cannot generally be regarded as meeting the requirements of the law and VA regulations; however, the other enumerated types of personal assistance must be considered.

(b) *Hospitalization at veteran's expense.* Where a beneficiary is hospitalized at his or her own expense in a private institution, the same criteria will be necessary in determining the need for regular aid and attendance as would be required were he or she at home, and the hospitalization will not be considered as a fact indicating the existence of the need.

(c) *Attendance by relative.* The performance of the necessary nursing or attendant's service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.

2. In § 3.353, paragraphs (a), (b) and (d) are revised to read as follows:

§ 3.353 Determinations of incompetency and competency.

(a) *Definition of mental incompetency.* A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) *Authority.* Rating agencies are authorized to make official determinations of competency and incompetency for the purpose of existing laws, VA regulations and VA instructions. Such determinations will be controlling for purposes of insurance (38 U.S.C. 722), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 (§ 3.557(b)), and, subject to § 13.56 of this chapter, direct payment of current benefits. Where the veteran is rated incompetent the Veterans Services Officer of jurisdiction will be informed of the possible necessity for the appointment or recognition of a fiduciary. The Veterans Services Officer will develop information as to the veteran's social, economic and industrial adjustment. If the Veterans Services Officer upon review of this evidence concurs in the rating of incompetency he or she will proceed to effect the appointment of a fiduciary, or if the veteran is married, to recommend release of payments to the veteran's wife or husband as provided in § 13.57 of this chapter (38 U.S.C. 3202(f)), or recommend payment in accordance with § 13.56 of this chapter. The recommendation will be effectuated. If the Veterans Services Officer is of the opinion that the veteran is capable of administering the funds payable without limitation, the evidence on which that opinion is based will be referred to the rating agency with a statement as to his or her conclusion. The rating agency will consider this evidence together with all other evidence of record in determining whether its prior decision should be revised or continued. Reexamination may be requested as provided in § 3.327(d) if necessary to properly evaluate the extent of disability.

* * * * *

(d) *Presumption in favor of competency.* Where there is doubt as to whether the veteran is capable of administering his or her funds such doubt will be resolved in favor of competency.

[FR Doc.75-404 Filed 1-6-75;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 315-2]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Certain Inert Ingredients in Pesticide Formulations

In response to the notice published by the Environmental Protection Agency in the FEDERAL REGISTER of October 18, 1974 (39 FR 37216), proposing establishment of exemptions from tolerance requirements under provisions of section 408 of the Federal Food, Drug, and Cosmetic Act for 15 inert (or occasionally active) ingredients in pesticide formulations, no comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted, deleting three of the inert ingredients (ferric chloride, isobutyl alcohol, and maleic anhydride copolymer with methylvinyl ether) which have already been exempted from the requirement of a tolerance by an order which

appeared in the FEDERAL REGISTER of November 12, 1974 (39 FR 39878).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.1001 is amended by alphabetically inserting new items in paragraphs (c), (d), and (e), as follows:

§ 180.1001 Exemption from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Bacillus thuringiensis fermentation solids and/or solubles.		Diluent, carrier.
* * *	* *	* *
Butylated hydroxyanisole.		Antioxidant.
Butylated hydroxytoluene.		Do.
* * *	* *	* *
1,2-Dihydro-6-ethoxy-2,2,4-trimethylquinolene.	Not more than 0.02 percent of pesticide formulation.	Antioxidant.
* * *	* *	* *
Lactose		Solid diluent, carrier.
* * *	* *	* *
α-(p-Nonylphenyl) poly (oxypropylene) block polymer with poly (oxyethylene); polyoxyethylene content 30 to 90 moles; molecular weight averages 3,000.		Surfactants, related adjuvants of surfactants.
* * *	* *	* *
Propyl gallate		Antioxidant.
* * *	* *	* *
Soy protein, isolated.		Adhesive.

(d) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Calcium chloride		Stabilizer.
* * *	* *	* *
Graphite		Treatment aid for seeds.
* * *	* *	* *
Polyethylene glycol (mean molecular weight 200 to 9,500).		Solvent, deactivator.
* * *	* *	* *
Sodium salt of the insoluble fraction of rosin.		Surfactants, related adjuvants of surfactants.
* * *	* *	* *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Butylated hydroxyanisole.		Antioxidant.
Butylated hydroxytoluene.		Do.
* * *	* *	* *
α-(p-Nonylphenyl) poly (oxypropylene) block polymer with poly (oxyethylene); poly oxyethylene content 30 to 90 moles; molecular weight averages 3,000.		Surfactants, related adjuvants of surfactants.
* * *	* *	* *
Propyl gallate		Antioxidant.
* * *	* *	* *
Soy protein, isolated.		Adhesive.

Any person who will be adversely affected by the foregoing order may at any time on or before February 6, 1975, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on January 7, 1975.

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: December 30, 1974.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.75-275 Filed 1-6-75;8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 75—INFORMAL GRANT APPEALS PROCEDURES

Indirect Cost Appeals

A notice of proposed rulemaking was being published in the FEDERAL REGISTER on October 15, 1974, at 39 FR 36861 setting forth a proposal to establish a new Part 75 of Title 45. The proposed new part would establish informal procedures for resolving disputes arising in the negotiation of indirect cost rates and certain other cost allocations that are used in determining amounts to be reimbursed under grants awarded by the constitutent agencies of the Department of Health, Education, and Welfare. The proposal stipulated that a grantee would be required to exhaust the informal procedures before it would be allowed to submit a formal appeal to the Departmental Grants Appeals Board under Part 16 of Title 45.

Interested parties were given until November 14, 1974, to submit comments, suggestions, or objections to the proposed regulations. The following changes have been made based on the comments received:

1. The term "Regional Comptroller" in §§ 75.2(a), 75.3(c), 75.4, 75.6(b) and 75.6(d) has been changed to "Assistant Regional Director for Financial Management." This change has been made to reflect the formal title of the official responsible for supervising the negotiations covered by the regulations. Since the Assistant Regional Director for Financial Management is also known informally as the "Regional Comptroller", a statement to this effect has been included in § 75.3(c) to make it clear that both titles are used interchangeably.

2. The language in § 75.2(a)(4) has been clarified by setting out fringe benefit rate negotiations as a separate type of negotiation. In the proposal, these negotiations were included within the general phrase "other special rates." The coverage of § 75.2(a)(4) has also been broadened to include computer, fringe benefit, and other special rates negotiated with all types of grantee organizations. The proposal limited such coverage to colleges and universities.

Other major comments received are discussed below:

1. One comment recommended that the scope of the procedures be extended to cover negotiations of rates and amounts conducted by the Social and Rehabilitation Service (SRS). The procedures, however, are designed specifically for negotiations conducted within an Office of the Regional Director of the Department. It would be inappropriate to apply them to the SRS negotiations since such negotiations are not conducted within the Office of the Regional Director.

2. One comment suggested that a time limit of 30 days be established for the notifications described in § 75.4. We do not believe that a specific time limit for this notification is necessary. The proposed language requires that the notification be made promptly, which we feel provides an adequate safeguard to insure that the notification is not unduly delayed once it is determined that a disagreement cannot be resolved by negotiation.

Accordingly, with the changes noted above, the proposed regulations are adopted as set forth below.

Effective date: This part becomes effective on January 7, 1975.

Dated: December 11, 1974.

JOHN D. YOUNG,
Assistant Secretary, Comptroller.

Approved: January 2, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended by adding a new Part 75 to read as follows:

PART 75—INFORMAL GRANT APPEALS PROCEDURES

Subpart A—Indirect Cost Appeals

Sec.
75.1 Purpose.
75.2 Scope.
75.3 Definitions.
75.4 Notification.
75.5 Submission to the Regional Director.
75.6 Action by the Regional Director.

AUTHORITY: Sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631.

Subpart A—Indirect Cost Appeals

§ 75.1 Purpose.

This subpart establishes informal procedures for resolving disputes arising in the negotiation of indirect cost rates and certain other cost allocations (as set forth in § 75.2) that are used in determining amounts to be reimbursed under grants awarded by the constituent agencies of the Department of Health, Education, and Welfare. A grantee must exhaust the procedures set forth in this subpart prior to appealing a disputed issue(s) to the Departmental Grants Appeals Board under Part 16 of this title.

§ 75.2 Scope.

(a) This subpart applies to disputes arising in the negotiation of the following rates or amounts conducted under the supervision of an Assistant Regional Director for Financial Management of the Department:

(1) Indirect cost rates negotiated with colleges and universities, State and local government agencies, hospitals, and non-profit institutions.

(2) Patient care rates and amounts associated with the care of patients participating in research programs supported by the Department.

(3) Cost allocation plans negotiated with State and local units of government.

(4) Computer, fringe benefit, and other special rates negotiated with colleges and universities, State and local government agencies, hospitals, and non-profit institutions.

(b) Notwithstanding paragraph (a) of this section, this subpart shall not be applicable to disputed issues which are appealed to the Armed Services Board of Contract Appeals under a contract with the Department.

§ 75.3 Definitions.

For purposes of this subpart:

(a) "Department" and "Departmental" refer to the Department of Health, Education, and Welfare.

(b) "Regional Director" means a Regional Director of the Department.

(c) "Assistant Regional Director for Financial Management" means an Assistant Regional Director for Financial Management of the Department. The Assistant Regional Director for Financial Management is also known informally as the "Regional Comptroller."

(d) "Grantee" means the agency, institution or organization named as grantee in a grant award document issued by a constituent agency of the Department. For disputes involving cost allocation plans, this term also includes a State or local unit of government which includes an agency that is named as grantee in a grant award document.

§ 75.4 Notification.

When a dispute arises in a negotiation described in § 75.2, the Assistant Regional Director for Financial Management will promptly notify the grantee in writing of the Regional Office's determination concerning the issue(s) involved in the dispute. This notification will set forth the reasons for the determination in sufficient detail to enable the grantee to respond and will inform the grantee of its opportunity for reconsideration under this subpart.

§ 75.5 Submission to the Regional Director.

If the grantee wishes to request reconsideration of the Regional Office's determination, it may submit an application for such reconsideration to the Regional Director. The grantee's application must be postmarked no later than 30 days after the postmark date of the notification described in § 75.4. The Regional Director, however, may grant an extension of time for submission of the application if the extension is requested and justified by the grantee. Although the application need not follow any prescribed format, it must clearly identify the issue(s) in dispute and must contain a full statement of the grantee's position on such issue(s) along with pertinent facts and reasons in support of its position.

§ 75.6 Action by the Regional Director.

(a) Upon receipt of an application for reconsideration, the Regional Director will immediately notify the grantee that its application has been received and will be acted upon as soon as possible.

(b) The Regional Director will review all background material on the issue(s). Within 30 days after receipt of the grantee's application, and with at least 10 days written notice, he will provide the grantee with an opportunity to meet with him to discuss the issue(s) and to submit additional information in support of its position. The Regional Director may consult the Assistant Regional Director for Financial Management, other regional officials, Departmental central office officials, and other individuals in conducting the review.

(c) Within 45 days after the meeting described in § 75.6(b) (or 45 days after submission of any supplemental information provided by the grantee) the Regional Director will notify the grantee in writing of his decision. If the Regional Director's decision is adverse to the grantee's position, this notification will state the basis of the decision and will inform the grantee of its right to appeal the decision to the Departmental Grants Appeals Board under Part 16 of this title.

(d) The Regional Director may delegate the responsibilities described in this section to another senior Departmental official in his region. This delegation, however, may not be made to the Assistant Regional Director for Financial Management.

[FR Doc.75-424 Filed 1-6-75;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20118; FCC 74-1426]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS.

PART 95—CITIZENS RADIO SERVICE

External Radio Frequency Power Amplifiers; Report and Order

1. On July 31, 1974, the Commission released a notice of proposed rule making, 48 FCC 2d 82, to amend its rules to restrict external radio frequency power amplifiers in the Citizens Radio Service. The notice was duly published in the FEDERAL REGISTER on August 5, 1974, (39 FR 28165). Interested persons were invited to file comments on or before September 30, 1974, and reply comments on or before October 14, 1974. These proceedings were instituted because the rapidly increasing number of operators using external radio frequency power amplifiers to boost the power of their Citizens radio transmitters beyond the permissible limit pose a significant interference potential to Class D Citizens radio operations and to radio and television reception. Attempts under the existing rules have been ineffective in stopping the rising incidence of over power operation in the Citizens Radio Service.

2. Comments were received by approximately 100 parties including various Citizens radio organizations representing the views of hundreds of individual licensees, about 15 equipment manufacturers and a number of unaffiliated licensees. A substantial number of those commenting supported the objectives of the Commission, without qualification. Many respondents supported the proposal in principle but suggested various modifications designed chiefly to protect some self serving interest or purported operational need. Supporting comments from chapters of user groups such as the Affiliated League of Emergency Teams

(ALERT) and the Radio Emergency Action Communications Team (REACT) outnumbered those chapters submitting opposing comments by approximately 2 to 1. Those few who opposed the proposal raised issues of financial hardship, ineffectiveness in producing the desired result or that higher levels of power are inherently needed to serve the purposes of the Citizens Radio Service. Still others believe that additional exceptions to the proposed proscription should be considered. The petition for late acceptance of A. N. Fischer, President of Electronics Group, Inc. is granted and its comments have been considered. In the following paragraphs we will discuss the significant issues presented in the comments

DEFINITION

3. In the notice, we proposed to proscribe the marketing of "any external radio frequency power amplifier capable of use with a transmitter operated on any frequency in the band 26.96–27.26 MHz * * *" We also defined any external RF power amplifier capable of operation on any frequency or frequencies between 20.0 MHz and 40.0 MHz as having power amplification capability in the 27 MHz frequency band. We also proposed as an exception from the marketing restriction, commercially manufactured multi-band amplifiers capable of use with amateur equipment provided that they require greater than 20 watts carrier power or 80 watts peak envelope power to the input of the amplifier to produce the maximum rated power output. In short, the amplifier would have to require a relatively high drive power to produce the rated power output for that amplifier.

4. Some comments argued that the 20.0 MHz–40.0 MHz frequency range was too broad. The American Radio Relay League (ARRL) declares that the 20/80 watts drive power limitation for the excepted commercially manufactured multi-band power amplifiers adversely affects the development of more efficient amplifiers particularly in the solid state field where substantial power output with a small amount of excitation from the transmitter is possible.

5. With respect to the frequency range limitation we believe some accommodation at both the lower and the upper limits of the range is feasible without disturbing our objective. Accordingly, we find that it would not be inconsistent with our purposes to change the proposed marketing rule to prohibit the marketing of any external RF power amplifier capable of use with a transmitter operated on any frequency or frequencies between 24.0 MHz and 35.0 MHz. This change is expected to exempt some maritime equipment and equipment designed for use in land mobile services. We would require in any type acceptance application that the data submitted clearly indicate that the RF power amplifier could not as constructed provide significant power output on any of the frequencies allocated to the Citizens Radio Service. Because we have redefined the frequency range applicable to external RF power amplifiers, we have made corresponding changes in the rule set forth below.

6. We are also deleting the drive power limitation proposed for commercially manufactured power amplifiers. Its inclusion in the rule is of questionable assistance in preventing permissibly marketed power amplifiers from being illegally employed at a Class D station. The effect of the proposed provision would be to merely increase the price to the individual who is able and willing to purchase more expensive equipment even though such requirement for multi-band power amplifiers would prevent its full rated power output when used with Citizens radio equipment containing low excitation capability.

FINANCIAL HARDSHIP

7. Comments received from some manufacturers whose business is devoted either entirely or in large part to the fabrication of single band power amplifiers assert that adoption of the proposed rule outlawing single band power amplifiers would force them out of business and result in unemployment for hundreds of individuals. Several manufacturers of Citizens and other two-way radio equipment, while recognizing the need for such regulation, complained that their investment for research and development and requirement to redesign equipment to comply with the new technical standards would work a financial hardship.

8. E. F. Johnson, the largest manufacturer of Citizens radio equipment, indicates that any claim of economic adversity is illusory. It states: "[W]e believe that in general there will be little or no economic impact upon legitimate manufacturers of type accepted products listed * * *" in the Commission's Notice. While we regret that there will be business and job losses, we concur with E. F. Johnson that the products of these companies are directed toward an illegal market. Therefore, these devices do not warrant our protection. Although there may be some redesign costs incurred by some equipment manufacturers, we believe such costs to be minimal and totally warranted if we are to control the interference potential by reducing the number of power amplifiers at Class D Citizens radio stations. To be reticent to the needs of licensed users would only serve the manufacturer's private interest and would hardly fulfill the public interest concerning interference potential of devices capable of causing harmful interference to radiocommunications, 47 U.S.C. 302 and the prevention of interference between stations 47 U.S.C. 303 (f). By our action today in reducing the frequency range in the rule definition some equipment which would have required change under the proposal will not have to be redesigned to comply with new marketing standards.

POTENTIAL EFFECTIVENESS OF THE RULE

9. Some respondents, although agreeing in principle, with the proposal suggest that the rule is unworkable. For instance, Electronic Industries Association (EIA) would expand the definition of the rule to include transceivers that are capable of easily being modified for use in the 26.0–28.0 MHz range. Philmore Manufacturing Company suggests an exception for users in the mountainous areas of the country. EIA and Pathcom, Inc. would curtail demonstrating or otherwise exposing such amplifiers in any place public or private. Pathcom would require type acceptance of all power amplifiers and transceivers for use in the 20.0 MHz–40.0 MHz range. EIA urges the one time single unit construction provision for amateurs be eliminated.

10. We do not believe that any of the foregoing suggestions have offered significant solutions within the framework of this rule making. As stated in our report and order in Docket 18426, 23 F.C.C. 2d 79, 83, establishing marketing rules for devices which interfere with radio reception, the inclusion of the term "offer for sale" would "prohibit the advertising for sale of existing radio frequency devices prior to the date that it has been determined that such devices comply with the Commission's requirements." Thus, any demonstration or exposition of external RF power amplifiers which have not received Commission authorization and has for its purpose the advertising for sale of such device is prohibited and no further changes to the proposed rules need be made. Type acceptance of transceivers is beyond the scope of these proceedings but we intend to investigate the possibility of requiring type acceptance for all commercially manufactured transmitting equipment. EIA's comments indicate their reluctance to permit single-unit home construction of single band amplifiers. In our opinion, this exemption does not endanger the effectiveness of the rule in view of the amateur's strong reliance on multi frequency band equipment.

11. We recognize that the marketing rules that we adopt today may not be entirely effective in keeping out all power amplifiers from the Citizens Radio Service. By adoption of these marketing rules we are attempting to eliminate interference potential caused or created by the use of these devices. We serve notice that we intend to vigorously enforce these rules and to impose whatever sanctions, as authorized, we deem appropriate. We believe the rules adopted herein offer the least intrusion into the functions of responsible persons. We also intend vigorous enforcement of the new § 95.44 which would prohibit the use of any external RF power amplifier at any Class D station unless the operator of such equipment holds a license in another radio service permitting higher levels of power. As stated in the notice, the Commission will presume the use of such equipment where there is extrinsic evidence of an overpowered operation. This is in accordance with established case law which provides that a presumption may be upheld where it is shown that there is a material connection between the facts (overpowered operation) and the statutory inference (use of such equipment). Barnes v. United States, 412 U.S. 837 (1973); Turner v. United States, 396 US 398 (1970); United States v. Romano, 382 US

136 (1965); Tot v. United States, 319 US 463 (1943).

IMPACT ON LAND MOBILE RADIO SERVICE

12. Several respondents advance arguments in one form or other indicating that any requirement to redesign new power amplifiers would obsolete communications equipment used widely in the land mobile radio services (Parts 21, 89, 91, 93 of the rules). For instance, Fanon Courier alleges that its 25.0–50.0 MHz pocket pager would no longer be able to be used by offices, factories, hospitals and hotels. Likewise, Executone Communications Systems, Inc. indicated it could no longer provide a relatively low power transmitter in the Special Emergency (rule Part 89) and the Industrial Radio Service (rule Part 91) on frequencies between 31.0 MHz and 43.680 MHz. The Collins Radio Group states that many amplifiers in the range of 1.6–25 MHz or 30–70 MHz have been produced which are of a design that would be difficult to convert to Class D Citizens operation and therefore ought to be exempted from the rule's thrust. TPL Communications would like us to exempt the FM amplifiers (also known as a Class C amplifier) for use on the frequencies 30–50 MHz. They also allege without supporting evidence that solid state amplifiers that are designed to allow coverage of either 10 or 15 meters can be made inoperable on 11 meters, and that high pass or band reject filters could be used to allow the use of power amplifiers in the Land Mobile Services.

13. Under the revised rule's definition, it does not appear that Collins' multiband amplifier in the 1.6–25 MHz range would be proscribed for use in the land mobile service. While we concede some impact will occur in the land mobile services, we believe that such impact is fully warranted in view of the scope of the problem. We are unaware of other reasonable and effective solutions and no other suggestions have been called to our attention in the comments which would allow us to accomplish the objectives herein without unreasonably intruding in other radio services. The foregoing suggested exceptions for the land mobile service would be self defeating. For instance, a Class C amplifier which is non linear is normally not employed with Class D stations operating in an AM mode. However, it is a simple procedure to modify it for linear operation. Considering the ease with which the operating conditions of the amplifier could be modified we find that selective rule exceptions to accommodate land mobile radio purposes would only maximize the opportunity for subterfuge in which purported legitimate amplifiers would simply be marketed for illegal purposes. Our overriding concern primarily is to eliminate one source of objectionable interference to CB operations and secondarily to reception of other services and use of electronic entertainment devices. Licensees in the land mobile radio services requiring power within the limits permitted on the particular frequencies in which they are licensed to or propose to operate should secure transmitters which provide the necessary power without the necessity of adding an external radio frequency power amplifier to low power equipment.

AMPLIFIERS MANUFACTURED FOR EXPORT AND U.S. GOVERNMENT USE

14. Some equipment manufacturers urge us to permit power amplifier manufacturing in the United States to continue for export purposes. An exemption was requested for the manufacturer of equipment for the U.S. Government.

15. Under section 302 of the Communications Act and section 2.807 of the Commission's rules, the marketing proscription does not apply to radio frequency devices intended for export. Since we concluded in the notice that power amplifiers are radio frequency devices the law applies to RF power amplifiers, hence the regulations herein adopted do not apply to power amplifiers manufactured solely for export.

16. U.S. Government stations as administered by the Office of Telecommunications Policy, Interdepartment Radio Advisory Committee provide for the use of FCC type accepted or type approved Citizens radio equipment. A maximum transmitter output power of 5 watts is permitted. Thus, it appears that power amplifiers would be prohibited on the 27 MHz U.S. Government frequencies.

GENERAL INCREASE IN POWER OR IN TIMES OF EMERGENCY

17. Several ALERT Chapters and Fanon Courier suggested that notwithstanding the adoption of an anti-marketing rule for power amplifiers, the permissible power of Class D Citizens radio stations should be increased. Other user groups suggested that power amplifiers be permitted in times of emergency.

18. The matter of power was considered in Docket 17196 released on October 16, 1973. We note that some of the comments pointed out that the harmonic output of illegally amplified signals from Class D stations interfere with or pose serious threats of interference to the reception of television Channel 2 operating between 54 and 60 MHz. Also, according to the National REACT headquarters many emergency messages in the Class D Citizens Radio Service are not successfully completed because of interference caused by high powered equipment operating in the 27 MHz frequency band. The foregoing confirms the Commission's own observation. Moreover, any exception to the low power limitation would endanger the shared frequency concept for a large number of users. Thus, we do not believe that any proposal to increase operating power in the Citizens Radio Service is warranted at this time even for emergencies.

HEARINGS

19. One comment urged us to convene public hearings. Public hearings in rule making proceedings conducted under the Administrative Procedure Act are not a matter of right and we fail to understand how it would serve any useful purpose, particularly where full opportunity has been afforded interested persons to file written comments. Further, any public hearing would adversely affect the public interest by delaying the relief afforded by these new rule amendments.

CLARIFICATIONS AND PROCEDURAL CHANGES

20. Collins requests clarification as to whether an RF power amplifier marketed in conjunction with an RF exciter source, type accepted under a single type number, might also be construed as falling within the proposed rule amendment. Dynamic Communications asks us to clarify our statement in Paragraph 5 of the notice which refers to the exemption from the rule amendment those units sold to licensees other than those in the Citizens Radio Service prior to six months after the effective date of the final rules.

21. In type accepting transmitting equipment for operation in radio services other than Part 95 of the Commission's rules under a single designated type acceptance number, the Commission would not distinguish between a transmitter consisting of a single unit or several pieces of equipment and connected together. Therefore, the fact that the data submitted indicates that the transmitter is housed in multiple cabinets will not prevent its type acceptance by the Commission for that reason alone. For amateur stations not requiring type accepted equipment the rules are not intended to mean that the multiple band power amplifier must be an integral unit with the power source or exciter.

22. Paragraph 5 of the notice is merely a provision to enable equipment manufacturers and distributors to clear their "pipeline" of type accepted equipment in order to minimize their losses due to equipment which can no longer be shipped or sold under the rules. By this provision the Commission recognizes the hardship that might occur should immediate application against shipment or sale of type accepted equipment be mandated. Therefore, the immediate affect will apply to equipment which has not been type accepted. An additional six months will be allowed for equipment manufacturers to clear their stocks of type accepted equipment. Of course, the land mobile users to whom type accepted equipment is shipped or sold during the six month period would be entitled continued use of them at their licensed station even after the finalization of the rule.

23. We have reworded for clarity the definition of an external radio frequency power amplifier without changing its import.

24. In view of the foregoing consideration, we find that the amendments to Parts 2 and 95, set forth below are in the public interest, convenience and necessity. The authority for such amendments is contained in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

25. Accordingly, *it is ordered*, that effective February 12, 1975, Parts 2 and 95

of the Commission rules are amended, as set forth below.

26. *It is further ordered*, That Appendix A contained in the notice of proposed rule making is revised to indicate those external radio frequency power amplifiers for which marketing described in § 2.815 of the Commission's rules and regulations is prohibited after August 12, 1975.

27. *It is further ordered*, That this proceeding is terminated.

Adopted: December 23, 1974.

Released: January 3, 1975.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Secretary.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 164, 303))

Parts 2 and 95 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. § 2.815 is added new to read:

§ 2.815 External radio frequency power amplifiers.

(a) As used in this Part, an external radio frequency power amplifier is any device which, (1) when used in conjunction with a radio transmitter as a signal source is capable of amplification of that signal, and (2) is not an integral part of a radio transmitter as manufactured.

(b) After (effective date) no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier capable of use with a transmitter operated on any frequency or frequencies between 24.00 MHz and 35.00 MHz. Type accepted external radio frequency power amplifiers as defined herein may not be marketed after (six months after effective date).

(c) The proscription in paragraph (b) of this section shall not apply in the case of any external radio frequency power amplifier capable of use with a transmitter in the amateur frequency bands 28.00–29.70 MHz if the amplifier is an integral part of a unit or device having incorporated therein power amplification capability in the bands 7000–7300 kHz, 14,000–14,350 kHz and 21.00–21.45 MHz.

(d) The proscription in paragraph (b) of this section shall not apply in the marketing to another licensed amateur radio operator of any single-band external radio frequency power amplifier fabricated in not more than one unit of the same model by any licensed amateur radio operator, whose license affords him the privilege of operating on amateur frequencies between 1.80 and 29.00 MHz, for his own personal use at his licensed amateur radio station.

2. In § 95.3(c) the definition "External radio frequency power amplifiers" is added to read as follows:

§ 95.3 Definitions.

* * * * *

(c) * * *

External radio frequency power amplifiers. As defined in § 2.815(a) and as used in this Part, an external radio frequency power amplifier is any device which, (1) when used in conjunction with a radio transmitter as a signal source is capable of amplification of that signal, and (2) is not an integral part of a radio transmitter as manufactured.

* * * * *

3. § 95.44 is added new to read as follows:

§ 95.44 External radio frequency power amplifiers prohibited.

No external radio frequency power amplifier shall be used or attached, by connection, coupling attachment or in any other way at any Class D station.

NOTE: An external radio frequency power amplifier at a Class D station will be presumed to have been used where it is in the operator's possession or on his premises and there is extrinsic evidence of any operation of such Class D station in excess of power limitations provided under this rule part unless the operator of such equipment holds a station license in another radio service under which license the use of the said amplifier at its maximum rated output power is permitted.

APPENDIX A

Marketing of external radio frequency power amplifiers as described in § 2.815 of the Commission's rules is prohibited after August 12, 1975. The public records show the amplifiers listed below to be within the proscription. Although the list is believed complete, failure of an amplifier to appear on the list should not be construed as marketing acceptability under § 2.815.

By manufacturer and type number:

Aeronautical Electronics, Inc., or Aerotron, Inc.: 7N100/MA, 7N60/MA, 7N85/MA.

Allison Electronics: 650–RB.

Bogen Communications Division of Lear Siegler: AX–30.

Communications Engineering Company: CE–313.

Communications Industries, Inc.: CE–313.

Courier Communications, Inc.: BL–100, ML–100.

Dumont, Allen B. Laboratories or Dumont Division of Fairchild Camera and Instrument Corp., or Dumont Division of Gonset: 5850–B.

Dynamic Communications, Inc.: 4950, 4960, 8949.

E. F. Johnson Company: 242–0157, 242–0159, 242–0181, 242–0181–301, 242–0181–302, 242–0181–303, 242–0181–304, 242–0181–305, 242–0182, 242–0182–301, 242–0182–304, 242–0182–305, 242–0182–302, 242–0182–303, 242–157–201/299, 242–159–201/299.

Executone, Inc.: BR–21

Federal Telephone and Radio Corp.: 148–A, 149–A.

General Electric Company: EF–4–A, EF–4–B, KT–62–A, KT–63–A.

Hy Gain Electronics: 480, 481, 482, 483, 484, 485, 486, 487, 488, 600.

Kriss, Inc.: 300M.

Motorola, Inc.: P–8233, SP1050511, SP20550, SP943501, TU298.

Multitone Electronics, Ltd.: TA14/1, AT8/1.

Pathcom, Inc.: PX 100.

Polytronics Laboratories, Inc.: PB–100–1, PB–50–1.

Sonar Radio Corporation: BR–21, BR–2906, BR–2911, BR–2912.

[FR Doc.75-387 Filed 1-6-75;8:45 am]

[1] Commissioner Hooks absent.

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 74–10; Notice 11]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Air Brake Systems

This notice amends Standard No. 121, *Air brake systems*, 49 CFR 571.121, to establish a new test category (and an effective date) for highly specialized tractor-trailer vehicle combinations, and to specify modified brake retardation force requirements for trailers until September 1, 1976.

The National Highway Traffic Safety Administration (NHTSA) proposed these actions, along with other actions that deal with specialized trucks, in a notice published November 14, 1974 (39 FR 40168). The NHTSA is acting as soon as possible on the retardation force and integral tractor-trailer issues because they directly affect the manufacture of trailers, which will be subject to the standard's requirements on January 1, 1975. The issue of exemption for oversize and specialized trucks (which have a March 1, 1975, effective date) will be addressed in the near future by a separate notice.

The NHTSA takes note of its recent proposal and request for comments on a postponement of this standard (39 FR 43639, December 17, 1974). The NHTSA is proceeding with this rulemaking action independently of that proposal to maintain as much continuity as possible in the regulation as presently issued.

The manufacturers and users of auto transporter combination vehicles and the Truck Trailer Manufacturers Association supported the proposal to exempt "integral tractor-trailers" from applicability of the standard until September 1, 1976, because of their particular testing difficulties. It has been suggested that the term "integral tractor-trailer" should be replaced by a more descriptive designation of the combination vehicles in question. The NHTSA agrees and modifies the definition to refer to the transportation of motor vehicles, and to change the defined term to "auto transporters." The comments requested deletion of a requirement in the definition which limited these vehicles to those designed "by a single manufacturer, or person who alters a certified vehicle." The comments expressed concern that the phrase would eliminate the manufacture of tractor and trailer portions separately. Some manufacturers also believed that the reference to "certified vehicles" meant that any incomplete truck tractor equipped with 121-type equipment would have to be certified upon completion by the manufacturer of auto transporters.

The cited requirement does not exclude manufacture by separate individuals of the two portions of the combination, although the preamble inadvertently referred to "trucks and trailers manufactured by a single manufacturer for use in combination." It is possible that one or more persons other than a

vehicle manufacturer or alterer may be responsible for the integral design. The NHTSA therefore deletes the phrase in question to permit continued flexibility in the design of these vehicles.

The reference to alteration of a "certified vehicle" confused some businesses which modify stock truck-tractors for use in auto transporters. They believed that a completed vehicle that had been certified to meet Standard No. 121, or an incomplete vehicle with documents referring to Standard No. 121, could not qualify for an exemption as a portion of an auto transporter. In actuality, a complete and certified vehicle, or an incomplete vehicle, can be modified to become a portion of an auto transporter, which would thereby qualify for exemption whatever its previous status.

Bankhead Transportation requested clarification with regard to manufacture of new auto transporter trailers to be fitted to existing truck tractors that are modified to accept the new trailer. These trailers constitute a portion of an auto transporter and as such are exempt until September 1, 1976. The NHTSA has modified the language of § 5.3 in one respect from that proposed, to make clear that a transporter trailer manufactured without an equivalent transporter tractor would be tested separately under the requirements of § 5.3.2 after September 1, 1976.

The NHTSA also proposed that the retardation force requirements of the standard, which apply to trailers (and, on an optional basis, to a small category of large trucks until September 1, 1976), be somewhat reduced because of the degree of variability being experienced in brake lining performance. The NHTSA requested comments on lower values and on whether such new values should be permanent, or only temporary while further information is developed on variability.

With the exception of General Motors Corporation and Automotive Research Associates, Incorporated (which suggested changes in dynamometer procedures instead of values), the commentors supported the reduction of retardation force values for trailers. General Motors argued that brake force reductions of the trailer should not be undertaken without similar reductions in stopping distance requirements for trucks, and in particular towing vehicles.

The NHTSA, in an amendment published May 17, 1974 (39 FR 17750), has already acknowledged the variability of production brake assemblies on trucks and buses by establishing longer stopping distances for an interim period until September 1, 1975. The NHTSA recently denied a petition by Diamond Reo to make these longer distances the permanent values of the standard (39 FR 39880). A Paccar Corporation petition presently under consideration on the subject of stopping distances also raises the issue of relaxed stopping requirements. The NHTSA concludes that its decision on that petition will be responsive to the points raised by General Motors.

Several comments on the proposed lower retardation forces included data that further substantiate the determination that variability of brake linings is not sufficiently small to permit 100 percent compliance of every brake assembly at the present values. Wagner Electric Corporation, which originally petitioned for use of the values proposed by the NHTSA, has submitted new data which support a slightly lower minimum force level to support the desired mean performance of approximately 60 pounds. Data supplied by Raybestos Manhattan demonstrate a variability to the 3-sigma limit of slightly more than the 20 percent calculated by the NHTSA on earlier testing. Molded Materials Company disagreed that compatibility of combination vehicles required 60 percent mean retardation values, but supported the proposed lower minimum force levels as a means to achieve compatibility. Abex Corporation supported the lower values so that actual production experience could be accumulated as a basis for future changes.

The NHTSA concludes on the basis of submitted data that values slightly lower than those proposed will better accommodate the demonstrated variability of brake lining material. Therefore, values of 0.06, 0.13, 0.20, 0.27, 0.34, 0.41, and 0.47 will replace the present values for trailers.

Manufacturers and users of brake lining differed on whether the new values should permanently replace the previous values. The NHTSA did not receive conclusive information indicating that the variability in performance will remain in production units. The NHTSA concludes, therefore, that interim values will permit the accumulation of significant field experience on vehicle compatibility and lining variability, and that a judgment will be made on the basis of that data in the future.

Only Kelsey-Hayes commented on the proposal to apply these new retardation force values to trucks with heavy (or driving) front axles during their interim requirements. As a manufacturer of front axle brake assemblies for this vehicle category, Kelsey-Hayes pointed out that the revision was not supported for truck front axle brake assemblies and would require an unjustified retooling for a period of no more than 18 months. The NHTSA agrees that the data underlying the proposal supports a modification for trailer brake assemblies only. Accordingly, the NHTSA does not reduce the optional interim retardation force requirements for trucks specified in § 5.1.3.2.

In a separate matter, Rockwell International Corporation asked whether the discussion of 100 percent compliance with Standard No. 121's retardation force requirements was a modification of earlier NHTSA discussion on the "due care" responsibility of each manufacturer to ensure that each of his products meets the requirements of the standard (39 FR 17750, May 17, 1974). The requirement to exercise "due care" that each vehicle comply with Standard No. 121 is a statutory requirement (15 U.S.C. 1397), and the above-cited discussion remains the NHTSA position.

In consideration of the foregoing, Standard No. 121 (49 CFR 571.121) is amended as follows:

§ 571.121 [Amended]

1. S3. is amended to read:

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems. However, it does not apply to a fire fighting vehicle manufactured before September 1, 1975, or a heavy hauler trailer manufactured before September 1, 1976, or to any vehicle manufactured before September 1, 1976, that has an overall width of 108 inches or more or that has a gross axle weight rating (GAWR) for any axle of 24,000 pounds or more, or to any vehicle which, in combination with another vehicle, constitutes a part of an "Auto transporter" as defined in S4.

2. S4. is amended by the addition of a new definition following "Heavy hauler trailer" to read:

"Auto transporter" means a truck and a trailer designed for use in combination to transport motor vehicles, in that the towing vehicle is designed to carry cargo at a location other than the fifth wheel and to load this cargo only by means of the towed vehicle.

3. S5. 3 is amended by the addition of a new sentence at the end of the text to read:

However, the truck and trailer portions of an auto transporter (if both are manufactured after September 1, 1976), shall, in combination, meet the requirements of S5.3.1 as they apply to a single unit truck or bus, in place of the requirements of S5.3.2 as they apply to the trailer portion, and in place of the requirements of S5.3.1 as they apply to the truck portion in the loaded condition.

4. In S5.3.1.2, the phrase "formula and values" is modified to "formula and Column 1 values."

5. S5.4.1 and Table III are amended to read:

S5.4.1 *Brake retardation force.* The sum of the retardation forces exerted by the brakes on each vehicle designed to be towed by another vehicle equipped with air brakes shall be such that the quotient

$$\frac{\text{sum of the brake retardation forces}}{\text{sum of GAWR's}}$$

relative to brake chamber air pressure, shall have values not less than those shown in Column 1 of Table III, except that the values in the case of each such vehicle manufactured before September 1, 1976, shall be those shown in Column 2 of Table III. Retardation force shall be determined as follows:

TABLE III

BRAKE RETARDATION FORCE

Brake retardation force, GAWR		Brake chamber pressure, psi, Col. 3
Col. 1	Col. 2	
0.100	0.06	20
0.175	0.13	30
0.250	0.20	40
0.325	0.27	50
0.400	0.34	60
0.475	0.41	70
0.550	0.47	80

Effective date: January 1, 1975. Because of the imminent effective date of the standard for trailers (January 1, 1975), the National Highway Traffic Safety Administration finds, for good cause shown, that an effective date sooner than 30 days is in the public interest.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on December 31, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-309 Filed 1-2-75;9:03 am]

[Docket No. 74-10; Notice 10]

PART 571—AIR BRAKE STANDARD

No Postponement of Effective Date

The purpose of this notice is to advise the public of the decision of the National Highway Traffic Safety Administration (NHTSA) that the effective dates of Standard No. 121, *Air brake systems*, will not be postponed. The standard therefore remains effective January 1, 1975, for trailers and March 1, 1975, for trucks and buses.

On December 16, 1974, the NHTSA proposed and requested comments on a delay of the standard (39 FR 43639, December 17, 1974), to elicit information on the economic impact of the standard, both on individual companies and on the nation as a whole, specifically in light of the present economic situation. The notice requested comments on the short-term economic effect of the standard as it presently exists, and if it were delayed for 3 months, 6 months, 1 year, or indefinitely.

Over 250 comments were received from interested manufacturers, suppliers, and users in the air-braked vehicle market. Their recommendations varied from request for a January 1, 1975, implementation to total cancellation of the standard.

Many of the comments questioned the safety benefits to be derived from Standard No. 121, and recommended a delay until further analysis of the cost-effectiveness of the standard could be developed. The Council on Wage and Price Stability requested an indefinite postponement of the standard to permit further study of its costs and benefits. As the NHTSA noted in the preamble which accompanied the postponement proposal, however, the standard's safety benefit is not at issue, but rather its short-term impact on the current economic situation, particularly employment and industrial output. The NHTSA remains convinced that the standard meets a need for motor vehicle safety, and that any delay of the standard must be justified on the basis of its short-term economic consequences. The agency will continue to monitor the effectiveness of the standard as vehicles conforming to its requirements enter the stream of traffic, with a view to any modifications that would lower costs while achieving comparable levels of safety.

Analysis of the comments indicates that the net short-term economic consequences of delay in this standard would be negative. The principal factor dictating this conclusion is the standard's imminent effectiveness on January 1, 1975, and March 1, 1975. The effective dates are so near that the preparations and commitments, with all their economic ramifications, have already occurred and are substantially irreversible in the short run.

Substantial capital and employment commitments have been made by the suppliers who provided sub-system components that are used in meeting the requirements of the standard. For example, Wagner Electric Corporation, a manufacturer of air brake system components, estimates that 1,000 employees hired in anticipation of a 20 percent increase in sales would have to be fired. Loss of investment and employee layoffs would occur in the rest of the component industry. The result of any delay at this time would mean significant disruption of investment and employment, and a sharp downturn in the economic situation of this industry. Because of the imminent effective date, manufacturers and suppliers alike are committed to use 121-type components. Rockwell International, a manufacturer of axle systems and foundation brakes, estimates that a return to prestandard components would involve a 9- to 12-month changeover. Additionally, the cost of retooling to the old components and then further retooling to reestablish 121-level components would have to be passed on to the buyers.

The largest manufacturer of air-braked trucks, International Harvester, stated that proceeding with the standard without delay would be the course of action with the smallest adverse financial impact on their operations. IH argued for changes in the standard, but found an indefinite delay of the standard to be intolerable. Another manufacturer of air-braked vehicles, Oshkosh Truck Corporation, also stated it would suffer a large loss of its investment and its market share if the standard were postponed. Several trailer manufacturers also supported implementation of the standard despite its increased costs, as a means to recover their large investments in research, engineering, and capital outlay.

Other manufacturers of trucks and trailers argued for a delay of 1 year or more, on the basis that the tooling costs and other expenses incurred in a delay would be offset in the long run by increased sales at lower prices. PACCAR, Diamond Reo, Mack, and General Motors concluded that significant postponement of the effective date would increase sales and employment. Ford Motor Company requested cancellation of the standard.

On the basis of the comments submitted, the NHTSA has concluded that clear net economic benefit would not be derived from a postponement of the effective dates of Standard No. 121. The main advantage cited by those supporting a delay was the probability of an increase in unit sales because of lower costs. Sales of commercial vehicles, however, are less elastic with respect to price than passenger cars, being generally based on specific replacement needs, and little specific evidence was produced as to the overall effect on dollar sales. Comments from the supplier industries, on the other hand, pointed out emphatically that the effect on them would be quite severe.

The NHTSA concludes that the immediate economic disruption of a delay in Standard 121 would be at least as great as the difficulties that may be caused by its implementation, and that the long-term safety benefits of the standard will outweigh these difficulties and the costs associated with them. The prospect of higher weight limits for trucks and trailers makes the setting of an air brake performance standard even more important. For these reasons, therefore, Standard No. 121 (49 CFR 571.121) will not be postponed, and will come into effect as presently issued on January 1, 1975, for trailers and March 1, 1975, for trucks and buses.

Several manufacturers noted difficulties that they have experienced in obtaining components needed to make their vehicles conform to the standard. The NHTSA invites such persons to notify this agency of such problems, both for informational purposes and for any assistance the agency might render in obtaining proper attention from suppliers. Producers of fewer than 10,000 vehicles per year should also be aware of the procedure for obtaining a temporary exemption on the ground of economic hardship (49 CFR Part 555). Inability to obtain needed supplies could qualify as a basis for such an exemption. Contact with the NHTSA on these matters may be made by telephone at 202-426-9511.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on December 31, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-308 Filed 1-2-75;9:02 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. MC-C-6829 (Sub-No. 1)]

PART 1064—NOTICE OF AND PROCEDURES FOR BAGGAGE EXCESS VALUE DECLARATION

Limitation of Free Baggage Allowance-Reasonableness of the $50 Limitation and Greyhound Lines-Petition for Investigation

By report and order dated December 4, 1974, reported at 120 M.C.C. 719, the Interstate Commerce Commission adopted regulations regarding the liability of motor common carriers of passengers and their baggage subject to part II of the Interstate Commerce Act for lost or damaged baggage.

The promulgated regulations generally prohibit limitation of liability by the carriers to an amount less than $250 per

adult ticket for loss or damage to baggage checked by the passenger. The carriers also will be required to post adequate and conspicuous notice of the limitation of liability, with a statement that additional coverage is available upon payment of a charge. The regulations require that identification tags be attached to the baggage, and that tags be made available by the carriers to the passengers upon request.

The effective date of the regulations will be March 3, 1975. These regulations are promulgated pursuant to parts I and II of the Interstate Commerce Act (49 U.S.C. 1 and 301 et seq.) and sections 553 and 559 of the Administrative Procedure Act (5 U.S.C. 553 and 559). The adopted regulations read as follows:

§ 1064.1 Minimum permissible limitations for baggage liability.

No motor common carrier of passengers and baggage subject to part II of the Interstate Commerce Act, shall by tariff provision limit its liability for loss or damage to baggage checked by a passenger transported in regular-route or special operations to an amount less than $250 per adult ticket. Appropriate identification must be attached securely by the passenger to each item of baggage checked, indicating in a clear and legible manner the name and address to which the baggage should be forwarded if lost and subsequently recovered. Identification tags shall be made immediately available by such carriers to passengers upon request.

§ 1064.2 Notice of passenger's ability to declare excess value on baggage.

(a) All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage in excess of a free baggage allowance limitation, shall provide clear and adequate notice to the public of the opportunity to declare such excess value on baggage.

(b) The notice referred to in paragraph (a) of this section shall be in large and clear print, and shall state as follows:

NOTICE—BAGGAGE LIABILITY

This motor carrier is not liable for loss or damage to properly identified baggage in an amount exceeding $. If a passenger desires additional coverage for the value of his baggage he may, upon checking his baggage, declare that his baggage has a value in excess of the above limitation and pay a charge as follows:

IDENTIFY YOUR BAGGAGE

Under I.C.C. regulations, all baggage must be properly identified. Luggage tags should indicate clearly the name and address to which lost baggage should be forwarded. Free luggage tags are available at all ticket windows and baggage counters.

The statement of charges for excess value declaration shall be clear, and any other pertinent provisions may be added at the bottom in clear and readable print.

(c) The notice referred to in paragraphs (a) and (b) of this section shall be (1) placed in a position near the ticket seller, sufficiently conspicuous to apprise the public of its provisions, (2) placed on a form to be attached to each ticket issued (and the ticket seller shall, where possible, provide oral notice to each ticket purchaser to read the form attached to the ticket), (3) placed in a position at or near any location where baggage may be checked, sufficiently conspicuous to apprise each passenger checking baggage of its provisions, and (4) placed in a position at each boarding point or waiting area used by the carrier at facilities maintained by the carrier or its agents, sufficiently conspicuous to apprise each boarding passenger of the provisions of the said notice.

§ 1064.3 Baggage excess value declaration procedures.

All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage value in excess of a free baggage allowance limitation, shall provide for the declaration of excess value on baggage at any time or place where provision is made for baggage checking, including (a) at a baggage checking counter until 15 minutes before scheduled boarding time, and (b) at the side of the bus or at a baggage checking counter in reasonable proximity to the boarding area during boarding at a terminal or any authorized service point.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc.75-432 Filed 1-6-75;8:45 a.m.]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

DEFINITION OF BANKING, FINANCING, OR SIMILAR BUSINESS OF CONTROLLED FOREIGN CORPORATIONS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 5, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by February 5, 1975. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains proposed amendments of the Income Tax Regulations (26 CFR Part 1) under section 954 of the Internal Revenue Code of 1954 relating to the definition of a banking, financing, or similar business.

Section 954(c)(3)(B) of the Code provides that, foreign personal holding company income of a controlled foreign corporation does not include dividends, interest, or gains from the sale or exchange of stock or securities if such dividends, interest, or gains are derived in the active conduct of a banking, financing, or similar business. Section 954(c)(4)(B) of the Code provides that such foreign personal holding company income does not include interest received in the conduct of a banking, financing, or similar business from a related person engaged in such a business if the businesses of the recipient and payer are predominantly with unrelated persons.

Section 1.954–2(d)(2)(ii) of the Income Tax Regulations, as adopted by T.D. 6734, which was published in the FEDERAL REGISTER for May 15, 1964 (29 FR 6385), contains a definition of the term "banking, financing, or similar business" for purposes of making such a determination. That definition is also used by way of cross-reference in § 1.954–2(e)(2) of the Income Tax Regulations. Both provisions contain a 50-percent test for determining when a person is primarily engaged in the conduct of a banking, financing, or similar business.

In order to achieve substantial uniformity in definition these proposed amendments conform the existing definition under section 954 to the definition of the same term contained in §§ 1.864–4(c)(5)(i) and 1.904–4(c) of the Income Tax Regulations. However, they do not include in such definition the activity of carrying on an insurance company business contained in § 1.904–4(c)(1)(vii) because section 954(c)(3)(B) of the Code has a separate rule on insurance companies and because § 1.904–4(c)(1)(vii) was adopted as a result of a statement in H.R. Rep. No. 1450, 89th Cong. 39, 111, 1966–2 C.B. 994, 1046, involving an amendment of section 904(f) of the Code by section 106(c) of the Foreign Investors Tax Act of 1966. On the other hand, the present rule in § 1.954–2(d)(2)(ii)(d) which includes the carrying on of certain underwriting activities is retained. The 50-percent test in paragraphs (d)(2)(ii) and (e)(2) of § 1.954–2 is dropped.

In order to accomplish these changes the Income Tax Regulations are hereby amended as follows, effective on the 31st day following the date of publication of the adopted amendments in the FEDERAL REGISTER:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Section 1.954–2 is amended by revising paragraphs (d)(2)(ii) and (iii) and (e)(2) to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(d) *Certain income received from unrelated persons in the active conduct of a trade or business.* * *

(2) *Dividends, interest, and gains on securities, received in banking or other financing business from unrelated persons.* * *

(ii) *Definition of banking, financing, or similar business.* A controlled foreign corporation will be considered to be engaged in the conduct of a banking, financing, or similar business for purposes of this subparagraph if it is engaged in business, whether in the United States or in a foreign country or possession of the United States, and the activities of that business consist of any one or more of the following activities carried on in transactions with persons situated within or without the United States—

(A) Receiving deposits of money from the public,

(B) Making personal, mortgage, industrial, or other loans to the public,

(C) Purchasing, selling, discounting, or negotiating for the public on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness,

(D) Issuing letters of credit to the public and negotiating drafts drawn thereunder,

(E) Providing trust services for the public,

(F) Financing foreign exchange transactions for the public, or

(G) Purchasing stock or debt obligations from the issuer or obligor (or from a person or persons controlling, controlled by, or under common control with, such issuer or obligor) thereof for the purpose of distributing such stock or obligations through resale to the public.

Although the fact that the controlled foreign corporation is subjected to the banking and credit laws of a foreign country or possession of the United States shall be taken into account in determining whether it is engaged in the conduct of a banking, financing, or similar business in that country or possession, the character of the business actually carried on during the taxable year therein shall determine whether it is conducting a banking, financing, or similar business therein. A controlled foreign corporation which acts merely as a financing vehicle for borrowing funds for its parent corporation or a related person, as defined in paragraph (e)(1) of § 1.954–1, shall not be considered to be engaged in the conduct of a banking, financing, or similar business.

If, in addition to conducting a banking, financing, or similar business, a controlled foreign corporation carries on other business activities, for example, the business of selling or manufacturing goods or merchandise from which it realizes income, gain, or loss, only those dividends, interest, and excess of gains over losses from sales or exchanges of stock or securities, derived in the conduct of the banking, financing, or similar business shall be excluded from foreign personal holding company income of the controlled foreign corporation under section 954(c)(3)(B).

(iii) *Incidental income.* If securities or shares of stock are acquired as an ordinary and necessary incident to the conduct of a banking, financing, or similar business, as defined in paragraph (d)(2)(ii) of this section, the dividend and interest income from, and the excess of gains over losses from sales or exchanges of, such securities or stock will be considered to be derived in the conduct of a banking, financing, or similar business for purposes of this subparagraph but only so long as the retention of such property remains an ordinary or necessary incident to the conduct of such business. Thus, the acquisition of a security or stock acquired as the result of, or in order to prevent, a loss in a banking, financing, or similar business upon a loan contracted in the ordinary course of such business will be considered ordinary and necessary to the conduct of such business, but dividends, interest, gain, or loss on such security or stock will be considered derived or incurred in the conduct of a banking, financing, or similar business only so long as the holding of such security or stock remains an ordinary and necessary incident to the conduct of such business. The term "security," as used in this subdivision, means any bill, note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

* * * * *

(e) *Certain income received from related persons.* * * *

(2) *Interest received in banking, financing, or similar business from a related person.* Foreign personal holding company income of a controlled foreign corporation does not include interest received in the conduct of a banking, financing, or similar business if such interest is received from a related person, as defined in paragraph (e)(1) of § 1.954-1, if the related person is engaged in the conduct of a banking, financing, or similar business, and if the payer are predominantly with unrelated persons, as defined in paragraph (e)(2) of § 1.954-1. See section 954(c)(4)(B). For purposes of this subparagraph, the businesses of the recipient and the payer of interest will be considered to be predominantly with unrelated persons for a taxable year if both the recipient and the payer each receive more than 70 percent of their gross income for the taxable year from unrelated persons. Determinations as to compliance with such 70-percent test shall be made for the taxable year of the controlled foreign corporation in which the interest is received and for the taxable year of the related person in which the interest is paid. The rules provided in paragraph (d)(2) of this section shall apply under this subparagraph for purposes of determining whether a person is engaged in the conduct of a banking, financing, or similar business and whether interest is received in the conduct of such business. The application of this subparagraph may be illustrated by the following example:

Example. Controlled foreign corporation M is organized under the banking laws of foreign country X. M's sole business activity consists of transactions with the public in which it receives deposits of money and makes loans. In the conduct of its banking business M receives in 1974 5 percent of its gross interest income from payments made in such year by foreign corporation N, a related person incorporated under the laws of foreign country Y. Both M and N laws of foreign country Y. Both M and N use the calendar year as the taxable year. For 1974, N is engaged in the conduct of a financing business. M and N each derive more than 70 percent of their gross income for 1974 from unrelated persons. Interest income of M received from N in 1974 is excluded from M's foreign personal holding company income under section 954(c)(4)(B).

* * * * *

[FR Doc.75-440 Filed 1-6-75;8:45 am]

[26 CFR Part 31]

EMPLOYMENT TAXES

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 5, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by February 5, 1975. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains proposed amendments to the Employment Tax Regulations (26 CFR Part 31) in order to conform such regulations to the provisions of sections 104(i), 122(b), 125(a), 128(b), 129(a)(2), and 138(b) of the Social Security Amendments of 1972 (86 Stat. 1341, 1354, 1357, 1358, 1359, and 1365).

The Social Security Amendments of 1972 provide generally that, after 1974, payments made to an employee after he obtains age 62, whether male or female, are not "wages" subject to social security taxation, if the employee did not work for his employer in the period for which the payment is made. Prior to this amendment the computation point for this exclusion was age 65 for men and age 62 for women.

The 1972 Amendments provide that payments made by an employer after 1972 to a disabled former employee who performed no services during the payment period are not "wages" if paid after the calendar year in which the former employee became eligible to receive disability insurance benefits under the Social Security Act. Payments made by an employer after 1972 to a survivor or estate of a former employee after the year of his death are also excluded from "wages".

The 1972 Amendments redefine "employment" to extend social security to employees of the Federal home loan banks and to certain temporary and intermittent employees of the Government of Guam for services performed by such employees after 1972 (and, in certain cases for services performed in the employ of a Federal home loan bank, after 1966 and before 1973).

Generally, after 1972, the Amendments except from "employment" services performed by students while in the employ of auxiliary nonprofit organizations such as student bookstores or student housing, when such units are organized and operated exclusively for the benefit of, or controlled by the school, college, or university which they were established to serve.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to the amendments made to the Internal Revenue Code of 1954 by sections 104(i), 122(b), 125(a), 128(b), 129(a)(2), and 138(b) of the Social Security Amendments of 1972 (86 Stat. 1341, 1354, 1357, 1358, 1359, and 1365), such regulations are amended as follows:

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

1. Section 31.3121(a)(9) is amended to read as follows:

§ 31.3121(a)(9) Statutory provisions; definitions; wages; payments to employees for non-work periods.

Sec. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(9) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains age 62, if such employee did not work for the employer in the period for which such payment is made;

[Sec. 3121(a)(9) as amended by sec. 201(b), Social Security Amendments 1956; sec. 4(b)(1), Act of Oct. 13, 1964 (P.L. 88-650, 78 Stat. 1077); sec. 104(i), Social Security Amendments 1972]

2. Section 31.3121(a)(9)-1 is amended by revising paragraph (a) thereof to read as follows:

§ 31.3121(a)(9)-1 Payments to employees for non-work periods.

(a) The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee for a period throughout which the employment relationship exists between the employer and the employee, but in which the employee does not work (other than being subject to call for the performance of work) for the employer, if such payment is made after the calendar month in which—

(1) The employee attains age 65, if the employee is a man to whom the payment is made before January 1975, or if the employee is a woman to whom the payment is made before November 1956, or

(2) The employee attains age 62, if the employee is a man to whom the payment is made after December 1974, or if the employee is a woman to whom the payment is made after October 1956.

* * * * *

3. Section 31.3121(a)(14)-1 is amended to read as follows:

§ 31.3121(a)(14)-1 Payments by employer to survivor or estate of former employee.

The term "wages" does not include any payment by an employer to a survivor or the estate of a former employee made after 1972 and after the calendar year in which such employee died.

4. Section 31.3121(a)(15)-1 is amended to read as follows:

§ 31.3121(a)(15)-1 Payments by employer to disabled former employee.

The term "wages" does not include any payment made after 1972 by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any service for such employer during the period for which such payment is made.

5. Section 31.3121(b)(6) is amended by revising subparagraph (B)(ii) and the historical note thereof, and by adding immediately after the historical note of section 2 of the Act of September 21, 1961, a new section 125 of the Social Security Amendments of 1972 and a historical note. These amended and added provisions read as follows:

§ 31.3121(b)(6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

(6) * * *

(B) * * *

(ii) Service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

* * * * *

[Paragraph (7), sec. 3121(b), as redesignated paragraph (6) and amended by sec. 205 (b), (d), Social Security Amendments 1954; sec. 201(d) (1), (2), Social Security Amendments 1956; secs. 104(h), 202(a), Farm Credit Act 1959 (73 Stat. 387, 389); sec. 311(b)(4), Social Security Amendments 1965; sec. 403(i), Social Security Amendments 1967]

* * * * *

Sec. 125. [Social Security Amendments of 1972].

(a) The provisions of section 210(a)(6)(B)(ii) of the Social Security Act and section 3121(b)(6)(B)(ii) of the Internal Revenue Code of 1954, insofar as they relate to service performed in the employ of a Federal home loan bank, shall be effective—

(1) With respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act; and

(2) In the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the sixth calendar year preceding the year in which this Act is enacted; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted are paid under the provisions of section 3122 of such Code by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph.

[Sec. 125(a), Social Security Amendments 1972]

6. Subdivision (ii) of paragraph (c)(4) of § 31.3121(b)(6)-1 is amended to read as follows:

§ 31.3121(b)(6)-1 Services in employ of United States or instrumentality thereof.

* * * * *

(c) *Services performed for an instrumentality not subject to employer tax on December 31, 1950, and covered under a retirement system established by such instrumentality.* * * *

(4) * * *

(ii) Services performed in the employ of a production credit association, a Federal Reserve Bank, or a Federal Credit Union; services performed before December 31, 1959, in the employ of a national farm loan association; services performed after December 30, 1959, in the employ of a Federal land bank association; services performed after December 31, 1959, in the employ of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives; services performed after December 31, 1972, in the employ of a Federal home loan bank; and services performed after December 31, 1966, and before January 1, 1973, in the employ of a Federal home loan bank, in the case of individuals who are in such employ on the latter date, provided that an amount equal to the taxes imposed by sections 3101 and 3111 with respect to all such services performed by all such individuals are paid under the provisions of section 3122 by July 1, 1973;

* * * * *

7. Section 31.3121(b)(7) is amended by revising subparagraphs (B)(ii) and (C)(iv), by inserting new subparagraph (D) at the end thereof, and by revising the historical note. These amended and added provisions read as follows:

§ 31.3121(b)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

* * * * *

(7) * * *

(B) * * *

(ii) The remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam [see historical note at end of this section] or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) * * *

(iv) By a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

(D) Service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply;

[Sec. 3121(b)(8) redesignated paragraph (7) by sec. 205(b), Social Security Amendments 1954; as amended by sec. 103(n), Social Security Amendments 1960; sec. 317(b), Social Security Amendments 1965; sec. 403 (i), Social Security Amendments 1967; sec. 128(b), Social Security Amendments 1972. The provisions of section 3121(b)(7)(B) are not applicable to service performed in the employ of the Government of Guam, of any political subdivision thereof, or of any wholly owned instrumentality of one or more of the foregoing, for the reason that a certification by the Governor of Guam, for which there is provision in sec. 103(v)(1), Social Security Amendments 1960, has not been received by the Secretary of the Treasury. Such a certification was made by the Governor of American Samoa and was received by the Secretary of the Treasury on December 29, 1960. Such a certification was made by the Commissioners of the District of Columbia and was received by the Secretary of the Treasury on Aug. 12, 1965]

8. Section 31.3121(b)(7)–1 is amended by adding paragraph (e) at the end thereof to read as follows:

§ 31.3121(b)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

* * * * *

(e) *Government of Guam.* The exception from employment under section 3121(b)(7) does not apply to services performed after 1972 in the employ of the Government of Guam or any instrumentality which is wholly owned thereby, by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam. The preceding sentence shall not apply to the services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof. For purposes of this paragraph—

(1) Any person whose services as an officer or employee of such Government or instrumentality is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(2) The remuneration for service described in subparagraph (1) (including fees paid to a public official) shall be deemed to have been paid by such Government or instrumentality.

9. Section 31.312(b)(10) is amended by revising the caption and subparagraph (B) thereof, and by revising the historical note, to read as follows:

§ 31.3121(b)(10) Statutory provisions; definitions; employment; services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; services performed by certain students in the employ of a school, college, or university or of a nonprofit organization auxiliary thereto.

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

* * * * *

(10) * * *

(B) Service performed in the employ of—

(i) A school, college, or university, or

(ii) An organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 of such Act; if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[Sec. 3121 (b) (11), Internal Revenue Code 1954, redesignated paragraph (10) by sec. 205 (b), Social Security Amendments 1954; as amended by sec. 129(a)(2), Social Security Amendments 1972]

10. Section 31.3121(b)(10)–1 is amended by revising paragraph (b) thereof to read as follows:

§ 31.3121(b)(10)–1 Services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax.

* * * * *

(b) See § 31.3121(b)(8)–2, relating to services performed in the employ of religious, charitable, educational, and certain other organizations exempt from income tax; § 31.3121(b)(8)–1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121(b)(10)–2, relating to services performed by certain students in the employ of a school, college, or university or of a nonprofit organization auxiliary to a school, college, or university; and § 31.3121(b)(13)–1, relating to services performed by certain student nurses and hospital interns.

11. Section 31.3121(b)(10)–2 is amended by revising the caption and paragraphs (a), (b), and (c) thereof to read as follows:

§ 31.3121(b)(10)–2 Services performed by certain students in the employ of a school, college, or university, or of a nonprofit organization auxiliary to a school, college, or university.

(a)(1) Services performed in the employ of a school, college, or university (whether or not such organization is exempt from income tax) are excepted from employment, if the services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

(2) Services performed after 1972 in the employ of an organization which is—

(i) Described in section 509(a)(3) and § 1.509(a)–4;

(ii) Organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university; and

(iii) Operated, supervised, or controlled by or in connection with such school, college, or university;

are excepted from employment, if the services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university. The preceding sentence shall not apply to services performed in the employ of a school, college, or university of a State or a political subdivision thereof by a student referred to in section 218(c)(5) of the Social Security Act (42 U.S.C. 418(c)(5)) if such services are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 of such Act. For the definitions of "operated, supervised, or controlled by", "supervised or controlled in connection with", and "operated in connection with", see paragraphs (g), (h), and (i), respectively, of § 1.509(a)–4.

(b) For purposes of this exception, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services performed by the employee, and the place where the services are performed are immaterial. The statutory tests are (1) the character of the organization in the employ of which the services are performed as a school, college, or university, or as an organization described in paragraph (a)(2) of this section, and (2) the status of the employee as a student enrolled and regularly attending classes at the school, college, or university by which he is employed or with which his employer is affiliated.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university, as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services. An employee who performs services in the employ of an organization described in paragraph (a)(2) of this section, as an incident to and for the purpose of pursuing a course of study at a school, college, or university with which such organization is affiliated, has the status of a student in the performance of such services.

* * * * *

[FR Doc.75-441 Filed 1-6-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1872]

[FmHA Instructions 465.1]

REAL ESTATE SECURITY

Proposed Revision

Notice is hereby given that the Farmers Home Administration has under consideration the revision of Subpart A of Part 1872, Title 7, Code of Federal Regulations (38 FR 19385). This revision prescribes policies and procedures for

servicing and liquidation of real estate loans and certain note-only cases. More responsibility and approval authority have been placed on the State Director, District Director, and County Supervisor so that the number of referrals to the National Office will be reduced. This proposed revision also makes the following major changes:

1. Use of the FmHA County Committee is no longer authorized for servicing actions involving borrowers indebted only for section 502 or 504 RH loans.

2. Section 1872.1(g) has been revised to define County Supervisor.

3. Section 1872.2(b)(1) is revised to permit the District Director, except in foreclosure cases, to authorize the County Supervisor to take possession of the property and enter into a lease or caretaker's agreement for the account of the borrower on the best terms obtainable.

4. Section 1872.2(c)(1) is revised to delete the requirement for National Office concurrence to enter a bid or to make payment of more than $40,000 under prior lien foreclosure.

5. Section 1872.2(d) is revised to provide that divorce cases will be submitted to the District Director rather than to the State Director, for his advice or concurrence in servicing the account.

6. Section 1872.2(e) is added to provide instructions for handling abandonment cases.

7. Section 1872.3(c)(4) has been revised to permit a subordination to another lender for FO, RL, LCD, and SW loans when the total indebtedness does not exceed the market value of the security or $225,000, whichever is less.

8. Section 1872.3(d)(2)(ii) is revised to provide that an RL, SW, RH or EM loan may be subordinated for development or enlargement purposes and for any purpose for which that type loan may be made.

9. Section 1872.3(f) is revised to provide that when a subordination is granted in connection with an FO, SW, or RL loan to permit a loan by another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property.

10. Section 1872.3(g) is revised to increase the approval authority of the County Supervisor and District Director to $100,000 and $160,000, respectively.

11. Section 1872.3(h) is revised to require that the County Committee certification or recommendation be completed in all cases involving a subordination for the purchase of additional land except when the borrower owes only a section 502 or 504 RH loan.

12. Section 1872.7 is revised to clarify the policy for servicing loans in cases involving junior liens.

13. Section 1872.8 is revised to grant the County Supervisor, District Director, and State Director greater authority for approving the leasing of security property.

14. Section 1872.10 is revised to permit the County Supervisor to consent to a severance agreement when the value of the item severed does not exceed $25,000. The District Director's authority is increased to $50,000.

15. Section 1872.17(h) is revised to provide that when a cash sale of mortgaged real estate will result in the secured debts not being paid in full, the County Supervisor may approve the sale for not less than the market value of the property and release the Government's lien.

16. Section 1872.18 is revised to: Permit the County Supervisor, District Director, and State Director to approve transfers when the amount of the secured debt does not exceed $100,000, $160,000, and $225,000, respectively; provide that when the FmHA debt consists only of OL and EM operating-type loans secured by real estate the payment period may not exceed 5 amortized annual installments. Also, in case of real estate loan transfers previously made on terms of not more than 5 years and the borrower is not able to meet the payments because of conditions beyond his control, an extension of the repayment period may be authorized not to exceed a total of 10 years from the date of transfer; provide that the borrower cannot be released from personal liability when real estate secured loans, other than 502 and 504 RH loans, are transferred to an ineligible transferee for a repayment period of more than 5 years from the date of the assumption agreement. When a borrower is not released from liability upon a transfer and assumption, he must indicate that he will continue to be liable for the debt by signing an agreement to that effect.

17. Section 1872.19 is revised to permit the County Supervisor and District Director to approve voluntary conveyance provided the total debts against the security do not exceed $100,000 and $160,000, respectively. For section 502 and 504 RH loans, an appraisal is not required when the approval official with the advice of the County Supervisor determines that the borrower has cooperated in good faith, used due diligence to maintain the property against loss, and has otherwise fulfilled the covenants of the loan to the best of his ability. In such cases, the approval official will accept the offer for the full satisfaction of the FmHA debt secured by the real estate. However, in cases when the debt is not satisfied and the borrower is not released from personal liability for the remaining balance of the debt, the credit to be entered on the borrower's loan record will be the present market value of the security conveyed as determined by a current appraisal.

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed revised Subpart to the Deputy Administrator Comptroller, Farmers Home Administration, United States Department of Agriculture, Room No. 5007, South Building, Washington, D.C. 20250, on or before February 6, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Deputy Administrator Comptroller, during regular business hours (8:15 a.m. to 4:45 p.m.)

As proposed, Subpart A is revised to read as follows:

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

Sec.

1872.1 General.
1872.2 Preservation of security property and protection of liens.
1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.
1872.4 Consent by partial release, subordination, or otherwise, to sale or other disposition of portion of or interest in security, except leases.
1872.5 Subordination of FmHA real estate mortgages to easements to the Bureau of Sport Fisheries and Wildlife.
1872.6 Subordination or FmHA's lien to the Commodity Credit Corporation's (CCC's) security interest taken for loans for farm storage and drying equipment.
1872.7 Consent to junior liens.
1872.8 Consent to borrower's granting lease of security.
1872.9 Transfer of upland cotton, peanut or tobacco allotments.
1872.10 Severance agreements.
1872.11 Disposition of proceeds of partial release, subordination, and consent transactions.
1872.12 Assignment and release of soil bank or similar program payments.
1872.13 Deceased borrower.
1872.14 Bankruptcy and insolvency.
1872.15 Servicing note-only cases.
1872.16 Release of FmHA mortgage without monetary consideration on basis of additional security or because of mutual mistake or nonexistence of evidence of indebtedness or valueless liens.
1872.17 Liquidation action.
1872.18 Transfer of real estate security.
1872.19 Voluntary conveyance of security to FmHA.
1872.20 Foreclosure by the Government.
1872.21 Taking liens on real estate as additional security in servicing FmHA loans.
1872.22 Assignment of promissory notes and security instruments outside the program.
1872.23 Cosigners—Rural Housing (RH) loans.
1872.24 Submission to National Office of certain partial release, subordination, consent, or other transactions.
1872.25 State supplements and reference to the OGC.
1872.26 Redelegation of authority.
1872.27 Nondiscrimination.
Exhibit A—Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration

AUTHORITY: (7 U.S.C. 1989); (42 U.S.C. 1480); (42 U.S.C.); (5 U.S.C. 301); delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director OEO, 29 FR 14764, 33 FR 9850.

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individual and Certain Note-Only Cases

§ 1872.1 General.

(a) *Purpose.* The purpose of this subpart is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) loans to individuals including

loans on leasehold interests, and certain note-only cases, except Rural Rental Housing (RRH) and Labor Housing (LH) loans to individuals operating under a loan agreement, or to Business and Industrial (B&I) loans. This subpart does not apply to loans subject to an FmHA Contract or Guarantee.

(b) *General policies.* Real estate security will be serviced in a manner to accomplish the loan objectives and protect the Government's financial interest. To accomplish these purposes, the real estate security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise meets the loan obligation, including loan repayment, in a satisfactory manner. When the above conditions are not satisfied, or it is determined that the loans must be liquidated for other reasons, and sufficient legal grounds for liquidation exist, prompt action will be taken to liquidate the security to protect the Government's financial interest.

(c) *Borrower's responsibility.* Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes, providing adequate property insurance, maintaining, protecting, and accounting to the FmHA for all real estate security, and complying with other loan requirements.

(d) *County Supervisor responsibilities.* The County Supervisor is responsible for informing each borrower of his responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and for servicing the security in accordance with this Subpart. When a borrower fails to maintain, protect, or account for the security as required by the loan documents, or makes unauthorized disposition or use of any security, prompt action will be instituted to protect the FmHA's interest. The County Supervisor will obtain any legal advice he needs from the Office of the General Counsel (OGC) through the State Director. In cases that have been referred to the OGC for legal action, no further action will be taken by the County Supervisor or other MmHA personnel without prior clearance with the OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC.

(e) *Servicing insured loans*—(1) *Servicing actions.* Servicing actions for insured loans will be the same as for direct loans except that in voluntary conveyance, and foreclosure cases, when the insured note is not held in the county office, the Finance Office will be requested to obtain assignment of the insured loan to the insurance fund as provided in § 1872.19 and § 1872.20 respectively, and when an insured Farm Ownership (FO) mortgage running to the lender as mortgagee is not held by the FmHA under trust assignment, or declaration of trust, or in the insurance fund (called insured FO mortgage held by the lender in this subpart) and a written subordination or partial release or other servicing document is requested, the document will be executed by the holder on a form prepared or approved by the OGC. In such cases, contacts with the holder will be made by the State Director and the holder's execution of the document will constitute his consent.

(2) *Execution of documents by Government.* The County Supervisor is authorized to execute all necessary forms, satisfactions, releases, and other documents required to complete any transactions in this subpart after the action has been approved by the appropriate approval official. The documents will be executed in behalf of the United States in the following form:

(i) "United States of America," when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(ii) "United States of America, for Itself and as Trustee," when an FO mortgage is held by the FmHA under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

(f) *Consent of lienholders.* When this subpart requires the consent of other lienholders, before the FmHA consents to a transaction which affects the security of its lien, such consent will be obtained and furnished to the FmHA by the borrower. The consent will, unless otherwise provided in a state supplement, include agreement as to the disposition of any funds involved in the transaction.

(g) *Definitions.* Unless otherwise indicated, the term "FmHA loans," "FmHA accounts," "FmHA interests," "FmHA security," "FmHA debts," and similar terms apply to indebtedness owed to or insured by the United States of America acting through the FmHA, and to related security instruments. The term "note" includes any note, bond, assumption agreement, or other evidence of indebtedness. The term "mortgage" includes deeds of trust and similar real estate security instruments and chattel security instruments where appropriate.

"County Supervisor" means "County Supervisor" and "Assistant County Supervisor" when in the opinion of the County Supervisor the Assistant County Supervisor has been sufficiently trained to competently perform the required actions and has delegated such authority to the Assistant County Supervisor in writing.

§ 1872.2 Preservation of security property and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect farm real estate security every three years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security property. Security on nonfarm tracts will be inspected only if liquidation action is likely to be taken, the property has been abandoned, when necessary to protect the interest of the Government, or whenever requested by the borrower. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, actions will be taken by FmHA for the account of the borrower as provided below. Any advances made for such purposes will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and charged to the borrower's account.

(1) *Operation of security by lessee or caretaker.* When prior approval is obtained from the State Director in any case, or the District Director in nonforeclosure cases, the County Supervisor will take possession of the property and will enter into a lease or caretaker's agreement for the account of the borrower on the best terms obtainable but not to exceed one year. Lease or caretaker's agreements will not be used as an alternative for, or as a means of delaying prompt liquidation of the loan. Lease agreements will be entered into on Form FmHA 465–2, "Lease of Security Property," and caretaker's agreements on Form FmHA 465–3, "Caretaker's Agreement (Real Property Only)."

(2) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this chapter.

(3) *Insurance.* For FmHA loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, Subpart A of Part 1806 of this chapter, and when appropriate Subpart B of Part 1806 of this chapter.

(4) *Maintenance.* In abandonment and pending liquidation cases, the State Director may authorize emergency repairs necessary to protect the interests of the FmHA. Such repairs will be properly documented on Form FmHA 424–1, "Development Plan." In all other cases, complete information concerning the borrower's failure to adequately maintain the security property and the State Director's recommendation for continuing the loan will be submitted to the National Office for prior authorization to advance funds for needed repairs. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of his unwillingness to do so should be included in the case file.

(c) *Actions by third parties which affect security.* The borrower will be expected to protect his own interest in condemnation, trespass, quiet title and other cases affecting the security. Third party actions include court or other actions in which the security property is involved. When the County Supervisor learns of any action taken by third parties which materially affects the security interests of the Government, he will send complete information concerning the action, the County Office case file, and his recommendations to the State Direc-

tor. When the Government or the County Supervisor is made a party to a court action, or when any suit is brought to condemn, impose a lien upon, or otherwise affect any part of the FmHA real estate security, information furnished by the County Supervisor will include a copy of the petition or complaint, if available to him, a statement of account, a current appraisal report, the name and address of borrower's attorney, if any, and any other pertinent information. The State Director will, in all litigation cases and in any other case where appropriate, after receiving the advice of the OGC, advise the County Supervisor of the actions to be taken to protect the Government's interest. When the State Director determines that foreclosure or other actions which would cause the borrower to lose possession of the property is imminent he may give consideration to making a subsequent loan, as appropriate, or approving a subordination to permit another lender to make a loan to satisfy such action when necessary to enable the borrower to retain the property, provided he has the ability and resources necessary to overcome the problems that caused the action, and, the third party agrees to postpone further action pending the processing of a subsequent loan or subordination. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Sale under prior lien foreclosure.* When a prior lien foreclosure sale is to be held and the State Director determines that a substantial net recovery on the Government's interest can be made by acquiring and reselling the security, he will authorize a bid in accordance with § 1872.20(b)(4) (vi) and (vii). Such bid may provide for payment of the prior lien indebtedness and costs incidental to the sale which must be paid from the sale proceeds. When under state law it is necessary, prior to such foreclosure, to acquire the prior lienholder's rights to protect the Government's junior lien interest, and in other situations when it is advantageous to the Government to pay the prior lien in full before the foreclosure sale, payment of the prior lien and required costs may be made with the advice of the OGC, provided the Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the prior lien foreclosure sale, and the FmHA account after acquisition of the prior lien will be liquidated as provided in § 1872.17. Information clearly supporting the action as being to the Government's financial advantage must be documented and made as part of the file.

(i) *Lienholder debt.* The prior lienholder will be contacted to determine the amount of his indebtedness including the cost of foreclosure sale and whether payment by SF–1034 is acceptable to him if the Government is the successful bidder at the sale. If the prior lienholder requires a cash payment, SF–1034 will be processed in sufficient time for the County Supervisor to receive a U.S. Treasury check before the sale. Requesting the check, payment of the bid, and payment of any other costs by using SF–1034 will be in accordance with the applicable portions of § 1872.20. The costs will be charged to the borrower's account.

(ii) *Title evidence.* Title evidence will be obtained prior to making a bid on the property or acquiring the prior lienholders rights.

(iii) *Assignment.* An insured loan which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before the foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(iv) *Final reporting.* (A) When FmHA enters a bid or is the successful bidder at the foreclosure sale, reporting actions will be in accordance with § 1872.20 of this subpart.

(B) When the State Director determines that no bid will be entered by FmHA, the County Supervisor will nevertheless attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. A narrative report will be sent to the Finance Office when no recovery is made by the Government. If the Government is to rely on its redemption rights, that fact will be indicated in the report.

(v) *Servicing Government redemption rights.* If the Government did not have an opportunity or for other reasons did not protect its interest at the time of the foreclosure sale by a prior lienholder and has any redemption rights, the State Director will determine whether to redeem the property before the redemption period expires. Such determination will be made after considering all factors including the value of the property or changes in its value after the sale and any other pertinent information. This determination will be made at a time sufficiently prior to expiration of the redemption period to permit exercise of the Government's rights. If redemption of the property is appropriate, the State Director's recommendation, accompanied by complete information showing the basis for not acquiring the security at the sale and factors which justify redemption of the property, should be sent to the National Office for prior consideration. The report should be accompanied by an opinion of the OGC stating that the redemption is legally authorized. If it is decided not to redeem the property, the right of redemption may be sold for its value by the State Director. There is no authority to dispose of redemption rights without consideration.

(2) *Foreclosure sale subject to FmHA mortgage.* If a lien junior to the FmHA lien is foreclosed and the property is sold subject to the FmHA mortgage, the account will be transferred under § 1872.18, if appropriate. Otherwise, it will be liquidated as provided in § 1872.17.

(d) *Divorce actions.* When borrowers with loans on farm are involved in a divorce action, the County Supervisor will submit the case to the District Director after the final divorce decree has been granted for his advice or concurrence in servicing the account. When borrowers whose loans are secured by a mortgage on a nonfarm tract are involved in a divorce action, the County Office file will be submitted to the District Director for advice when the County Supervisor is uncertain of the servicing actions needed to protect the Government's interest or if continuation of the loan with the remaining borrower is not authorized. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1872.18(b)(14).

(e) *Abandonment.* When a borrower has removed his personal property from the farm or home or the County Supervisor believes security property has been abandoned by the borrower, he will immediately check with the neighbors, relatives in the area, the local post office, utilities offices, schools, and other appropriate sources to determine if the family has moved from the area and, if so, whether a forwarding address can be determined. If the security property is not being maintained, and available information indicates that it has been abandoned, the County Supervisor will immediately report the facts to the State Director and request authority to take possession of the property pending liquidation, make emergency repairs needed to prevent further deterioration of the property, and to enter into a lease or caretaker's agreement on behalf of the borrower. If the security property is not in need of emergency repairs, Form FmHA 465–7, "Report on Real Estate Problem Case," will be prepared and submitted through the District Director to the State Director for his consideration.

§ 1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.

(a) *Reamortizing existing FmHA debts.* Existing FmHA loans may be reamortized to permit a loan of another lender in lieu of a subsequent loan of the kind involved with prior approval of the District Director or State Director as applicable. The reamortization of each existing loan may be made only within the remaining period of that loan. Authority to reamortize an account will be granted when it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. When a loan is reamortized it will be processed in accordance with Subpart A of Part 1861 of this chapter.

(b) *Use of other lenders' funds to reduce FmHA debts.* In connection with a subordination primarily for other purposes, funds of another lender may be used to pay on an FO, Soil and Water (SW), Recreation Loan (RL), Operating Loan (OL), or Emergency loan (EM) only to the extent that is necessary to accomplish the objectives of the FmHA loan involved and to establish the borrower's operations on a sound basis within his ability to pay. Also, when a borrower owes any of the aforementioned loans and a Rural Housing (RH) loan,

the funds of another lender may be used to pay the amount delinquent on the RH loan or to refinance the total RH debt when necessary. It is not intended that the FmHA lien will be subordinated for removal of a delinquency that the borrower could be expected to pay within five years. It is also the policy to only permit payment of that portion of the FmHA debt that is necessary to avoid failure in connection with obtaining additional resources essential to success. This authority will be used in those cases that will provide for meeting the FmHA objectives as specified in § 1872.1(b) of this subpart. In such cases, the narrative justification and the case file will be sent to the National Office prior to development of the subordination.

(c) *Conditions for subordination.* A subordination may be granted subject to the following conditions:

(1) *Refinancing.* The borrower is unable to refinance the FmHA debt on terms which he can reasonably be expected to meet;

(2) *Objectives.* The transaction will further the objectives for which the FmHA loan was made;

(3) *Prior lien.* The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) *Market value.* The amount of any prior lien plus the balance of the FmHA debt will not exceed the market value of the security; except for an FO, RL, Land Conservation and Development (LCD), or SW loan, it will not exceed the market value of the security or $225,000, whichever is less. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total security will be increased by an amount at least equal to the amount of the additional advance. The $225,000 limitation will not apply to loans if, because of fire, flood, windstorm, or other casualties, the subordination is necessary for land development or for the repair or replacement of essential buildings to put the property in livable and operable condition or to protect it against further deterioration. However, the subordination will not permit the total indebtedness to exceed the present market value of the security;

(5) *Stock.* An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as collateral security, when possible, and when needed for security; and

(6) *Security.* The FmHA secured indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction.

(d) *Purposes of subordination.* A subordination may be granted to:

(1) *Refinance, extend, or reamortize.* Refinance, extend, or reamortize an existing prior lien provided the amount of the indebtedness secured by the prior lien, as of the date of the transaction, is not increased by more than reasonable costs incident to loan closing, plus funds for the purchase of any required stock.

(2) *Increase.* Increase the amount of prior lien or permit a new prior lien when the funds will be used:

(i) *Nonfarm tract.* On a nonfarm tract securing RH loans for purposes for which RH nonfarm loans are authorized subject to the limitations that would be applicable if an RH loan were made. When the mortgage includes nonfarm property larger than a minimum adequate site, the subordination may be granted on the excess land for purposes not inconsistent with the purposes for which the loan was made.

(ii) *Farm.* On a farm which secures an FO loan only or an FO and any other type FmHA loan, for any purpose for which an FO loan can be made. Also, an RL, SW, RH, or EM loan may be subordinated for development or enlargement purposes and for any purpose for which that type loan may be made. However, if the RH loan was made to finance a dwelling and the loan is secured only by the dwelling and dwelling site, the RH loan will be subordinated only for purposes for which an RH nonfarm loan may be made.

(3) *Requirements.* Any transaction approved under § 1872.3(d)(2) (i) or (ii) must meet the following additional requirements:

(i) The proposed use of the funds will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the operation on a sound basis.

(ii) In the case of either an FO loan or OL loan, the use of the funds will not result in the farm being larger than a family farm or family farming operation.

(iii) Any proposed development will be planned and performed in accordance with Part 1804 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of Part 1804 of this chapter and is concurred in by the State Director.

(iv) Funds to be used for development or to acquire land will be handled as prescribed for FO loan funds in Part 1803 of this chapter, except that if the creditor will not permit the use of a supervised bank account, arrangements satisfactory to the FmHA which will assure that the funds will be spent for the planned purposes may be substituted.

(v) In cases of land purchase or exchange of property, the FmHA will obtain a valid mortgage on such acquired land. Title clearance and loan closing will be required the same as for an initial or subsequent FO loan as appropriate. The mortgage will be recorded when the subordination is delivered to the other lender, or immediately after the other lender records its mortgage.

(e) *Request for subordination.* When a borrower requests the FmHA to subordinate a mortgage Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with a new prior lienholder will be obtained as required in § 1807.2(f)(5) of this chapter. In case of an insured FO mortgage held by the lender, the holder's consent will be obtained in accordance with § 1872.1(e). Any junior lienholder's consent to the transaction and use of the proceeds will be obtained as provided in § 1872.1(f) of this subpart.

(f) *Appraisal.* A current appraisal report will be prepared when property is to be purchased or exchanged, or when the existing appraisal report is more than two years old or is inadequate to make the determination required in this subpart. When an appraisal is required by FmHA in connection with a subordination being granted to the Federal Land Bank (FLB), the appraiser may recommend, or the loan approval official may find, the market value of the total security to be equal to the market value of the real estate plus the value of the FLB stock. This determination will be recorded on a separate sheet and attached to the appraisal report. When a subordination is granted in connection with an FO, SW, or RL loan to permit a loan by another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property in accordance with Subpart A of Part 1809 of this chapter.

(g) *Approval authority.* The County Supervisor and District Director are authorized to approve transactions under § 1872.3 when the total indebtedness against the security after the transaction is completed does not exceed $100,000 and $160,000 respectively. The County Supervisor, however, may not approve transactions that involve refinancing of an FmHA debt. The State Director is authorized to approve transactions that exceed the approval authority of the County Supervisor and District Director. When a new appraisal is required for a farm, the employee who appraises the property cannot approve the transaction. Also, the Assistant County Supervisor may not approve a transaction when the appraisal is made by the County Supervisor in the same office.

(h) *Processing.* When the approval of the transaction by the State Director is required or when the County Supervisor or District Director desires advice before his approval of the transaction, the borrower's case folder with current documents to support the applicable determinations such as, where appropriate, Forms FmHA 431–2, "Farm and Home Plan," FmHA 431–1, "Long-Time Farm and Home Plan," FmHA 431–3, "Family Budget," FmHA 422–1, "Appraisal Report (Farm Tract)," FmHA 422–8, "Property Information and Appraisal Report—Rural Housing Nonfarm Tract," FmHA 440–2, "County Committee Certification or Recommendation," other necessary forms, and Form FmHA 465–1 will be sent to the State Office. Form FmHA 440–2 will be completed in all cases involving a subordination for the purchase of additional land except when the borrower is indebted only for a section 502 or 504 RH loan. After approval of the transaction, it will be closed in accordance with State Supplements to the max-

imum extent possible as provided in § 1872.25. However, when legal advice on an individual case is necessary, Form FmHA 465–1, any subordination form furnished in connection therewith, the original or a copy of the FmHA mortgage, the refinancing mortgage or agreement, and related documents will be submitted to the OGC for review and preparation of the necessary instruments and closing instructions. The documents and closing instructions will be sent to the County Office. If the signature of the State Director is required on some of the instruments, the docket and closing instructions will be routed through the State Office. The transaction will be completed in accordance with the closing instructions.

§ 1872.4 Consent by partial release, subordination, or otherwise, to sale or other disposition of portion of or interest in security, except leases.

The consent of FmHA or other lienholders may be in the form of a partial release, subordination, or other form of a partial release, subordination, or other form of written consent, depending on the circumstances. The consent authorized herein is applicable to the disposition of security or an interest in the security rather than to a release of security granted to a mortgagor upon his reduction of the debt from regular or other personal funds. A formal release may not be delivered for 15 days after the payment is received unless such payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available.

(a) *Provisions of FmHA mortgages.* In all FmHA mortgages except RH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loans mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it, without the prior written consent of the mortgagee. Furthermore, even in the case of the few RH, OL, EM, SL, and WF loan mortgages not requiring FmHA consent, any property, or any part thereof or interest therein which is subject to the FmHA mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes.

(b) *Consent and partial release and subordination forms.* When FmHA consent is requested, it will be given by approving a completed Form FmHA 465–1 if the transaction meets the conditions of § 1872.4(c). Also, when requested, the FmHA will give a written partial release or subordination on Form FmHA 460–1, "Partial Release," approved by the OGC. Written consent of any prior or junior lienholders will be obtained by the borrower and delivered to the FmHA if any proceeds are not to be applied on liens in accordance with their priorities. When an insured FO mortgage is held by the lender, his consent will be obtained only if a written partial release, subordination, or other written servicing document is requested. Any such consent will be obtained in accordance with § 1872.1(f).

(c) *Conditions of FmHA consent.* FmHA consent may be granted and a partial release or subordination executed if the consideration is adequate for the security property being disposed of, or rights granted; orderly repayment of the FmHA indebtedness will not be impaired; the transaction will not interfere with successful operation of any farming enterprise or other enterprise providing repayment ability of the borrower; the market value of the security is adequate to secure the unpaid balance of the FmHA debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA debts, the FmHA's security interest is not adversely affected; and the provisions of § 1872.4 (d) and (e) and § 1872.11 are complied with. Exceptions to the foregoing sentence are provided in § 1872.4(c) (1) and (2).

(1) *Condemnations.* The conditions of consent as stated in paragraph (c) that the consideration is adequate for the security property being disposed of, or rights granted, and that orderly repayment of the FmHA indebtedness will not be impaired will not apply in condemnation cases after final judgment or award which is not appealed.

(2) *Costs.* In any case of consent, partial release, or subordination the County Supervisor may authorize the borrower to use a portion of the proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay, including real estate taxes which must be paid to consumate the transaction. Such costs may, for example, include the following in justifiable cases: Costs of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, and recording fees, reasonable attorneys' fees and court costs in condemnation cases, costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber when the necessary appraisal cannot be obtained without costs, real estate brokers' commissions when a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained, or additional income tax which the borrower is required to pay for the year because of the capital gain or mineral royalty payments on the transaction. The amount of the estimated tax on the particular transaction will be deposited in the supervised bank account. Any deposited funds not needed to pay the borrower's adjusted tax liability for the year of the transaction will immediately be applied on the account as an extra payment. In any state in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any costs for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when he requests a partial release that he must pay such costs. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sales proceeds. The amount of the charge will be based on the statement of actual costs furnished by the lender. A subordination approval will also include additional advances by the lender as necessary for taxes, insurance, emergency repairs for maintenance, and liquidation expenses.

(3) *Appraisals.* When the official authorized to approve the transaction is uncertain whether a proposed consideration is adequate or for any other reason considers an appraisal necessary to complete Form FmHA 465–1, or when the transaction involves more than $5,000, a new appraisal report will be obtained in accordance with the applicable appraisal procedure. However, a new appraisal report need not be obtained if there is an appraisal report not over two years old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate his determination of values and the basis for it in the comments section of the existing appraisal report. The notation will be initiated and dated. When a new appraisal report is required, it will be completed to show the present market value of the property being retained. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(i) *Stationary units.* If timber or minerals including sand, gravel, or stone, which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA employee to advise him of the quality or value of the timber or minerals and the manner in which they should be sold. Generally, such assistance can be obtained from State or Federal employees who are located in the area.

(ii) *Units removed.* When timber or minerals, including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert, date, and initial a no-

tation on the existing appraisal report instead of making a new appraisal report. The notation should show the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area, and the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(d) *Authority of the County Supervisor and District Director.* The County Supervisor and District Director are authorized to approve transactions under § 1872.4, except those specifically reserved to the State Director as set forth in § 1872.4(e), when the total indebtedness against the security does not exceed $100,000 and $160,000, respectively. Also, when liquidation in accordance with § 1872.17 is not pending, the County Supervisor is authorized to approve transactions when the entire proceeds (other than costs authorized in § 1872.4(c)(2), or normal income as defined in § 1872.11 (b) will be applied on the liens in the order of their priority. The employee who appraises the property cannot approve the transaction. For example, if the Assistant County Supervisor makes the appraisal, the transaction may be approved by the County Supervisor; if the County Supervisor makes the appraisal, the transactions may be approved by the District Director. In case of a three percent loan for forestry purposes, the application for consent or release involving the harvest or sale of forest products will be forwarded to the District Director for approval if the harvest or sale is not in strict accordance with provisions of the initially-approved forestry plan, future repayments on the three percent advance are scheduled on any basis other than equal annual installments, there is a lien on the forest land prior to the lien of the FmHA, or there is a delinquency on any FmHA real estate loan. The County Supervisor and District Director are also authorized to approve transactions involving exchange of all or part of the security for other real estate, use of all or part of the proceeds for development or enlargement or as provided in § 1872.4(d)(3), sale of a portion of the security, except security for RH loans on nonfarm tracts, for its market value and on terms of not less than 10 percent down, and payments not to exceed 10 annual installments of principal plus interest at not less than eight percent per annum or the rate on the borrower's note, whichever is greater, and sale of a portion of the security for RH loans on nonfarm tracts for its market value on terms of not less than 10 percent down, and payments not to exceed five annual installments of principal plus interest at not less than eight percent per annum or the rate on the borrower's note, whichever is greater, provided: The Government's security rights, including the right to foreclose, are not impaired, the downpayment and subsequent payments are applied to the FmHA debts, prior liens, or are used as authorized in this Subpart, any security instruments the borrower obtained in the transactions are assigned to the FmHA, the property sold is not released prior to full payment of the account or receipt of the sale price with proper application or release of such proceeds, and unless appropriate reamortization is made in accordance with § 1861.9, Subpart A of this Chapter, and the borrower understands and agrees that such sale proceeds will not affect his primary and continued obligation for making payments under the note. In any case in which the proceeds under § 1872.11(a) will not be applied on prior liens or FmHA accounts secured by real estate liens, the following requirements must be complied with:

(1) *Development or enlargement.* Use of any proceeds for development or enlargement must be necessary to improve the borrower's debt-paying ability and to place his operation on a sound basis or otherwise further the objectives of the loan. In the case of an FO or OL loan, the use of proceeds for such purposes will not result in making the farm larger than a family farm.

(2) *Development.* Any proposed development work will be in accordance with Part 1804 of this chapter.

(3) *Inadequately secured loans.* When FmHA loans secured by a lien on real estate will be adequately secured after the transaction, proceeds not to exceed an amount equal to the equity in the security may, with the consent of other lienholders, be applied to inadequately secured FmHA loans, to reduce them to the extent that the security is adequately or up to $2,500 may be used for development of nonowned land essential to the borrower's operation whether or not it is taken as security for the loan. If funds are used on nonowned land it must be determined that the improvements are essential to his operation or repayment ability and that the borrower has tenure arrangements that will justify the use of such proceeds on that land. Proceeds released for payments on other FmHA debts will be applied as extra payments unless the District Director approves a specific written request from the borrower to apply proceeds on a delinquency or currently maturing installment because the borrower is otherwise unable to make such payments. That part of the proceeds not applied to any prior lien or inadequately secured FmHA loan must be applied to the FmHA lien on the security property of the highest priority if not used to develop or enlarge the security.

(4) *Funds.* Funds to be used for development or enlargement will be handled in the manner prescribed in Part 1803 of this Chapter.

(e) *State Director's authority.* The State Director is authorized to approve transactions (1) that exceed the approval authority of the County Supervisor and District Director, or (2) involving an easement or fee title right-of-way granted or conveyed without monetary compensation or for a token consideration if the Government's security interests are not adversely affected.

(f) *Processing.* When the approval of a transaction by the State Director is required, or the County Supervisor or District Director desires advice in connection with his approval of the transaction, the borrower's case folder, Form FmHA 465-1, and any other information pertinent to the transaction will be sent to the State Office. In an exchange of security, the provisions of this subpart applicable to a sale of a portion of the security will apply to the property being released. The provisions of Subpart A of Part 1821 of this chapter applicable to the purchase of land will apply to land being acquired in connection with FO, RL, and SW loans. The provisions of that subpart applicable to the title clearance, security, and appraisals will apply to lands being acquired in connection with other loans.

§ 1872.5 Subordination of FmHA real estate mortgages to easements to the Bureau of Sport Fisheries and Wildlife.

(a) *General.* The policies and procedures for subordinating FmHA mortgages on wetlands on which the Bureau of Sport Fisheries and Wildlife obtain easements for waterfowl nesting habitats are set forth herein. Appendix I "Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration," outlines the procedure to follow in processing of such subordinations.

(b) *Authorization.* When a request for a subordination is received from the Bureau of Sport Fisheries and Wildlife, the County Supervisor will handle the request in accordance with the steps outlined in Appendix I and applicable portions of §1872.3.

§ 1872.6 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC's) security interest taken for loans for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installation of either farm storage or drying equipment or both and requires that a loan of $10,000 or more, or any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA borrower and requests a subordination of the FmHA real estate lien, the request will be handled on an individual case basis in accordance with the authorizations and requirements of §1872.3 of this subpart. A borrower's request for the FmHA's consent to severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled in accordance with §1872.10 of this subpart.

§ 1872.7 Consent to junior liens.

(a) *Policy.* As a general policy, FmHA borrowers will be discouraged from giving junior liens on real estate securing an FmHA loan to other creditors. When consent is requested by a borrower, the

County Supervisor may consent by executing Form FmHA 465–1 or other form approved by OGC for use in the state provided: The loan is necessary for the successful operation of the borrower's security property or because of his financial condition; the terms of the junior lien debt are such that its payment will not likely jeopardize payment of the FmHA loan; any operating plans made with the junior lienholder are consistent with any plans made by the FmHA with the borrower; and the junior creditor agrees in writing that he will not foreclose his mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of notice to the FmHA.

(b) *Servicing action.* When a junior lien is placed on any property without FmHA's consent, and consent may not be granted in accordance with the policy indicated in § 1872.7(a), the FmHA may continue with the loan as long as the borrower makes payments on FmHA loans as agreed, properly maintains the security, and meets all other conditions of the loan. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1872.8 Consent to borrower's granting lease of security.

When consent to a lease is required by the security instruments and a borrower requests FmHA's consent to lease all or a portion of the security, or the County Supervisor discovers that a borrower is leasing the security without consent, Form FmHA 465–1 will be prepared when the County Supervisor recommends approval of the lease. That form will show the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, his consent will be obtained as provided in § 1871.1(f). FmHA consent to the lease may be granted on the basis of the situation at the time of the proposed action when; the lease or its terms will not adversely affect the repayment of the loan or the Government's rights under the mortgage, leasing is not an alternative to, or means of, delaying liquidation action, the operation of all or a portion of the security under the lease will not adversely affect any applicable crop allotments, the lease and use of any proceeds will further the objectives of the loan, liquidation is not pending and rental income sufficient to make regular payments under the note, pay taxes and insurance, and maintain the security is assigned to FmHA for these purposes unless such payments are otherwise reasonably assured, the lease is advantageous to the borrower and is not to the Government's disadvantage, and if foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions by the OGC. In cases where the borrower leases property without consent and consent may not be granted in accordance with the above provisions, or when further approval of a lease cannot be granted in accordance with the conditions of this subpart, the case will be serviced promptly in accordance with § 1872.17 of this subpart unless the borrower corrects the violation. Consent to lease will be subject to the additional conditions specified below for each kind of lease:

(a) *Leases of security for agricultural purposes*—(1) *County Supervisor's authority.* When liquidation in accordance with § 1872.17 is not pending, the County Supervisor is authorized to approve annual leases on all or part of the security for borrowers with:

(i) *RH or LH loans on farms, or SW, RL, or Other Real Estate (ORE) loans.* For the purposes of this subpart, leases for an annual term with option to the lessor to renew for a longer term and to cancel at least at the end of each year, will be considered annual leases. The FmHA will reserve the right to withdraw the consent at the end of any year should liquidation or other servicing action be required by FmHA.

(ii) *OL or FO loans.* OL or FO loans provided:

(A) Failure to personally operate the security to be leased is due to old age, poor health, or death in the family and the borrower or his family will continue to occupy the security as a home, or

(B) The part of the security to be leased is insignificant to total farm acreage and is surplus to the borrower's need, for example, a surplus building, wasteland, or a few acres of land inconveniently located or otherwise unsuitable and unnecessary for the successful operation of the farm by the borrower. This will also include the leasing of small allotment acreages that are not feasible for the borrower to operate because of special equipment needs, additional labor requirements, or other economical or management reasons. It must be determined that the leasing of these allotted acres will not reduce the borrower's operation to less than that of a family farm. This is not intended to cover substantial amounts of allotted crop acres that are an important part of the total farming operation. It must also be determined that the alloted acreage in question cannot be economically disposed of by the borrower in accordance with § 1872.4 and § 1872.9 of this subpart.

(2) *State Director's authority.* The State Director is authorized to approve leases when the following conditions exist:

(i) *Adverse conditions.* Failure to personally occupy as his home or operate EM, FO, or OL security is due to conditions beyond the borrower's control and it is determined that the borrower will reoccupy and resume personal operation of the property within a reasonable period of time generally not to exceed five (5) years.

(ii) *Pending liquidation.* Liquidation in accordance with § 1872.17 is pending and the lease is to protect the Government's interests. Form FmHA 465–2 will be used and the rental income will be applied to the FmHA secured debt as extra payments or to prior lien(s). However, when the value of the property is adequate to cover the secured debts and foreclosure action has not been approved, the proceeds may be applied on unsecured or undersecured FmHA debts.

(iii) *Time limit.* Consent is not granted for a period in excess of one year unless a lease with longer terms is determined to be in the best interest of the borrower and the Government. Any lease for a term of more than five (5) years will require prior concurrence of the National Office.

(3) *District Director's authority.* The District Director is authorized to approve leases on the same basis as the State Director provided consent is not given for more than four (4) years without further authorization from the State Office.

(b) *Lease of nonfarm tracts.* When a borrower who received an RH loan on a nonfarm tract no longer occupies the dwelling purchased, improved, or constructed and given as security for the RH loan, the loan will be serviced promptly for liquidation in accordance with § 1872.17, unless it is determined that the borrower vacated the dwelling for reasons beyond his control and intends personally to reoccupy the dwelling within a reasonable period usually not to exceed three (3) years.

(1) *County Supervisor's limit.* When it is determined that a borrower's request for permission to lease his RH security meets the conditions outlined above, the County Supervisor is authorized to approve the leasing for two (2) consecutive one-year periods.

(2) *District Director's limit.* When the borrower does not resume personal occupancy of the dwelling within two (2) years, the County Supervisor may submit the case file, Form FmHA 465–1, and his recommendations to the District Director who may consent to annual leasing for an additional two-year period or may require immediate liquidation. When the borrower is willing to voluntarily liquidate the account, or if foreclosure is contemplated, the District Director is authorized to approve the leasing pending liquidation. If the lease is for a term of more than one (1) month it will provide for cancellation by 30 days' notice.

(3) *State Director's authority.* Requests for leases exceeding the time limits above may be submitted to the State Director for consideration. However, any lease for a term of more than five (5) years will require the prior concurrence of the national office.

(c) *Leases of security under conditions other than specified in § 1872.8 (a), (b), (d), or (e).* The State Director is authorized to grant consent to the lease of the security provided:

(1) *Conditions.* The lease is advantageous to the Government and the borrower and will not adversely affect the borrower's personal operation of the farm securing any FmHA loan or the occupancy of the dwelling by a borrower with an RH loan on a nonfarm tract, and the land or building to be leased is surplus to the borrower's needs.

(2) *Time limit.* Consent for lease is not granted for more than five (5) years

without prior approval of the National Office. In any such case recommended by the State Director, the County Office case file, the justification for a lease for a longer period of time, and the reasons why a lease is preferable to disposition of the property will be sent to the National Office for consideration.

(d) *Mineral leases.* The County Supervisor, unless restricted by a State Supplement, or liquidation is pending, and the State Director in any case, are each authorized to consent on behalf of the Government and to execute recordable forms and such other forms as may be necessary, under the following conditions:

(1) *Compensation damages.* The lessee agrees in the lease or elsewhere, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface, improvements, and growing crops. When an oil and gas lease provides for payment of damage to growing crops and contains other provisions which are generally included in so-called "standard" lease forms that are used in the area, the State Director may determine that it will not be necessary to obtain any additional agreement for payment of damages if the value of the security likely will not be lessened. Damage compensation will be assigned to the FmHA by the use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or to the prior lienholder. However, the crop damage payment liability requirement may be omitted or deleted from the lease on small nonfarm tract cases.

(2) *Assignments.* Royalty payments are adequate and are assigned on Form FmHA 443–16.

(3) *Lease amount.* The bonus and rentals are at least equal to any minimum amounts established by a State Supplement. All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 433–16 if needed for protection of the Government's interests.

(4) *Lease forms.* The lease, subordination, or consent form is prepared by or is acceptable to the OGC. If standard lease forms are acceptable, the use of such forms may be authorized in a State Supplement.

(e) *Naval stores leases.* The County Supervisor, unless liquidation is pending, and the State Director in any case, are each authorized to execute Form FmHA 465–1 giving FmHA consent to the lease of naval stores and to execute such other forms on behalf of the FmHA as may be necessary. No lease may be consented to unless it requires operation consistent with approved naval stores practices in the community and any State Supplement on this subject. When naval stores are not managed or operated by the borrower, an assignment of the proceeds will be taken on Form FmHA 443–16.

§ 1872.9 Transfer of upland cotton, peanut or tobacco allotments.

(a) *General.* Agricultural Stabilization and Conservation Service (ASCS) regulations pursuant to approved legislation permits the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: Sale, lease, or transfer by the owner to another farm owned or controlled by him. These regulations require, among other things, that no allotment may be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is the policy of the FmHA to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA personnel should familiarize themselves with the state ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA policies and servicing of security.

(b) *Authorization.* The County Supervisor is authorize to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA 465–1. He is also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided for this purpose for those cases in which he approves a transfer.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA and constitute basic security for the FmHA loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA inquires about the sale of any of his allotted acres or requests the FmHA to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1872.4 of this subpart. The sale proceeds may be used only as authorized in that subpart after obtaining the concurrence of the employee authorized to permit use of the proceeds for other than application on the secured debt.

(d) *Transfer of allotment by lease.* The County Supervisor's authority to approve a lease of all or a portion of an allotment for a one-year period is contingent upon compliance with the policy outlined in the introductory statement of § 1872.8, except that the third example of item when FmHA consent may be granted will not be applicable. If the one-year lease is approved, the lease proceeds may be used as normal income. Leases for a period of more than one (1) year will be granted only with the concurrence of the District Director. When a lease is for more than one (1) year, an assignment of the rental proceeds should be obtained for application on the appropriate FmHA debt in accordance with the distribution formula for regular payments as outlined in § 1861.3 of Subpart A, Part 1861, Subchapter E of this chapter.

(e) *Transfer of allotment by owner to other land owned or controlled by him.* A transfer by an owner to land owned or controlled by him is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgagee approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions outlined in § 1872.9(d) to assure that the crop allotment on the security is not adversely affected.

§ 1872.10 Severance agreements.

When a borrower requests the FmHA's consent to a severance agreement or other instrument of similar effect under which an item or items to be acquired by him through other credit will not become a part of the real estate securing the FmHA debt, such as a silo, storage bin, bulk milk tank, irrigation or a nonfarm enterprise facility or recreational equipment, or other income-producing facilities, and such equipment or facilities will be subject to a chattel lien, Form FmHA 465–1 will be completed. The County Supervisor, if the value of the item does not exceed $25,000, the District Director, if the value of the item does not exceed $50,000, and the State Director in any case, are each authorized to give FmHA consent by executing Form FmHA 465–1 and any necessary severance agreements provided the following determination are made: The financing arrangements are sound and proper, the transaction will not adversely affect the FmHA's security position and will be within the borrower's debt-paying ability, and the facility is not in excess of the borrower's needs, is modest in cost and design, and is otherwise in line with FmHA financing policies. In any case in excess of the County Supervisor's approval authority, the County Supervisor will forward to the District Director the Form FmHA 465–1, the borrower's case file, and his recommendations regarding the request. The OGC will be requested to approve a severance agreement submitted by the borrower not previously approved for use in the State and, when necessary, issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1872.11 Disposition of proceeds of partial release, subordination, and consent transactions.

(a) *Payment on FmHA account or prior lien or use for development or enlargement.* Proceeds from the sale of a portion of the security, the granting of an easement or right-of-way, proceeds from leases referred to in §1872.8(a)(2)(ii), royalties and damage compensation payments, except for compensation for damages for growing crops, the sale of timber that clearly depletes the Government's security, other than that harvested on a selective cutting basis as authorized in §1872.11(b), naval stores production not managed by or under the supervision of the borrower, and all similar transactions will be either released for payment on the prior lien, applied as an extra payment on the FmHA loan as provided in Subpart A, Part 1861, Subchapter E of this chapter, used for replacement or repair of damages for which compensation was paid, or used as provided in § 1872.4(c)(2) and § 1872.4(d) of this subpart.

(b) *Normal income.* Proceeds from leases authorized in §1872.8, except lease proceeds referred to in §1872.8(a)(2)(ii), bonuses and rentals under mineral leases, proceeds from the sale of timber that is harvested on a selective cutting basis that does not deplete the Government's security, or from naval stores production managed by or under the supervision of the borrower, compensation to the borrower for growing crops, labor, or services in cutting, loading, and hauling of security, and all similar transactions will be considered as normal income and may be used for the same purposes as for normal income security as outlined in Subpart A, Part 1871, Subchapter F of this chapter. When forestry products income is received by the borrower, even though it is considered normal income, the County Supervisor must determine that amount of such proceeds that may be released to the borrower. In making such a determination, protection of the Government's security position must be fully considered in light of the amount of forest resources remaining, the unpaid balance of the loan, and any other debts owed the FmHA.

(c) *Assignment.* Any proceeds to be paid to the FmHA subsequent to the time of closing the transaction and not otherwise assigned or made payable to the FmHA will be assigned by the use of Form FmHA 443–16 or other assignment form approved by the OGC.

§ 1872.12 Assignment and release of soil bank or similar program payments.

The County Supervisor may take an assignment on income to be received under a Soil Bank or similar contract to protect the financial interest of the Government or to facilitate loan servicing. The assignment of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and payments due on all FmHA loans have been made from other income or the income is urgently needed to meet emergency or other justifiable uses.

§ 1872.13 Deceased borrower.

Decreased borrower cases will be handled in accordance with the policy outlined in § 1871.39 of Subpart B, Part 1871, Subchapter F of this chapter.

§ 1872.14 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled in accordance with the policy outlined in § 1871.38 of Subpart B, Part 1871, Subchapter F of this chapter. The handling of bankruptcy cases varies from state to state. Therefore, the State Director will issue a state supplement for more specific guidance when it will expedite the handling of such cases.

§ 1872.15 Servicing note-only cases.

Each loan made on a note-only basis without mortgage security will be serviced in a manner consistent with the best interests of the FmHA.

(a) *Sale of real property on which improvements were made with note-only FmHA funds.* Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If such collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if such assumption is determined to be in the FmHA's best financial interest. If such collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Part 1864, Subchapter E of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of the OGC and the U.S. Attorney will authorize an employee to attend the sale and if appropriate enter a bid on behalf of the Government in accordance with § 1872.20(b)(4)(vi) and (vii) of this subpart.

(b) *Assumption of note-only when real property securing another FmHA loan is involved.* When a borrower has an FmHA loan secured by real estate, and another FmHA loan evidenced only by a note, and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must be assumed as appropriate under § 1872.18 of this subpart, if approval of assumption of the secured note and transfer of the real estate is approved. If the entire note-only account is assumed, it may be assumed by use of Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," in accordance with the terms of the existing note. Otherwise, it may be assumed by use of Form FmHA 460–5, "Assumption Agreement (New Terms)," by an applicant who meets the eligibility requirements for the type of loan involved and on terms applicable to such a loan. Form FmHA 460–5 or Form FmHA 460–9 will be modified as appropriate, with the advice of OGC. The loan approval official may require a note-only loan being assumed to be secured by obtaining a new mortgage.

(c) *Deceased borrower cases.* When a borrower dies while owing an FmHA unsecured note, the case will be handled in accordance with the applicable policies in Subpart B, Part 1871, Subchapter F of this chapter. If it is determined that there are no assets in the estate from which the claim can be collected and there are no survivors or others who will assume the account and continue to make payments on the note in accordance with its terms, the account will be settled immediately in accordance with Part 1864, Subchapter E of this chapter.

§ 1872.16 Release of FmHA mortgage without monetary consideration on basis of additional security or because of mutual mistake or nonexistence of evidence of indebtedness or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattel, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. No part of the FO, RL, SW, EM, or RH farm or the borrower's dwelling for an EM, RH, FO, or RL loan is considered as additional security for this purpose. This subpart does not cover basic security for OL, and EM loans and only permits release of real estate for such loans, when it was taken as additional security. It must be determined that there is reasonable assurance that orderly payments can be made on the FmHA indebtedness and:

(1) *Release.* The release is needed to help finance the borrower's operations; or

(2) *Purposes.* The purposes for which the loan was made would be facilitated; or

(3) *Repayment.* The borrower's ability to repay the loan will be improved.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the factual situation, may be released from the mortgage by the State Director. The release is contingent on the State Director with the advice of the OGC determining that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA County, State, or Finance Office.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following will be obtained:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA employee authorized to make appraisals.

(2) *Lienholders.* The names of the holders of prior liens on the property and the amount secured by each lien which is prior to the FmHA. Such information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for his review.

§ 1872.17 Liquidation action.

When the County Supervisor, with the advice of the District Director and the County Committee, except the County Committee will not be used for servicing sections 502 and 504 RH loans, determines that continued servicing of the loan will not accomplish the objectives of the loan or that for other reasons further servicing cannot be justified under the policy stated in § 1872.1(b), liquidation of the account(s) will be accomplished as expeditiously as possible.

(a) *General.* When the borrower is willing to voluntarily liquidate the account

immediately by selling the property and paying the account in full, transferring the total security with an assumption of all or the appropriate portion of the debt under § 1872.18, selling the property for not less than its present market value under § 1872.17(h), or, conveying the security to the FmHA under § 1872.19, the County Supervisor may give him 60 days to accomplish such action. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA security debt and any prior lien does not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, he will obtain the concurrence of the District Director for secured debts of not more than $160,000 and the concurrence of the State Director if the secured debts exceed $160,000.

(b) *Problem case report.* If the borrower is unwilling to take any of the actions specified in § 1872.17(a) or fails to carry out any such actions within 60 days, the County Supervisor will complete Form FmHA 465–7 and send it to the State Office through the District Director so that the District Director's recommendation may be attached. In cases involving only a Section 502 or 504 RH loan, the County Committee's recommendation on Form FmHA 465–7 will not be obtained. If the State Director agrees that forced liquidation is appropriate, he should approve such liquidation. The State Director may give the borrower additional time to make the sale, transfer, or voluntary conveyance before sending the case to the OGC for initiation of foreclosure action.

(c) *Acceleration of account.* When the State Director approves forced liquidation, the account should be accelerated and the borrower notified even though he gives the borrower additional time to voluntarily liquidate the account. He should place a time limit on the borrower which usually should not exceed three months in the first instance. The original period fixed by the State Director plus any extensions granted by him should in no case exceed one (1) year without prior concurrence of the National Office. Prior to granting any extension after the original period fixed by him, the State Director will require the County Supervisor to report the steps taken by the borrower to liquidate the account. If a sale is involved, the County Supervisor's report should indicate whether the borrower's asking price is reasonable and whether the asking price is delaying the sale unreasonably. Acceleration or granting time for voluntary liquidation as provided for above will not preclude exercise of the authority in § 1872.17(g). However, the above authority should never be used for the purpose of extending the liquidation period under § 182.17(f).

(d) *Assignment.* When an insured loan case is sent to the OGC to initiate liquidation action, the insured note will be simultaneously assigned to the fund.

(e) *Multiple loans.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and of the effect liquidation of one or more of the loans would have on any other loan. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated. For example, on an OL and FO loan, the liquidation action will be started simultaneously, and the liquidation of real estate and chattel security will be coordinated to the extent possible. However, the chattel security will be liquidated in accordance with Subpart B, Part 1871 of Subchapter F except that when an account(s) is secured by both real estate and chattels and the account(s) will be transferred, such transfer(s) will be accomplished in accordance with § 1872.18 of this subpart.

(f) *Requirement.* An RH borrower who obtained a loan on a nonfarm tract, or any FO or RL borrower who, without FmHA consent, does not personally operate the farm or recreational facility, or when required by the mortgage, does not live on the security property, is violating his agreements with FmHA. Such a borrower, if available, will be promptly contacted in person by the County Supervisor and advised of the violation and that it will be necessary to liquidate the account by payment in full, by refinancing or otherwise, unless definite agreements are reached to remove the violation by reoccupying or resuming personal operation of the property as required by the loan documents, or consent for lease is granted as authorized in § 1872.8 of this Subpart. If the borrower is not available for personal contact or definite agreements cannot be reached or consent to a lease is not authorized, the County Supervisor will write to the borrower at his last known address, notifying him of the violation and advise him that, because of the violation, it will be necessary to liquidate the account. The County Supervisor may authorize the borrower a reasonable period of time (60 to 90 days) in which to correct the violation. If during such period the borrower fails to remove the violation or take appropriate action for liquidation of the account in full, the case will be handled in accordance with § 1872.17 (b) and (c).

(g) *Acceleration agreement.* When liquidation of the account is necessary because of failure to refinance, or for other reasons, and the remaining loan repayment period exceeds ten (10) years for real estate loans, or two (2) years for OL and EM loans, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an acceleration agreement. For real estate loans other than RH loans on nonfarm tracts, the term of the agreement will not exceed ten (10) years. For OL, EM, and RH nonfarm loans, the term of the agreement will not exceed five (5) years. In either case, the balance of the debt will be scheduled for repayment in equal annual or monthly amortized installments of combined principal and interest, except that if annual payments are required, the first installment may be less than a full amortized installment if it is due substantially less than a full year after the date of the agreement and the borrower will not be able to pay the full amount. If the borrower owes a small amount and the remaining period of the loan is ten (10) years or less for real estate loans and two (2) years or less for OL or EM loans, the State Director may authorize acceleration of the account for a shorter period, as appropriate. Interest will be at the rate shown in the note. The State Director will determine that authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest and the borrower can reasonably be expected to meet the accelerated payments, and the borrower will continue to comply with other requirements of the loan and security instruments. When an understanding to accelerate is reached with the borrower, Form FmHA 465–11, "Accelerated Repayment Agreement," will be completed and executed. Separate Forms FmHA 465–11 will be used for each type of loan and for direct or insured loans. If the borrower fails to meet any installment when due as provided in such an agreement, foreclosure action will be initiated.

(h) *Cash sale.* When a cash sale of mortgaged real estate will result in the secured debts not being paid in full, the County Supervisor is authorized to approve the sale for not less than the present market value of the property established in accordance with § 1872.17(a) and to release the Government's liens, provided:

(1) *Substantial recovery.* A substantial recovery can be made on the FmHA secured indebtedness based on a recent appraisal report showing the present market value of the property.

(2) *Application.* All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1872.4(c)(2).

(3) *Release.* The FmHA liens are not released by the County Supervisor until receipt of the appropriate sale proceeds for application on the Government's claim. The release will be made on forms approved or prepared by the OGC. If the debt is not paid in full and a deficiency judgment is not to be obtained, the case will be reclassified to collection only if the debt cannot be settled under the provisions of Part 1864 Subchapter E and the requirements of FmHA regulations concerning case classifications can be met. When a case is reclassified to collection only, Form FmHA 404–1, "Case Reclassification," and Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office.

§ 1872.18 Transfer of real estate security.

When the mortgage requires the consent of FmHA to any proposed sale or

other transfer of real estate security for FmHA loans, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. If the proposed sale would not result in the FmHA account being paid in full at the time of the sale, the County Supervisor should explain thoroughly the requirements of this section and § 1872.4 or 1872.17 as appropriate. When the transferor is receiving a substantial downpayment in connection with the sale of his property, the purchaser should be required to contact other sources of credit to secure a loan for repayment of the FmHA loan in full. When real estate security, including water rights, is sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart the account will be liquidated as required in § 1872.17.

(a) *Authority.* County Supervisors, District Directors, and State Directors are authorized to approve transfers with assumption of FmHA accounts to eligible or ineligible transferees in accordance with § 1872.18 and release of liability when the secured debts do not exceed $100,000, $160,000, and $225,000 respectively. State Directors also are authorized to approve such transfers to and assumptions by ineligible transferees regardless of the amount of the outstanding FmHA debts or the amount of prior liens. Proposed transfers to, and assumptions by, eligible transferees which will exceed the authorizations and limitation of the State Director for an initial or subsequent loan of the same type, will be submitted to the National Office for prior authorization for approval.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers or proposes to transfer real estate which is security for an FmHS loan(s) and the loan account(s) is to be assumed by use of either Form FmHA 460–9 or Form FmHA 460–5.

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee.

(2) *Assignment.* If an insured loan is involved, when applicable, the Finance Office will have the insured not assigned to the fund when the assumption agreement changes the terms of the note.

(3) *Value.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount equal to the present market value as determined in accordance with § 1872.1(a), less prior liens. Otherwise, the transferee will assume the total FmHA secured debt(s).

(4) *Assumption agreement.* Notwithstanding that part of § 1807.2(f)(8) regarding the effect of a wife's signature on a promissory note, a deceased borrower's spouse will execute an assumption agreement when the spouse is not already liable for the indebtedness because of not having signed the note(s) or would be absolved from liability under State law after having signed the note(s). The assumption agreement, when required in such cases, will be completed and sent to the Finance Office. The interest rate and terms of the assumption agreement of such a spouse usually will remain the same as they were in the note(s). If, however, the number of years over which a note was amortized needs to be extended to be within the repayment ability of the assuming spouse, the reamortization period may be extended but cannot exceed the repayment period applicable to the kind of loan being assumed calculated from the date of the original note. Authorization to continue the loan at the interest rate and terms authorized by this paragraph are contingent on a determination by the approval official that such rates and terms are necessary to carry out the purpose of the loan, or to protect the financial interest of the Government.

(5) *Withdrawal of joint borrowers.* When one of the joint borrowers (including the jointly liable former spouse of a divorced borrower) withdraws from the operation and conveys his interest in the security property to the remaining borrower who desires to assume the total indebtedness, the assumption, except for RH loans, will be made on the basis of the existing note(s) by use of Form FmHA 460–9 or, in case of an ineligible transferee, on Form FmHA 460–5 on terms applicable to ineligible applicants. For RH loans, an assumption agreement is not required. However, Form FmHA 450–10 will be submitted to the Finance Office when the account will be continued with the remaining borrower(s) under a different name. In either case, the former spouse or previous joint owner will be released of liability for the indebtedness if the conditions of § 1872.18(f) are met, except when a divorce decree awarded the security property to one spouse wuold be responsible for playing spouse would be responsible for paying all or part of the mortgage payments.

(6) *Assumption with joint borrower.* When the spouse or another member of a borrower's family who is eligible for the kind of loan involved will assume the indebtedness with one or more of the existing borrowers, the assumption will be made on the same basis as the existing note(s) by use of Form FmHA 460–9. Such assumptions are frequently made in accordance with all or the applicable requirements of this § 1872.18 when an aged couple has a son or daughter who will assist in operating the farm or live in the RH house, help make the payments, and obtain title to the property individually or jointly with the borrower(s), or subject to a life estate reservation by the existing borrower(s).

(7) *Loan type.* The kind(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as ORE.

(8) *Conveyance of a portion of the security.* Generally, title to all FmHA real estate security, including water rights, must be conveyed to the transferee not later than the date of closing the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the total indebtedness may be approved, provided: The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of such property, and the transaction is advantageous to the Government. In such a transaction, the transferor will be released from personal liability for the debt. The security he retained will be released from the Government's lien.

(9) *Multiple sales and assumption.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with assumption of a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that such a transaction would be advantageous to the Government. In such a case, the total debt must be assumed by the transferee even though a portion of the security property may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction. It will include appraisal reports showing the present market value of each portion to be transferred and such value of the total unit before subdivision, the amount of indebtedness to be assumed by each transferee, and the case file with other pertinent information outlining the reasons for the proposed actions.

(10) *Dual security.* When the account(s) is secured by both chattel and real estate, all the chattel security must be transferred, sold, or liquidated by the time of the transfer or the real estate, except that in case of EM or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent.* The written consent of any lienholder must be obtained if required.

(12) *Junior liens.* When the full amount of the FmHA debits assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA liens being assumed unless the State Director determines that such liens, judgments, or claims will not adversely affect the Government's security interest and that the transferee's ability to pay the FmHA debt will not be impaired thereby.

(13) *Restriction.* When less than the full amount of the FmHA debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA loans being assumed.

(14) *Loans.* An initial or subsequent loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the kind of loan being made.

When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay equity. When real estate security for an RH loan is transferred to a person eligible under Subpart A, Part 1822 of Subchapter B for an RH loan to purchase such real estate, RH loan funds may be used to pay the equity. This, however, does not include income producing lands or buildings. In lieu of the subsequent loan of the kind involved, the Government's lien may be subordinated to (1) enable the transferor to take a first mortgage to secure the amount of his equity payment, or, (2) to permit another lender to furnish funds needed in connection with the transfer. In such cases, the subordination will be processed in accordance with the applicable provisions of § 1873.3. The transferor may convey title to the property by warranty deed or, when he agrees to take a first lien to secure his downpayment, he may sell the property by purchase contract or similar instrument that meets the conditions of § 1821.7(a)(2). In such cases, prior lienholders' agreements will be obtained in accordance with § 1807.2(f)(5). When necessary to settle a divorce action, a subsequent loan may be made or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property.

(15) *Payments.* If a payment to the transferor is to be made in connection with the transfer, the total FmHA debt must be assumed unless the payment received by the transferor is applied on a prior lien or to the portion of the transferor's FmHA debt not assumed. When the full amount of the FmHA secured debt is being assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any equity payment be applied on such debts.

(16) *Downpayment.* An eligible transferee will make a downpayment on the FmHA secured debts if he is financially able. When a payment is required the transfer will not be closed nor the appropriate assumption agreement executed prior to receipt of such payment.

(17) *Date.* The effective date of the transfer will be the actual date the transfer is closed. This is the date on which Forms FmHA 460–5 or FmHA 460–9 are signed. In connection with the use of either form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," Form FmHA 451–31, "Borrower Transaction Record," or the monthly payment account Status Report. If Form FmHA 460–9 is used, the transferee will be informed of the amount of principal and interest owed. He also will be advised of the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, and any accounts that must be paid to bring any monthly payments up to date.

(18) *Civil Rights Acts.* "When the property transferred will continue to be used for the same or a similar purpose for which federal financial assistance was extended, except for property involving only one or more of the following programs: FO and OL loans for farm purposes; RH 502, 504, and 523 Self Help loans; and EO, SW, and EM loans to individuals; the transferee will sign a Form FmHA 400–4, 'Nondiscrimination Agreement.' "

(c) *Transfer of loans to eligible applicants*—(1) *Eligibility.* A loan may be transferred to an applicant who meets the eligibility requirements for the kind of loan being assumed or whose situation after the transfer will satisfy such eligibility requirements. Also, an RH Senior Citizen loan may be transferred to anyone eligible for a Section 502 RH loan. An ORE loan may be transferred to an applicant who meets the eligibility requirements for an FO loan, or to an applicant who meets the eligibility requirements for an RH loan if it is a nonfarm tract and was security for an FH loan originally. An RH loan to a person of low or moderate income may be transferred to a person whose income is above moderate and who meets the other requirements of an eligible transferee. However, preference will ------ An above moderate loan may be transferred to an applicant whose income may not be in the above moderate category provided his income is sufficient to meet the terms of the loan. Such a loan, after the transfer, will continue to be classified as above moderate. Special livestock or other emergency type loans no longer being made may be transferred to an applicant who meets current EM loan requirements. Any other type of loan for which there are no present authorizations or eligibility requirements may be transferred only with the advice of the National Office after considering the recommendation of the State Director and reviewing the case file.

(2) *Repayment and reamortization terms*—(i) *Form FmHA 460–9.* Except as noted below for RH loans, assumption of any FmHA loan may be approved without any change in the balance owed, interest rate, or other terms. In such cases Form FmHA 460–9 will be used. A loan may be transferred even though it is on schedule, ahead of schedule, or behind schedule. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee.

(A) Rural Housing Disaster (RHD) loans will be transferred at the current rate for section 502 loans unless the transferee is eligible for a RHD loan.

(B) Direct sections 502, 503, and direct Senior Citizen RH loans will be transferred at the current rate for section 502 loans.

(C) Low and moderate RH loans transferred to a person having an above-moderate income will be transferred at the current rate for an above-moderate section 502 loan.

(ii) *Form FmHA 460–5.* If an extension of the existing loan repayment period is necessary to enable the transferee to be successful, Form FmHA 460–5 will be used. The new repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, and RH—33 years. If a new repayment period is used and the current interest rate is higher than the rate specified in the note, the current interest rate for a new loan of the type involved will be used and any insurance charge applicable to such a loan will be provided for, except in assumptions by a surviving spouse under § 1872.18(b)(4). In determining the new repayment period and interest rate, (a) an ORE loan will be considered an FO or RH loan, as appropriate, if the applicant and the property meet the requirements of § 1872.18(c)(1), and (b) an SL or other emergency type loan no longer being made will be considered an EM loan.

(d) *Transfer of loans to ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) who is not eligible to assume the indebtedness in accordance with §1872.18 (c) and the mortgage requires the Government's consent for the transaction, it will be the policy to permit assumption of the account by the ineligible transferee if it is in the best interest of the FmHA. Otherwise, the account will be immediately liquidated. Ineligible transferees may include a farming corporation or a farming partnership but do not include other corporations or partnerships, real estate brokers, or financing institutions. For any type of loan for which there are no existing authorizations or eligibility requirements in FmHA Instructions, the loan may be transferred under the requirements and conditions of this Subpart. If the approval official determines that it is in the best financial interest of the FmHA to transfer the account, he may consent to the transfer by assumption agreement provided:

(1) *Downpayment.* Each transferee is required to make as large a downpayment on the FmHA secured debt as he is financially able to make under the circumstances. However, no transfer to an ineligible applicant may be approved without at least ten (10) percent downpayment.

(2) *Terms—farm.* Except for RH loans on nonfarm tracts, the balance of the FmHA debt assumed is scheduled for repayment in not to exceed ten (10) years with amortized monthly or annual installments, and with interest to the borrower at the rate being charged for section 502 RH loans to moderate-income applicants at that time or at the

rate of interest specified in the note being assumed, whichever is greater. When it has been definitely determined that a property cannot be transferred on terms of ten (10) years or less because of conditions in the area, the State Director may authorize a longer repayment term not to exceed fifteen (15) years. When the FmHA debt consists only of OL and EM operating type loans secured by real estate, the balance of the debt assumed will be scheduled for repayment in not more than five (5) years. In case of real estate loan transfers previously made on terms of not more than five (5) years and the borrower, because of crop failure, a natural disaster, or similar conditions beyond his control, is unable to meet the scheduled installments, an extension of the repayment period not to exceed a total of ten (10) years from the date of transfer may be authorized provided the County Committee and the State Director determine that the extended repayment period is necessary to prevent foreclosure action and the Government's interest will not be adversely affected. In such cases, the unpaid balance owed will be reamortized over the remaining period and the borrower will execute a replacement assumption agreement evidencing the debt.

(3) *Terms—nonfarm.* For RH loans secured by a lien on a nonfarm tract, the balance of the RH debt assumed will be scheduled for repayment in not more than five (5) years with amortized annual or monthly installments. Interests on the amount assumed will be charged at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note being assumed, whichever is greater.

(4) *Payment.* The transferee has ability to pay the FmHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(5) *County Committee.* The County Committee, except for Section 502 and 504 RH loans, finds that the transferee will honestly endeavor to make payments in accordance with the assumption agreements, maintain the security property, and carry out his other obligations in connection with the loan.

(6) *Condition.* The transfer will not adversely affect the FmHA program in the area.

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1872.18 (c) or (d), the Government will not consent to the sale. In such a case, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor also will advise the State Director of the nature of the default, and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the borrower and otherwise serviced in the usual manner.

(f) *Release of transferor from liability.* The policy of the FmHA is that the borrower (and any cosigner for an RH loan) will be released from personal liability to the FmHA when all of the real estate security for a loan is transferred under § 1872.18 (c) or (d) and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Borrowers, however, may not be released from personal liability to the FmHA when real estate securing loans, other than section 502 and 504 RH loans, is transferred to an ineligible transferee under § 1872.18(d) unless the debt assumed by the transferee is scheduled for repayment in not to exceed five (5) years from the date of the assumption agreement. Also, when the total outstanding debt is not assumed, the following conditions must be met:

(1) *Required certification*— (i) *Certification by County Committee.* The County Committee, except for section 502 and 504 RH loans, must execute a memorandum containing the following statement:

(Name of transferor and any cosigner) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security.

(ii) *Certification by loan approval official.* The official approving the transfer section 502 and 504 RH loans must execute a memorandum containing the statement provided for in § 1872.18(f) (1) (i) when County Committee action was not required to authorize release of the borrower from personal liability to the FmHA.

(2) *Release.* For an RH loan involving a cosigner, the transferor may be released from personal liability only if the cosigner also can be released.

(3) *Continued liability.* When an ineligible transferee assumes an FmHA loan, other than a section 502 and 504 RH loan, scheduled for repayment in more than five (5) years from the date of the assumption agreement, the transferor must indicate that he will continue to be liable for the debt by signing an agreement as follows:

CONTINUED LIABILITY AGREEMENT OF PRESENT DEBTORS

The undersigned hereby agree to remain personally liable for the indebtedness owed to the FmHA and assumed by _____
(assuming parties)
under assumption agreement dated _____.

_____

_____

_____
(Date)

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's County Office case folder, and a copy provided the transferor.)

(g) *Processing transfer by assumption of indebtedness.* When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or State Office, as appropriate, for approval or disapproval.

(1) *Refund of unused funds, loan funds not advanced, transaction record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, RH, RRH, LH, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligation of, or request for loan funds not yet advanced will be canceled. Form FmHA 451-26, Form FmHA 451-31 or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket*—(i) *Checking docket forms.* When the transfer docket forms shown in § 1872.18(g) (2) (iii) have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with Forms Manual Insert or other appropriate Subparts, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which such items appear.

(ii) *Information on the availability of other credit.* The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full and make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Distribution of transfer docket forms.* The following table will be used as a guide in distributing the necessary forms.

FmHA Form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
440-3	Record of Actions	3		[8],[3]2	
[2] 400-4	Nondiscrimination Agreement	2	[1]1	[1]1	[1]1
410-1	Application for FmHA Services (with attachments)	1	[1]1	[1]1	
[2] 410-4	Application for Rural Housing Loans (Non-Farm Tract)	1		1	
[2] 410-5	Request for Verification of Employment	1		1	
465-5	Transfer of Real Estate Security	3	[1]1	[1]1	[1]1
[2] 440-2	County Committee Certification or Recommendation	1		[1]1	
[4] [2] 431-2	Farm and Home Plan	1	[1]1	[1]1	[1]1
[2] 431-1	Long-Time Farm and Home Plan	2	[1]2	[3]1	[1]1
[4] [2] 431-3	Family Budget	2	[1]1	[3]1	[1]1
[4] [2] 431-4	Business Analysis-Nonagricultural Enterprise	2	[1]2	[3]1	[1]1
[2] 422-1	Appraisal Report (Farm Tract)	1		[1]1	
422-3	Map of Property	1		[1]1	
[2] 422-8	Property Information and Appraisal Report—Rural Housing Nonfarm Tract	1		[1]1	
[2] 426-1	Valuation of Buildings	1		[1]1	
[4] [2] 440-9	Supplementary Payment Agreement	2	[1]1	[1]2	[3]1
[2] 424-1	Development Plan	2	[1]1	[1]2	[3]1
[4] [2] 460-5	Assumption Agreement (New Terms)	4	[1]1	[1]1	[3]1
[4] [2] 469-9	Assumption Agreement (Same Terms—Eligible Transferee)	4	[1]1	[1]1	[3]1
[4] [2] 465-8	Release from Personal Liability	2		[1]1	[1]1
[2] 443-17	Agreement to Sell Nonessential Real Estate	2	[1]2	[1]1	[3]1
[7] 440-41	Disclosure Statement for Loans Secured by Real Estate	2		1	[1]1
[2] 440-43	Notice of Right to Rescind	3	[3]1	1	[1]2
[2] 451-19	Request for Statement of Account	3		[3]2	
451-25	Status of Account	2		O to FC [1]2	

[1] Original.
[2] Copy.
[3] When applicable.
[4] In addition to plan for the first full year, interim plan, if prepared, will be included in the docket.
[5] In record book.
[6] The original form will not be executed until date of closing the transfer.
[7] In right to rescind cases, original and sufficient copies for each person who has right to rescind in accordance with part 1808.
[8] Original and 1 copy to transferee; 2 copies to each other person who has right to rescind in accordance with part 1808. If the person exercises his right to rescind, he will sign one copy of the form and return it to the county office.

NOTE.—When requested prepare an additional copy for delivery to transferor.

(iv) *Other transfer docket items when applicable.* Other transfer docket items may include a mortgage title policy, title evidence, or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract, or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, he may, in lieu of including the document evidencing ownership, include a statement in the docket indicating that he has seen and reviewed the document. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making subpart.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451–26 or Form FmHA 451–31 will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account status report, he should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In such cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Director of the Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification.* For payments received on the date of transfer, Form FmHA 451–2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owned by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451–2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, such a payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farm and home plans and financial statements.* When the transfer involves an ineligible transferee, Form FmHA 431–3 or Form FmHA 431–2 will be used with Tables A and J being completed in the same manner as for any other borrower but other tables and portions of the form will be completed only to the extent necessary to determine the debt-paying ability of the transferee and to give sufficient information for completing Table J. When a transfer is to be made for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of transferor will be obtained on Form FmHA 431–3 or Form FmHA 431–2.

(5) *Appraisal report.* Form FmHA 422–1, FmHA 422–7, "Appraisal Report for Multiunit Housing," or FmHA 422–8 as appropriate will be obtained when (a) the amount to be assumed is less than the full amount of the indebtedness, (b) required in connection with an initial or subsequent FO, RL, SW, RH, RRH, or LH loan to be processed with the transfer, or (c) the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except for sections 502 and 504 RH loans, will be presented to the County Committee for review.

(i) *Applicants.* The transfer will be contingent upon the County Committee making its appropriate certification on Form FmHA 440–2 for an eligible applicant or when transfer is to an ineligible applicant, executing a memorandum containing the following statement:

> In our opinion, the transferee, _____ (name of _____ will honestly endeavor to make transferee) payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan.

(ii) *Release.* When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under § 1872.18 (c) or (d) with an assumption of less than the total debt, the provisions of § 1872.18(f)(1)(i) will be followed.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the requirement for the loan(s) involved. If the insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 Subchapter A of this chapter in case of a transfer involving an FO, RL, RH, RRH loan to an individual, LH, or SW loan not coded J or a LCD loan. Title clearance and legal services for such loans, however, are not

required when a joint borrower conveys his interest in the security to the remaining borrower who assumes the total indebtedness provided a subsequent loan or subordination is not involved. For all other kinds of loans being transferred, title clearance and loan closing services will not be required unless the approval official, with the advice of the OGC, determines that such services are needed in order to maintain the FmHA's security position or for other reasons. If other than an FmHA mortgage is involved which requires the mortgagee's consent to the transfer, such consent will be obtained.

(9) *Assumption agreement, release from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this Subpart and all of the security is being transferred, Forms FmHA 460–5 or FmHA 460–9, FmHA 451–1, "Acknowledgement of Cash Payment," and FmHA 465–8 will be completed and executed simultaneously with the closing of the transaction. The original (and signed copy for insured loan) Form FmHA 460–5 or Form FmHA 460–9 and, when applicable, Form FmHA 451–1 will be transmitted immediately to the Finance Office.

(10) *Transfer of unused development funds.* Any remaining funds not to be refunded that are in the transferor's supervised bank account will be transferred to the eligible transferee's supervised bank account simultaneously with the closing of the transfer for use in completing planned development.

(11) *Case folder.* The transferor's County Office case folder will be used for the transferee after adjustments have been made.

(12) *Nondiscrimination Agreement.* "When the property transferred will continue to be used for the same or similar purpose for which federal financial assistance was extended, except for property involving only one or more of the following programs: FO and OL loans for farm purposes; RH 502, 504, and 523 Self Help loans; and Economic Opportunity (EO), SW, and EM loans to individuals; the transferee will sign a Form FmHA 400–4.

(h) *Transfer not completed.* If for any reason the transfer is not completed, the Finance Office will be notified to resume servicing of the account in the name of the transferor.

§ 1872.19 Voluntary conveyance of security to FmHA.

When voluntary conveyance of security to the FmHA is determined to be appropriate, the voluntary conveyance docket will be assembled and approved by the County Supervisor or submitted with the borrower's County Office case folder(s) to the State Director or District Director, as appropriate. If voluntary conveyance is approved as being in the best financial interest of the Government by permitting a substantial recovery on the Government's loan, the State Director will send any title information or evidence of ownership of water rights held in the State Office to the County Office. When a prior lien(s) exist, such lien(s) will be paid by Standard Form 1034, only if it is determined that a substantially greater recovery on the Government's investment can be obtained, or the property is suitable for sale to an eligible applicant subject to the terms of the prior lien and the holder of the prior lien(s) will not agree and his concurrence is required for the Government to acquire the property and resell it subject to his lien(s). If the property is acquired subject to a prior lien(s), payment of installments on the prior lien may be made while title to the property is held by the Government. All junior liens on the property except FmHA liens and taxes and assessments which are or will become a lien on the property must be satisfied by the borrower without FmHA assistance, unless the State Director determines that payment of the junior liens by the Government voucher will better protect the Government's interests, considering all pertinent factors including the results of any delay that foreclosure action would involve. If a mortgage has been taken on the property to further secure other FmHA loans, all security not conveyed to the FmHA must be liquidated by the borrower and the sales proceeds applied on the secured debts in the order of their priority before the conveyance is closed. The word "property" as used in this subpart includes the real estate items which are considered real estate, items which customarily pass with the real estate in the change of ownership, and any irrigation equipment and other equipment such as bulk milk tanks, feed storage facilities which are normally considered chattel security if they are necessary for the successful operation of the farm, will enhance the sale of the farm, and are a part of the security for the loan involved in the conveyance.

(a) *Authority.* The State Director, subject to the policies outlined in this Subpart, is authorized to approve a voluntary conveyance with or without release of personal liability. The State Director is authorized to consent to release of a borrower and any cosigner in connection with a voluntary conveyance as set forth in § 1872.18(f) which is applicable to a transfer. The County Supervisor and District Director are authorized to approve transactions under § 1872.19 on the same basis as the State Director provided the total debts against the security do not exceed $100,000 and $160,000 respectively.

(b) *Preparation, processing and distribution of voluntary conveyance docket.* When a borrower offers to voluntarily convey his property to the FmHA and agrees to carry out all the conditions contained in Form FmHA 465–4, "Offer to Convey Security," the form will be completed and he will signify his agreement by signing the form. A warranty deed on a state approved form or a deed meeting the requirements of § 1807.2(e) will be required and, whenever possible, completed and signed simultaneously with Form FmHA 465–4. However, it will not be recorded until the closing of the transaction. Also, if water rights are not fully conveyed in the dead, any necessary assignments of transfers of water stock, membership certificates, or other water right documents will be obtained simultaneously with the execution of Form FmHA 465–4 whenever possible but not later than the execution of the deed, and will be recorded, if necessary or appropriate, in connection with closing the transaction. When the borrower executes Form FmHA 465–4, a preliminary determination will be made by the County Supervisor as to whether the property constitutes a family farm as defined in Subpart A of Part 1821 of this chapter. Based on the recommendation of the County Supervisor, a decision will be made by the approval official at the time of acquisition of the property as to whether such property is suitable for sale under the terms and conditions of Subpart C, Part 1872, of Subchapter F to eligible applicants or as surplus property. If the voluntary conveyance is approved by the District Director or State Director, the County Supervisor will be notified of the determination and given instructions for selling the property in accordance with Subpart C of Part 1872 of this chapter.

(1) *Acceptance of offer.* Offers made and accepted are subject to the conditions outlined in Form FmHA 465–4.

(i) *Appraisal not required.* When the approval official determines that a borrower who is indebted only for a Section 502 or 504 RH loan has cooperated in good faith, used due diligence to maintain the property against loss, farmed in a workmanlike manner if engaged in a farming operation, and has otherwise fulfilled the convenants of the loan to the best of his ability, the approval official will immediately accept the offer for full satisfaction of the FmHA debt secured by the real estate. In such cases an appraisal of the security property will not be made. The borrower's account will be satisfied in accordance with § 1872.19(b)(10)(i) after the transaction has been closed.

(ii) *Appraisal required.* When a borrower indebted for any type loan other than a section 502 or 504 RH loan or when the approval official is unable to make the determination required by § 1872.19(b)(1)(i) for a section 502 or 504 RH borrower, offers to convey the property securing the loan to the FmHA, the approval official will make or request that an appraisal to be made of the property to be conveyed. The appraisal will reflect the market value of the property in its present condition. If the amount of the outstanding FmHA debts secured by a lien on the property, plus any prior liens exceeds the present market value of the security property, the County Committee, except for section 503 and 504 RH loans, must determine whether the borrower should be released of liability for any balance owed on the indebtedness. In such cases, the recommendation of the County Supervisor and the Committee certification required by § 1872.19(b)(4) will be submitted with the borrower's loan docket and Form FmHA 465–4 to the approval official for his consideration. If, however, the value

of the security is equal to or exceeds the FmHA debts and any prior liens against the security property, the case will be handled in accordance with § 1872.19(b)(1)(i).

If, however, the value of the security is less than the FmHA debts and any prior liens against the security property and the approval official is unable to determine that a borrower, who is indebted only for a section 502 or 504 RH loan, meets the conditions of paragraph 1872.19(b)(1)(i) or the County Committee does not recommend that a borrower and any cosigner be released of liability for any balance owed on debts secured by the property being conveyed, the account will be handled in accordance with § 1872.19(b)(10)(ii) after the transaction has been closed.

(2) *Assignment of note to the insurance fund.* When an insured loan not held by the insurance fund is involved and the approval official decides to accept the offer to convey, he will request the Director, Finance Office, to have the insured loan assigned to the insurance fund.

(3) *Taxes.* When Form FmHA 465–4 is submitted to the approval official and it does not obligate the borrower to pay taxes and assessments which are a lien or will become a lien on the property, or water assessments or charges to protect the right to receive water, Standard Form 1034 will be attached thereto for the payment of any taxes and assessments which are due and payable. If Form FmHA 465–4 is accepted, the approval official will forward the voucher to the Finance Office.

(4) *County Committee's certification and recommendation.* When property is to be voluntarily conveyed for a credit on the borrower's account of less than the FmHA indebtedness secured by the property, the County Committee, except for sections 502 and 504 RH loans, will determine whether in its opinion the borrower should be released of liability for any balance owed on such indebtedness. If the County Committee recommends that the borrower and any cosigner be released of liability for such balance, it will make the following certification:

In our opinion

(Name of borrower(s) and any cosigner)

do not have reasonable debt-paying ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration their assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his ability. Therefore, we recommend that the borrower and any cosigner be released of personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government.

(5) *Obtaining statement of account and refunding unused loan funds.* Any funds remaining in the supervised bank account will be applied as a refund on the loan prior to accepting the offer to convey. A statement of account will be requested by using Form FmHA 451–10 when a current transaction record or monthly payment account Status Report is not available.

(6) *Checking docket forms.* When the docket forms shown in § 1872.19(b)(7) have been completed, the approval official will determine that (a) each form is prepared correctly in accordance with the Form Manual Insert or other appropriate instructions, and (b) items such as names and addresses are the same on all forms.

(7) *Distribution of voluntary conveyance docket forms.* The following table will be used as a guide in distributing the necessary forms.

FmHA Form No.	Name of form	Total number of copies	Signed by borrower	Voluntary conveyance docket
465–4	Offer to Convey Security	2	[1] 2	[1] 2
[3] 422–1	Appraisal Report (Farm Tract)	1		[1] 1
422–3	Map of Property	1		[1] 1
[3] 422–8	Property Information and Appraisal Report—Rural Housing Nonfarm Tract.	1		[1] 1
[3] 431–2	Farm and Home Plan	1	[1] 1	[1] 1
[3] 431–3	Family Budget	1	[1] 1	[1] 1
451–10	Request for Statement of Account	2		[2] 1 (O to FC)
451–11	Statement of Account	2		[1] 2, [2] 1
[3] [4] 465–8	Release from Personal Liability	2		[1] 2, [2] 1
465–2	Lease of Security Property	3		[1] 3, [2] 2

[1] Original. [2] Copy.
[3] When applicable.
[4] This form will be executed by the county supervisor after approval of the voluntary conveyance and the determination is made to release the borrower from personal liability.

Other voluntary conveyance docket items. When a voluntary conveyance involves a release of liability under § 1872.19(b)(1)(ii), a current financial statement, and information relative to the present income of the borrower, and any cosigner, will be obtained. Ordinarily, this information will be recorded on either Form FmHA 431–2 or Form FmHA 431–3, whichever is more appropriate. The borrower's deed for voluntary conveyance of the property will be included in the conveyance docket and for cases handled under § 1872.19(b)(1)(ii), the County Committee's Certification and Recommendation narrative form will be completed in accordance with § 1872.19(b)(4) and included.

(8) *Title examination and closing instructions.* Upon acceptance of the borrower's offer, the County Supervisor will determine whether title clearance and closing of conveyance will be accomplished with the assistance of the designated attorney, title insurance company, or combination thereof, or by other method, as outlined in a State Supplement. The County Supervisor will notify the designated attorney or title insurance company to furnish title services in accordance with Part 1807, Subchapter A of this chapter. All junior liens except FmHA liens, taxes, and assessments to be advanced by the FmHA will be removed by the borrower, unless the State Director determines that payment of the junior liens by Government vouchers will better protect the Government's interests considering all pertinent factors including the results of any delay that foreclosure action would involve. Any additional title defects or encumbrances will be removed by the borrower except those recited in the FmHA mortgage or subsequently approved by the FmHA. When title defects or encumbrances will be removed as required, the title evidence will be submitted to the designated attorney or title insurance company by memorandum with Form FmHA 465–4, the deed of conveyance, any water right documents, the original or a conformed copy of the FmHA mortgage, any assignment instruments, and conformed copies of any remaining encumbrances such as mineral leases, agricultural leases, easements, rights-of-way, and partial releases. The transmittal memorandum will include a request for the preparation of necessary legal instruments, including any necessary separate instruments of assignment (which will become effective when the deed is recorded) pursuant to Form FmHA 465–4, and request a date for closing the conveyance. The designated attorney or title insurance company will determine the manner in which any necessary notices of assignment of leases will be given to the lessees. The assistance of the OGC will be obtained only in unusual or complex cases.

(9) *Closing of conveyance.* The State Director will issue a State Supplement containing general guidelines for closing a voluntary conveyance when it will expedite such closing. The conveyance transaction will be closed by the designated attorney or title insurance company representative. When an insured loan is involved and the note is not held by the insurance fund or in the county office, the Finance Office will be requested to repurchase and assign the borrower promissory note to the appropriate insurance fund. However, the conveyance transactions may be closed and deed recorded pending assignment of the insured note to the insurance fund. Expenses incident to the closing of the transaction, as authorized in the closing instructions, will be paid. After the designated attorney or title insurance company determines that the transaction has been properly closed, he will return all documents submitted to him to the County Supervisor and advise as to the date when title to the property was vested in the Government. The County Supervisor will forward a copy of this memorandum to the State Director and to the Finance Office. The County Supervisor will notify the District Director of completion of

any conveyance which the District Director approved. Property insurance will be handled in accordance with Part 1806, Subchapter A of this chapter. The acquired property will be handled in accordance with Subpart C, Part 1872, Subchapter F of this chapter.

(10) *Indebtedness and inventory records.* The credit to be entered on the borrower's loan records will be either: (a) the total amount of the indebtedness owed on the account after all expense items have been charged thereto when the property is accepted in full satisfaction of the debt, or (b) the present market value of the security conveyed when the debt is not satisfied and the borrower is not released from personal liability for the remaining balance owed on the debt. Immediately after the transaction is closed in accordance with the closing instructions and the amount of the credit to be allowed on the account is determined, Form FmHA 465–6, "Advice of Mortgaged Real Estate Acquired," will be completed and transmitted to the Finance Office by the County Supervisor for processing. Any assigned agricultural, mineral, or other lease on the property will be sent to the Finance Office along with Form FmHA 465–6. If an oral lease of the property or on a portion of the property exists, it will be reduced to writing on Form FmHA 465–2, and if possible its execution by the lessee will be obtained. A copy of the Form 465–2 will be sent to the Finance Office. After the Finance Office assigns an advice number to Form 465–2, and a contract number to the lease, it will advise the County Supervisor by memorandum with a copy to the State Office of such number for proper identification of the inventory property and lease.

(i) *Satisfied account.* The Finance Office or the County Supervisor, as appropriate, will stamp the borrower's note "Satisfied by surrender of security and release from liability" when the account is fully satisfied. The County Supervisor will take appropriate action to release the lien of record on the security property and deliver the satisfied note to the borrower.

(ii) *Unsatisfied account.* When the account is not fully satisfied by surrender of the security, the borrower will be classified as "collection-only" by processing Form FmHA 404–1 and Form FmHA 450–10 and submitting them to the Finance Office with Form 465–6. The remaining amount will be accelerated by written notice if grounds for acceleration exist. The Finance Office will retain the note(s) and send the County Office a current transaction record or Form FmHA 451–11. Upon receipt of the transaction record or Form FmHA 451–11 from the Finance Office, the loan record card will be reconciled with the statement of account and the account will be serviced as a collection-only case in accordance with Subpart A of Part 1861. In such cases, the FmHA mortgage will be released of public record, but not satisfied. The type of release to be used will be as prescribed by State Supplement.

§ 1872.20 Foreclosure by the Government.

Foreclosure action will be recommended when (1) liquidation has been decided upon, (2) a substantial net recovery can be obtained on the FmHA account(s), (3) foreclosure is determined to be the most practicable method of liquidation by which the interest of the FmHA can be protected or (4) failure to foreclose would adversely affect the FmHA program in the area. If these requirements cannot be met under the circumstances existing when foreclosure is first considered, but conditions change so that the requirements can be met at a later date, foreclosure will be instituted at a later date. When there is a prior lien(s) and the State Director has determined that foreclosure is necessary, he will contact the prior lienholder, either directly or through the County Supervisor, and give him an opportunity to institute the foreclosure proceedings, if he is in a position to do so, with the FmHA taking whatever action is necessary to protect the interests of the Government. If the prior lienholder is unable or unwilling to institute the foreclosure, the FmHA will institute foreclosure proceedings, subject to the prior lien if feasible. Whether foreclosure of the FmHA mortgage will be subject to the prior lien will depend upon such factors as the state law, the action or inaction of the prior lienholder, the condition of the prior lien account, the amount of the prior lien debt in relation to the total debt, and other factors. After issuance of the acceleration notice, account and security servicing actions other than acceptance of payment in full, voluntary conveyance, or permitting of transfer, including payments of insurance and taxes, will be taken only with the advice of the OGC. Expenses incident to the foreclosure action which are approved by the OGC for payment by the FmHA will be paid. If the OGC advises that a credit on the borrower's account or a Standard Form 1034 will not be acceptable for payment on the FmHA bid, the State Director will obtain a check from the Finance Office for making the payment. Standard Form 1034 will be used for this purpose and it will fully explain why it is necessary to immediately obtain a check for such payment.

(a) *Authority.* The State Director is authorized to approve foreclosures and to execute any necessary documents. After such approval, the County Supervisor will take appropriate action and execute all necessary forms for completion of the transaction, except as otherwise provided herein.

(b) *Processing*—(1) *Form FmHA 465–7 and recommendation for deficiency judgment.* If Form FmHA 465–7 has not been recently submitted to the State Office, and foreclosure is recommended in accordance with § 1872.17, the form will be completed, and if chattle security is involved, Form FmHA 455–1, "Request for Legal Action," and Form FmHA 455–2, "Evidence of Conversion," when appropriate, providing necessary supplementary information, will be attached to Form FmHA 465–7. The completed Form FmHA 465–7 will be forwarded with the County Office case file to the State Office through the District Director so the District Director's recommendation will be included. If it appears that the recovery to the Government from a sale by foreclosure will be insufficient to fully satisfy the indebtedness, the borrower's situation will be reviewed by the County Supervisor to determine if there is a possibility of making a further recovery on the account. The facts revealed by his review should be included in the recommendation made on Form FmHA 465–7. When foreclosure action does not automatically result in a deficiency judgment and there are other assets from which a substantial recovery can be made, the OGC will be requested by the State Director, on Form FmHA 465–7, to obtain such a judgment if legally permissible. No deficiency judgment may be sought if the borrower has received a moratorium on payments as provided for in § 1861.10 when the moratorium has previously been obtained on the section 502 or 504 RH loan being liquidated.

(2) *Appraisal report, additional instructions and withdrawal of funds in supervised bank account.* The State Director will obtain a present market value appraisal report unless there is a current appraisal report that can be relied on for completing Form FmHA 465–7. Any additional instructions and the case folder will be returned to the County Office. Also, when foreclosure is approved, the State Director will include any title information or evidence of ownership of water rights held in the State Office. Any order to the bank will be included for withdrawal of any funds remaining in the supervised bank account.

(3) *Foreclosure not approved.* If foreclosure is not approved, the State Director will instruct the County Supervisor on Form FmHA 465–7 on future servicing of the account. The original of Form FmHA 465–7 will be forwarded to the County Supervisor, a copy retained in the State Office, and a copy sent to the District Director.

(4) *Actions after approval of foreclosure.* When foreclosure action is approved, steps will be taken to consummate the foreclosure as follows:

(i) *Unused loan funds.* Any funds remaining in the supervised bank account will be refunded.

(ii) *Statement of account.* Form FmHA 451–10 will be forwarded to the Finance Office to obtain a statement of account when required for foreclosure action for each account to be included in the foreclosure and to request the Finance Office not to issue any statements of account to the borrower or apply any payments to the account until further notice.

(iii) *Issuance of acceleration notice.* When an FmHA account is in monetary default the State Director will date, sign, and forward the acceleration notice, if he has not already issued one in accordance with § 1872.17(c), to the borrower with two conformed copies to the County Supervisor, and the case folder and any

necessary instructions. For all other types of default, the account will not be accelerated until review by the OGC. In such cases a State Supplement will be issued to prescribe the information to be assembled and sent to OGC. When the borrower is in the Armed Forces of the United States the acceleration notice will not be prepared until clearance is obtained from the OGC. A copy of Form FmHA 465–7 will be retained in the State Office and a copy will be forwarded to the District Director. Thereafter, except as otherwise provided in State Supplements, where state law requires acceptances of defaulted installments after acceleration, the County Supervisor will not accept payment of less than the full amount of the indebtedness but will notify the State Director of any such offer and ask for instructions.

(iv) *Cancellation of foreclosure action.* When it has been determined that foreclosure is warranted and circumstances change which, in the opinion of the State Director, makes liquidation of the account unnecessary, he may stop the action or request OGC to stop it. If the action is stopped, the account will be reinstated. The State and County Office records will be properly noted to indicate the situation and the borrower will be informed. The Finance Office will be notified. The OGC also will be informed of the situation if it has been consulted.

(v) *Forwarding docket to the OGC and institution of foreclosure action.* When the period provided by the acceleration notice expires, or, if one is not issued upon the advice of the OGC, the following action will be taken:

(A) If a direct loan is involved, the State Director will request the Finance Office to send the original or conformed copy of the note as required by State Supplement to the County Office. If an insured loan is involved and the note is not held by the insurance fund, or the County Office, the State Director will request the Finance Office to have the note assigned to an insurance fund. The Finance Office will send the original or conformed copy of the assigned note and related documents to the State Director with instructions as to any necessary action in connection with the assignment.

(B) The borrower's case folder, including a conformed copy of each FmHA note and any assumption or cosigner agreements involved and such additional information and copies as appropriate will be forwarded by the State Director to the OGC for instructions to complete the foreclosure action. Also, title evidence required by OGC will be obtained and furnished to it at that time so that an opinion can be issued as to whether the FmHA will obtain a title merchantable in fact if it is the successful bidder.

(C) Ordinarily, no curative action will be taken with respect to title defects before foreclosure sale. However, when for special reasons the State Director, with the advice of the OGC, determines it would be in the best interest of the FmHA to cure certain defects before the foreclosure sale, the State Director may authorize the necessary curative action.

(D) The expiration date of the property insurance will be called to the attention of OGC so that office will be aware of the fact that an additional cost will be incurred if the sale is not completed before the expiration date of insurance. A copy of the acceleration notice will be sent to the Finance Office. When it has been determined that a title merchantable in fact can be obtained, the OGC will advise the County Supervisor who will prepare and submit Standard Form 1034 to the Finance Office for payment of all real estate taxes and assessments including water assessments which are due and payable. The OGC also will request the Finance Office to send it a current statement of account which reflects the amount of vouchers it advised the County Supervisor to process in connection with the foreclosure.

(E) The OGC will, except in judicial foreclosure cases, route the docket through the State Office so any advertising notices and other needed documents may be prepared, or signed by the State Director when necessary if they were prepared by OGC.

(F) If the property is subject to redemption rights under State law, the State Director, in judicial foreclosure cases, will request through OGC that the provisions in the mortgage waiving the right of redemption be enforced.

(G) Title VI of the Civil Rights Act of 1964 applies as long as any real property continues to be used for the same or similar purposes for which the Federal financial assistance was extended. If the property being sold was subject to Title VI, the advertisement of foreclosure sale should include a statement that the purchaser will be required to sign Form FmHA 400–4, if he intends to use the property for its original or similar purposes.

(vi) *Maximum bid.* The State Director will establish the maximum amount of the FmHA bid. Such bid will be either the present market value of the security or gross investment, whichever is less.

(A) In establishing the present market value, the State Director will consider (a) the effect that any outstanding mineral rights, easements, other interests, or title defects will have on the resale of the property, (b) any prior liens that will remain outstanding after the foreclosure sale, and (c) any other pertinent information affecting or indicating the value including the appraisal report.

(B) Gross investment means the amount of the FmHA secured indebtedness, including all advances made, or to be made, by the FmHA and charged to the mortgage debt before the foreclosure sale, plus the amount of any prior liens or other costs which the OGC advises must be paid from proceeds of the foreclosure sale before payment of the FmHA mortgage debts.

(vii) *Bidding.* The State Director or an employee designated by him is authorized to bid on behalf of the FmHA. In appropriate cases the State Director may request that the U.S. Marshall be designated. The State Director will inform the County Supervisor by memorandum as to the maximum amount to be bid and whether he or some other person is authorized to bid. A copy of this memorandum will be sent to the OGC. Ordinarily, the State Director will designate the County Supervisor to bid on behalf of the FmHA unless circumstances make it necessary or desirable to designate another person. In judicial foreclosures, the OGC will inform the U.S. Attorney of the maximum amount recommended by the FmHA to be bid and in appropriate cases that an FmHA employee will be available at the sale to make the bid. The FmHA employee will make only one bid and that will be for the authorized maximum bid. This bid will be made when no other party makes a bid or when it appears that the bidding has slowed down and likely will stop and result in the property being sold for less than the authorized maximum bid.

(viii) *Final Report on foreclosure sale.* Immediately after a foreclosure sale at which the bidder on behalf of the FmHA is an FmHA employee, the County Supervisor will furnish the OGC with a copy to the State Director, a narrative statement giving complete information relative to the sale, including a copy of Form FmHA 465–6 if sufficient information is available for completion of the form at that time. When the OGC receives a report of a foreclosure sale, whether from FmHA or the U.S. Attorney, he will furnish the County Supervisor any necessary instructions for completing the transactions and advise of any rights of the Government, considering privileges provided by law and any other pertinent information. As soon as practicable, the OGC will also furnish the County Supervisor a final report on any acquired property. The final report will include instructions concerning any additional steps which should be taken to complete the transaction. A copy of this report will be forwarded to the State Director.

(ix) *Completion of Form FmHA 465–6.* If the FmHA is the successful bidder at the foreclosure sale, Form FmHA 465–6 will be completed and forwarded to the Finance Office by the County Supervisor as soon as all information necessary for completion of the form is available, except the date the Government acquired title to the property, without waiting for the final report of the OGC. The form will be dated as of the date of the sale.

(x) *Leases.* If the sale is made subject to an agricultural, mineral, or other lease in which the lessor's interest is acquired by the FmHA through the sale, the original or a copy of the lease will be submitted to the Finance Office with Form FmHA 465–6 for processing in accordance with § 1872.19(b)(10). Any oral lease in effect at the time the Government acquires the property will be reduced to writing using Form FmHA 465–2 and its execution by the lessee will be obtained if possible. The County Supervisor will notify any lessee in writing that the Government has acquired the lessor's rights under the lease and will direct the lessee to remit all payments to the County Office. Payments to FmHA under a lease which by its terms were due and payable prior to the date of the

foreclosure sale will be applied first on any delinquency claim resulting from the foreclosure and then on any other FmHA claim against the borrower. Any surplus remaining will be remitted to the borrower. Payments due and payable to the FmHA after the date of foreclosure will be collected and forwarded to the Finance Office as miscellaneous income. Receipts for collections made in accordance with this subpart will be issued to: "Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (name of lessee)." After a foreclosure sale is held, if a redemption period is involved, and the borrower has possession of the property during such period, or a right to lease proceeds during the redemption period, a lease will not be obtained by the Government or be sent to the Finance Office until the redemption period has expired and the Government has a right to such proceeds.

(xi) *Deficiency judgment.* When a deficiency judgment is obtained, the account will be classified as a judgment case and the County Supervisor will send Form FmHA 455–20, "Notice of Judgment," to the Finance Office and the account will be serviced in accordance with Subpart B, Part 1871, Subchapter F of this Chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 is sent to the Finance Office, the fact that it is pending will be indicated on Form FmHA 465–6. When a deficiency judgment is not to be obtained the case will be reclassified to collection only if the debt cannot be settled under the provisions of Part 1864, Subchapter E of this Chapter, and the requirements of FmHA regulations concerning case classifications. When a case is to be reclassified to collection only, Forms FmHA 404–1 and FmHA 450–10 will be forwarded to the Finance Office.

(xii) *Property insurance.* Property insurance will be handled in accordance with Subpart B, Part 1806, Subchapter A of this Chapter.

§ 1872.21 Taking liens on real estate as additional security in servicing FmHA loans.

(a) *Liens.* In servicing FmHA loans, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Such liens will be taken only when:

(1) *Inadequate security.* Present security for the loan is not adequate to protect the interests of the FmHA, and

(2) *Equity.* The borrower has substantial equity in the real estate to be mortgaged and it is determined that the taking of such a mortgage will not prevent the making of an FmHA real estate loan, which may be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for the FmHA loan the following items will be documented in the running record:

(1) *Justification.* The facts justifying the taking of such real estate lien;

(2) *Value.* A conservative estimate of the present market value of the real estate to be mortgaged (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) *Description.* A brief description of any existing liens on such property including the repayment terms and the unpaid balance on the debts secured by such existing liens, unless this is accurately reflected on a recent financial statement; and

(4) *Identification.* The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Security form.* Each real estate lien taken as additional security for both FmHA direct and insured loans will be taken on Form FmHA 427–1(State), "Real Estate Mortgage for _____" unless a State Supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing both FmHA direct and insured loans for which the additional security will be taken will be described in the same mortgage.

§ 1872.22 Assignment of promissory notes and security instruments outside the program.

The policy described in Subpart A, Part 1871, Subchapter F of this chapter assigning notes and security instruments to third parties will apply to all loans secured by real estate and when the State Director determines it is to the financial advantage of the Government or when the borrower has failed to refinance after an appropriate request. Payment of the FmHA debt in full will be collected and transmitted to the Finance Office at the time the assigned instruments are delivered. For insured loans, an assignment may be made on a non-insured basis after the note has been assigned to the insurance fund. The assignment will be effected on an assignment form furnished by the OGC which will include provisions (1) releasing the FmHA from liability as insurer, and (2) nullifying the provisions and covenants in the note and security instrument relating to the Government's rights and obligations as insurer and collection agent. The Government's endorsement of the promissory note will be made without recourse. The State Director will execute the assignment instruments unless he delegates authority to the County Supervisor in a State Supplement. At the time the assigned instruments are delivered, the County Supervisor will write "Insurance Contract Cancelled" across the face of the Government's insurance endorsement and will sign and date such cancellation.

§ 1872.23 Cosigners—Rural Housing (RH) loans.

A cosigner, as defined in § 1822.3(e), is personally liable for payment of the RH debt. The cosigner is not entitled to any interest in the security property or the rights of the borrower under the loan agreements or security instruments. However, he may pay the account in full and take any assignment of FmHA's interest.

(a) *Transfer or other servicing action.* In a case of a transfer, a cosigner may be given preference to assume the FmHA indebtedness as either an eligible or ineligible applicant, whichever is appropriate. Otherwise, the cosigner's status does not make inapplicable any conditions or provisions required for transactions authorized in this subpart.

(b) *Substitution or replacement of cosigner.* Any person, as determined by the County Supervisor, with ability to repay the RH loan in accordance with its terms, may be substituted for the other party who is previously obligated as cosigner on the loan. The new cosigner will execute an agreement to pay the balance owed on the RH debt. This agreement will be made in consideration of the release of the existing cosigner from personal liability. The original of the new cosigner's agreement will be attached to the original note and a copy will be attached to each copy of the note. The new agreement will be prepared by OGC.

(c) *Release of liability.* A cosigner of an RH note may be released from personal liability for the debt upon satisfactory substitution of a new cosigner. The release may be accomplished by modifying and using Form FmHA 465–8 with the advice of the OGC or on appropriate form prepared by the OGC.

§ 1872.24 Submission to National Office of certain partial release, subordination, consent, or other transactions.

The State Director may submit to the National Office for determination by the Administrator or his delegate any proposed transaction in which the conditions prescribed in the foregoing subparts for partial release, subordination, or consent by the FmHA cannot be satisfied, or any servicing action, that in the opinion of the State Director, is necessary for the protection of the Government's interest. The State Director must determine that either the FmHA secured indebtedness remaining after the transaction will be adequately secured, or the Government's security interest will not be adversely affected, and that the transaction and use of any proceeds will further the purposes for which the loan was made, improve the borrower's debt-paying ability, and permit necessary payment of reasonable costs and expenses incident to the transaction which the borrower is unable to pay from other sources. This Subpart is primarily intended to be used for those cases in which the use of the proceeds would be necessary for the borrower to retain the farm or rural residence that otherwise usually could not be accomplished. The State Director will submit to the National Office the full facts and justification for his recommendation and the County Office files. If the National Office approves the proposal, the returned material will, when legal assistance is needed, be submitted to OGC by the State Director for legal guidance in accomplishing the proposal.

§ 1872.25 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary, to carry out this Supplement, and forwarded to the National Office for prior approval. Whenever, in this Supplement, reference is made to advice or approval of the OGC it is contemplated that to the maximum extent possible the legal advice or approval may be stated in a general way whether included in State Supplements, State Bulletins, or other statements or explanations, rather than by the submission of individual matters to the OGC. It should be possible under such a plan to procure the most efficient legal assistance in handling real estate security servicing transactions.

§ 1872.26 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this Subpart to one or more of the following State Office employees: Chief, Rural Housing, Chief, Farmer Programs, Chief, Community Programs, Rural Housing Specialist; Farmer Programs Specialist; and Community Programs Specialist. The State Director may also redelegate in writing to the Property Management Specialist the responsibility for carrying out liquidation actions and management of security property for those cases where a determination has been made that liquidation of a loan is necessary to protect the Government's interest.

§ 1872.27 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following covenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

Date: December 30, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION

MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION

The purpose of this memorandum is to simplify and facilitate the obtaining by the Bureau of Sport Fisheries and Wildlife (Bureau) of subordination of mortgages held by the Farmers Home Administration (FmHA) on lands with respect to which the Bureau obtains a "Conveyance of Easement for Waterfowl Management Rights" (3–1916 Rev. April 1970). In order to accomplish this purpose it is agreed that:

1. In each case in which the Bureau proposes to take an easement from a landowner whose land is subject to a mortgage held by FmHA and the Bureau's proposal is acceptable to the landowner, the Bureau will notify the local FmHA County Supervisor. The notification will show the amount of consideration to be offered for the easement and the legal description of the land to be affected by the easement. Where there are existing drainage facilities on the land, the affected wetland areas that are to be excluded from coverage by the easement will be outlined on a map and furnished to FmHA and the landowner.

2. Where a subordination agreement is required, the FmHA County Supervisor will advise the designated local official of the Bureau as to whether the consideration is adequate from the standpoint of FmHA as mortgagee.

3. Where a subordination is required and the County Supervisor advises that the consideration is adequate, said easement form will be amended by: inserting at the end of the instrument the following: "In consideration of payment which is determined to be adequate from the standpoint of the FmHA as mortgagee, for the foregoing easement as provided in paragraph 5 thereof, the United States of America acting through FmHA hereby subordinates it mortgage dated _____, recorded in Book _____, page _____, of the real estate records in _____ County, State of _____ to said easement.

_____
Date

UNITED STATES OF AMERICA
By_____
FmHA County Supervisor

4. Where a subordination is not required of FmHA, because of a waiver of the need for a subordination by the United States Attorney General, the Bureau nevertheless will send a copy of the agreement and the check for the easement consideration, which will include FmHA as a co-payee, to the FmHA County Supervisor.

5. In all cases where an FmHA mortgage is involved, the easement form will be amended by: inserting at the end of paragraph 5 an additional sentence as follows: "The check for the easement consideration will be made payable to the Farmers Home Administration (FmHA) and the landowners, as co-payees, and will be mailed to the FmHA to be applied to its mortgage unless applied on a prior mortgage debt or released for other use as permitted by FmHA regulations."

6. The Bureau and FmHA will issue such procedures or directives to their respective field offices as may be necessary to effectuate this memorandum of understanding.

Date: September 14, 1967.

A. V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

Date: August 29, 1967.

HOWARD BERTSCH,
Administrator,
Farmers Home Administration.

[FR Doc.75–293 Filed 1–6–75;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 575]

[Docket No. 25; Notice 15]

UNIFORM TIRE QUALITY GRADING SYSTEM

Revision of Proposed Procedure for Tire Treadwear

This notice revises the grades and procedures concerning tire treadwear in the proposed Uniform Tire Quality Grading System. The Uniform Tire Quality Grading System was proposed in its present form on June 14, 1974 (39 FR 20808). A revision of the proposed treadwear test procedure was published on August 9, 1974 (39 FR 28644).

The NHTSA has decided to propose further changes in the procedure on the basis of comments on the earlier proposals, agency tests which have been conducted since publication of the earlier proposals, and a reevaluation of certain data on which the earlier proposals had been based. The treadwear test procedure proposed on June 14, 1974, has generated substantial controversy, and the NHTSA believes the public interest will be served if tentative agency conclusions are made known to the public at this time in order that comments may be received on them and evaluated. The proposals issued by this notice should not be viewed as superseding the earlier proposals, but rather as alternatives to them which the agency is seriously considering.

Comments were received objecting to the proposed treadwear grading system on the basis that small differences in actual treadwear in the vicinity of grade boundaries would be misrepresented as large differences due to the implications of the predetermined grade categories. The NHTSA recognizes the potential inequity of this "boundary effect," which is intrinsically associated with any grading scheme with relatively broad categories. This agency is also concerned that broad grade categories could in some cases have the effect of minimizing the desirable competitive impact of the tire quality grading system if tires of substantially differing treadwear performance were grouped in the same grade. The NHTSA is therefore proposing in this notice that the grading system for treadwear be changed from six predetermined categories to a relatively continuous scale, on which the manufacturer would grade each tire with a two-digit number representing the tire's minimum projected mileage in thousands of miles on the government course. No predetermined categories (except for the 1000-mile increments) would exist.

This newly proposed grading scheme is similar to the previous one in that it

utilizes actual projected mileages as grades. Several of the manufacturers have expressed in their comments a preference for a grading system that converts treadwear mileage results into other grading measures, on the grounds that such mileages are misleading and create warranty obligations on the part of the manufacturer. The NHTSA rejects this position. The label explaining the grades will fully disclaim any warranty, and it will be clear that no mileage warranty is intended. Consumers will be informed by the label that the mileage grade is the result of specific tests, and that its value is as a comparison with other tires, not as an indication or estimate of the mileage they will achieve in use. Consumers traditionally think in terms of tire mileage when evaluating tire performance. Mileage grades are, therefore, in the view of NHTSA, the most appropriate way of expressing treadwear performance, and are most likely to achieve the goals of the tire quality grading system.

Changes are also proposed in the treadwear testing procedure. The period for tire break-in would be extended to 800 miles in response to a recommendation from the Japanese Automobile Tire Manufacturers Association. Tires will be rotated between axles after 400 miles, to produce equal exposure to wear on front and rear axles. Experiments performed by NHTSA (Brenner, F. C. and Kondo, A., "Elements in the Road Evaluation of Tire Wear", *Tire Science and Technology*—Vol. 1, No. 1, Feb. 1973, pp. 17–31; entry no. 17—General Reference in this docket) indicate that variations resulting from axle differences are sufficiently significant to warrant compensation. Recommendations for a break-in period of 1600 miles, which would permit equal tire exposure to wear on each vehicle side, have not been adopted. The above-cited NHTSA experiments showed only an insignificant effect resulting from side differences.

The NHTSA also proposes a modification of the method of calculating projected mileages. The comments noted that standard industry procedures utilize an arithmetic mean of wear rates for each measurement period to establish an "overall wear rate," which is then extrapolated to obtain total projected mileage at wear-out. The NHTSA proposed in the June 14, 1974, notice the use of a geometric mean, on the basis of theoretical considerations deriving from the multiplicative rather than additive property of treadwear influence factors. The NHTSA has tentatively concluded, however, that use of the geometric mean will present some practical problems. The geometric mean is sensitive to inaccurate readings. Where the tread measurement for a particular mileage increment does not show positive treadwear, as has occurred in some tests, using the geometric mean results in a projected infinite treadwear life. While such results obviously reflect incorrect readings or inaccurate gauges, the likelihood of such readings, and the accompanying result of using the geometric mean, clearly reduces the effectiveness of the procedure. At the same time, the NHTSA does not view the use of an arithmetic mean, which has been suggested by industry, as an appropriate substitute. The arithmetic mean effectively depends upon only two data points, the original tread depth (after break-in) and the tread depth recorded at the conclusion of the test. Hence, intermediate readings are not weighed, and the results are sensitive to end-point errors. In light of these problems, the NHTSA proposes in this notice the use of the "least squares" method of calculation, as explained in an appendix to the regulation. This is a common mathematical method of finding the line that "best fits" the data points derived from a sequence of measurements. This method will be used to establish a regression line having tread depth as its ordinate, and mileage after break-in as its abscissa. The method has the advantage of weighting all measurements and avoiding the problems inherent in the arithmetic or geometric methods.

The notice also modifies the proposed convoy test method to reduce as far as practicable the effects of uncontrolled variables associated with treadwear testing. In light of docket comments and NHTSA testing at San Angelo, Texas, the NHTSA has tentatively decided to limit test vehicles to those equipped only with rear-wheel drive, to limit convoy size to no more than four vehicles, and to reposition vehicles, within the convoy every 800 miles. Driver position within the convoy remains fixed, and each driver will thus drive each vehicle once every 3,200 miles. The limitation against front-wheel-drive vehicles will promote testing uniformity by eliminating one potential source of variability. The limitation to four convoy vehicles is intended to reduce the "accordion effect" in treadwear testing by promoting uniformity in driver action and, consequently, test results. The rotation at 800-mile increments is intended to submit each tire to an equal "dose" of accordion effect.

The NHTSA has tentatively adopted in this notice a suggestion made in several comments that treadwear measurements be made at six rather than ten points in each groove, as was proposed previously. Based upon recent tests conducted by the American Society for Testing and Materials, the NHTSA agrees that six measurements will be adequate. This will reduce the time and cost necessary for testing.

The NHTSA also proposes modification of the part of the test procedure dealing with wheel alignment. As changed, the procedure is based on vehicle manufacturers' recommendations for wheel alignment at curb weight. The setting for the test would be the measurement taken after the vehicle is loaded to its test weight, after being initially set to the vehicle manufacturer's specifications with the vehicle loaded to its curb weight. The NHTSA has also included a specification for rims for use on the convoy vehicles. This was inadvertently omitted from the earlier proposals. As proposed herein, each convoy vehicle must be equipped with a "test rim" as defined in Motor Vehicle Safety Standard No. 109 (49 CFR 571.109), or any alternative rim listed for use with the tire in Appendix A of Standard No. 110 (49 CFR 571.110).

Many comments that have been received have recommended extending the mileage of the treadwear test beyond the 6,400 miles proposed. The arguments that have been presented are to the effect that 6,400 miles is insufficient to project ultimate tread life, particularly in the case of radial tires. To date, however, the data accumulated by NHTSA support the use of a 6,400-mile tread-wear test (plus break-in mileage) to determine ultimate tread life. In the absence of contrary data the NHTSA cannot justify any proposal to increase test duration, which would also increase testing time, cost, and fuel consumption. The NHTSA will continue to consider all relevant information with respect to this issue.

In light of the above, the proposal to establish § 575.104 "Uniform Tire Quality Grading System", in Title 49, Code of Federal Regulations, published in the FEDERAL REGISTER of June 14, 1974 (39 FR 20808), and amended August 9, 1974 (39 FR 28644), is revised as follows:

1. Paragraph (d) and (e) are revised to read:

§ 575.104 Uniform tire quality grading system.

* * * * *

(d) *Requirements*—(1) *Information.* (i) * * *

(B) Each tire, except a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface in a manner such that it is not easily removable a label containing its grades and other information in the form illustrated in Figure 2. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label adjacent to the description of the treadwear grade. The traction and high speed performance grades shall be indelibly circled.

* * * * *

(2) *Performance*—(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "Treadwear" followed by a number of at least two digits representing its minimum adjusted projected mileage in thousands of miles when the tire is tested in accordance with the conditions and procedures specified in paragraph (e) of this section.

* * * * *

(e) *Treadwear grading conditions and procedures.*

(1) * * *

(iv) Wheel alignment is set as follows:

(A) Load the vehicle to its curb weight,

(B) Set the wheel alignment to the vehicle manufacturer's specifications,

(C) Load the vehicle as specified in paragraph (e)(2)(iii) and record the alignment setting at this load, and

(D) Maintain this setting throughout the test in accordance with paragraph (e)(2)(vi)(D) of this section.

(v) A test convoy consists of no more than four passenger cars, each having only rear-wheel drive.

(vi) On each convoy vehicle, all tires are mounted on identical rims: either a "test rim" as defined with respect to that tire in paragraph S3 of § 571.109 of this chapter (Standard No. 109), or other rim listed for use with that tire in Appendix A of § 571.110 of this chapter (Standard No. 110) having a width within −0+0.50 inches of the "test rim" width.

(vii) Driver relative position in the convoy test is stationary regardless of vehicle rotation.

(2) * * *

(iv) Subject candidate and standard tires to "break-in" by running the tires in convoy for two circuits of the test roadway (800 miles). At the end of 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle.

(v) After break-in, allow the tires to cool to the inflation pressure specified in paragraph (e)(2)(ii) of this section; measure, to the nearest 0.001 inch, the tread depth of each candidate and standard tire, avoiding treadwear indicators, at six equally spaced points in each groove; and for each tire compute the overall average of these measurements.

(vi) Adjust wheel alignment, if necessary, to the setting recorded in accordance with paragraph (e)(1)(iv)(C) of this section;

(vii) Drive the convoy on the test roadway for 6,400 miles. After each 800 miles:

(A) Measure the average tread depth of each tire in accordance with paragraph (e)(2)(v) of this section;

(B) Rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle;

(C) Rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver position within the convoy;

(D) Adjust wheel alignment, if necessary, to the setting recorded in accordance with paragraph (e)(1)(iv)(C) of this section;

(viii) Determine the adjusted projected mileage for each candidate tire as follows:

(A) For each standard and candidate tire in a convoy, using the average of the tread depth measurements obtained in accordance with paragraph (e)(2)(v) of this section and the corresponding mileages as data points, apply the method of least squares as described in Appendix A of this section to determine the estimated regression line of y on x given by the following formula:

$$y = a + \frac{bx}{1{,}000}$$

where:

y = average tread depth in mils;

x = miles after break in;

a = reference tread depth (y intercept of regression line) in mils, calculated using the method of least squares; and

b = wear rate (the slope of the regression line) in mils per 1000 miles calculated using the method of least squares.

(B) Average the wear rates of the four standard tires as determined in accordance with paragraph (e)(2)(viii)(A) of this section.

(C) Determine a course severity adjustment factor by dividing the base course wear rate for the standard tire by the average wear rate for the four standard tires determined in accordance with paragraph (e)(2)(viii)(B) of this section.

NOTE: The base course wear rates for each of the three standard tires will be determined by the NHTSA on the basis of test runs over the prescribed course with convoys using standard tires, under conditions and procedures set forth in this paragraph for treadwear grading. Precise base wear rates have not yet been determined, but it is expected that the approximate values for each standard tire construction will be.

Radial: (Goodyear Custom Steelgard)—7.0 mils/1000 miles

Bias Belted: (General Belted Jumbo 780)—8.5 mils/1000 miles

Bias: (Firestone 500 PE)—12.5 mils/1000 miles

(D) Determine the adjusted wear rate for each candidate tire by multiplying its wear rate determined in accordance with paragraph (A) by the course severity adjustment factor determined in accordance with paragraph (e)(2)(viii)(C) of this section.

(E) Determine the adjusted projected mileage for each candidate tire using the following formula:

$$\text{Adjusted projected mileage} = \frac{1000\,(a-62)}{b'} + 800$$

where:

a = reference tread depth (y intercept of regression line) for the candidate tire as determined in accordance with paragraph (e)(2)(viii)(A) of this section.

b′ = the adjusted wear rate for the candidate tire as determined in accordance with paragraph (e)(2)(viii)(D) of this section.

* * * * *

2. Figure 2 is revised as follows:

FIGURE 2.—DOT QUALITY GRADES

ALL PASSENGER CAR TIRES MUST CONFORM TO FEDERAL SAFETY REQUIREMENTS IN ADDITION TO THESE GRADES

Treadwear	The treadwear grades represent the projected minimum life, in thousands of miles, of the tire on a specified government test course. For example, a tire graded 25 would achieve a projected mileage of at least 25,000 miles on the government course. THESE FIGURES DO NOT REPRESENT THE ACTUAL MILEAGES THAT WILL BE ACHIEVED IN USE, AND SHOULD BE USED ONLY FOR COMPARING ONE TIRE WITH ANOTHER.
Traction * * * * * * 0	The traction grades are * * * (the highest), * *, and *, and represent the tire's ability to stop on wet pavements as measured on asphalt and concrete test surface. A tire marked 0 for traction is ungraded, and may have poor traction performance.
High speed performance A B C	The high speed performance grades are A (the highest), B, and C, representing the tire's resistance to heat and its ability to dissipate heat. Heat can result from speed, outside temperature, improper inflation, and other factors. Sustained high heat can cause the material of the tire to degenerate and reduce tire life, and excessive heat can lead to sudden tire failure. The grade C represents the resistance to heat which all passenger car tires must meet under the Federal motor vehicle safety standards. Grades B and A represent higher levels of performance than the minimum required by law.

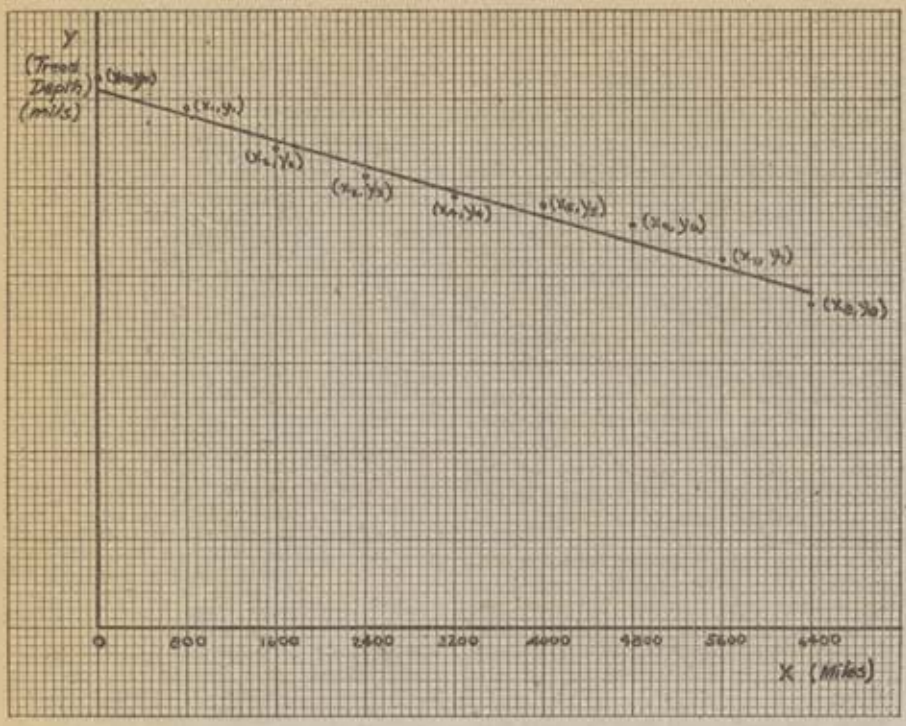
3. An Appendix A is added to read:

APPENDIX A

METHOD OF LEAST SQUARES

The method of least squares is a method of calculation by which it is possible to obtain a reliable estimate of the best algebraic relationship from a set of data which involve random error. The method may be used to establish a regression line of y on x that minimizes the sum of the squares of the vertical deviations of the measured data points from the line. The regression line is consequently described as the line of "best fit" to the data points. It is described in terms of its slope and its "y" intercept.

The following graph depicts a regression line calculated using the least squares method from data collected from a hypothetical treadwear test of 6,400 miles, with tread depth measurements made at every 800 miles.



In this graph, x_j, y_j ($j=0, 1, \ldots 8$) are the individual data points representing the tread depth measurements (the overall average for the tire with 6 measurements in each tire groove) at the beginning of the test (after break-in) and at the end of each 800-mile segment of the test.

The slope of the regression line is an estimate of the mils of tread worn per 1000 miles, and is calculated by the following formula:

$$b=1000\,\frac{\left(\sum_{j=0}^{8}x_jy_j-\frac{1}{9}\sum_{j=0}^{8}x_j\sum_{j=0}^{8}y_j\right)}{\sum_{j=0}^{8}x_j^2-\frac{1}{9}\left[\sum_{j=0}^{8}x_j\right]^2}$$

The "y" intercept of the regression line (a) in mils is calculated by the following formula:

$$a=\frac{1}{9}\sum_{j=0}^{8}y_j-\frac{1}{9}b\sum_{\frac{j=0}{1000}}^{8}x_j$$

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: February 3, 1975.

Proposed effective date: May 1, 1975.

(Secs. 103, 112, 119, 201, 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on December 27, 1974.

ANDREW G. DETRICK,
Acting Associate Administrator, Motor Vehicle Programs.

[FR Doc.75-220 Filed 1-6-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

[FRL 316-4]

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

Chlorothalonil; Proposed Tolerance

Dr. C. C. Compton, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of New York and Michigan submitted a petition (PP 4E1502) proposing establishment of tolerances for combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy - 2,5,6 - trichloroisophthalonitrile in or on the raw agricultural commodities green onions at 5.0 parts per million and dry bulb onions at 0.5 part per million.

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

1. The fungicide is useful for the purpose for which the tolerances are proposed.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The proposed tolerances will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), it is proposed that § 180.275 be amended by (a) revising the heading, the introductory paragraph, and the paragraph "5 parts per million * * *" and (b) by inserting the new paragraph "0.5 parts per million * * *" after the paragraph "1 part per million * * *", as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

Tolerances are established for combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on raw agricultural commodities as follows:

5 parts per million in or on broccoli, brussels sprouts, cabbage, cauliflower, cucumbers, melons, onions (green), pumpkins, snap beans, squash (summer and winter), and tomatoes.

* * * * *

0.5 part per million in or on onions (dry bulb).

* * * * *

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request, on or before February 6, 1975, that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments with reference to this notice to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 421 East Tower, 401 M Street, SW, Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Environmental Protection Agency and others interested in inspecting the documents. The comments must be received on or before February 6, 1975 and should bear a notation indicating the subject. All written comments filed pursuant to this notice will be available for public inspection in the office of the FEDERAL REGISTER from 8:30 a.m. to 4 p.m. Monday through Friday.

Date: December 23, 1974

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.75-400 Filed 1-6-75;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. 74-1420]

[12 CFR Parts 523, 524, 525, 526 and 532]

FEDERAL HOME LOAN BANK SYSTEM

Proposed Amendments Relating to Gold

DECEMBER 3, 1974.

The following summary of the amendments proposed by this resolution is provided for the reader's convenience and is subject to the full explanation in the following preamble and to the specific provisions of the proposed regulations.

I. Present Regulations.

None.

II. Proposed Regulations.

A. Liquidity.

1. Gold would not be considered "cash".

2. Gold-related general obligations of States and their subdivisions would not be considered liquid assets.

B. Federal Home Loan Banks.

1. FHL Banks could not have any involvement with gold or gold-related instruments.

C. Advances.

1. Gold and gold-related instruments would be ineligible as collateral for advances.

D. Advertising Rates of Return.

1. No advertisement could state that interest is payable in:

a. gold,

b. gold-related instruments, or

c. an amount of money determined in a manner involving gold.

E. Effect and Interpretation of 31 U.S.C. § 463 (Board Ruling).

1. 31 U.S.C. § 463 provides that contracts requiring payment in gold are against public policy.

2. The Board is of the view that 31 U.S.C. § 463 remains in effect.

3. The Board interprets 31 U.S.C. § 463 (a) as prohibiting the payment of interest or principal in:

a. gold,

b. gold-related instruments, or

c. an amount of money determined in a manner involving gold.

III. Reason for Proposed Amendments.

A. Enactment of Pub. L. 93-373.

As a result of the enactment of Pub. L. 93-373 and after consulting with the other Federal financial regulatory agencies, the Federal Home Loan Bank Board considers it desirable to propose amendments to Parts 523, 524, 525 and 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Parts 523, 524, 525 and 526) and to add a new Part 532 thereto (12 CFR Part 532). Pub. L. 93-373 states in effect that no provision of any law in effect on September 31, 1973, and no rule, regulation or order in effect on December 31, 1974 "may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad."

Part 523—which, inter alia, sets forth liquidity requirements applicable to institutions which are members of the Federal Home Loan Bank System—would be amended by revising §§ 523.10 (a) and 523.10(g)(6) thereof. Section 523.10(a) defines the term "cash", in connection with the liquidity requirements imposed by Part 523, to mean "cash on hand and unpledged demand deposits in a Federal Home Loan Bank, an insured bank, or the Bank for Savings and Loan Associations, Chicago, Illinois." Section 523.10(a) would be amended by adding the following sentence thereto: "[t]he term 'cash' does not include gold in any form." Section 523.10(g) defines the term "liquid assets" to include "general obligations (including such obligations held subject to a repurchase agreement) of any State, territory, or possession of the United States, or political subdivision of any of the foregoing" if such obligations have been given a certain minimum rating by a nationally recognized rating service and have remaining periods to maturity of not more than two years. The description in § 523.10(g)(6) of the types of general obligations which will be considered liquid assets in connection with the liquidity requirements imposed by Part 523 would be amended to exclude general obligations which are "gold-related."

Part 524, captioned "Operations of the Banks", would be amended by adding a new § 524.14 thereto. Said new § 524.14 would provide that (notwithstanding any other provision of Part 524) "no Bank may engage, as trustee or otherwise, in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities." The Board believes that proposed new § 524.14 is consistent with Pub. L. 93-373. If the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) does not authorize Federal Home Loan Banks to deal with gold and if Pub. L. 93-373 does not contain any authorization for them to deal with gold, then the Board lacks statutory authority to permit Federal Home Loan Banks to deal with gold. On the other hand, if the Federal Home Loan Bank Act authorizes Federal Home Loan Banks to deal with gold, or if Pub. L. 93-373 authorizes them to deal with gold, then the Board believes that either authorization is subject to the Board's regulatory authority under sections 12 and 17 of the Federal Home Loan Bank Act.

Part 525, captioned "Advances", would be amended by adding a new § 525.7 thereto. Said new § 525.7 would provide that (notwithstanding any other provision of Part 525) no Bank may (1) make an advance to a member institution secured by gold or gold-related instruments or securities, or (2) accept gold or gold-related instruments or securities from a member institution as security for any obligation.

Part 526, captioned "Limitations on Rate of Return", would be amended by revising § 526.6 thereof, captioned "Advertising of interest or dividends on savings accounts." Said § 526.6 provides that every advertisement, announcement, or solicitation relating to interest or dividends paid on savings accounts in member institutions shall be governed by eight rules. A new ninth rule (new § 526.6(i)) would provide that no such advertisement, announcement or solicitation may state that all or any portion of the interest or dividends on any type of savings account is payable (1) in gold (including any type of gold coin), (2) in gold-related instruments or securities, or (3) in an amount of money determined in any manner involving or having reference to gold. The third of these provisions would prohibit member institutions from, for example, advertising the payment of an interest rate to be determined by the price of gold on the date such interest was due.

New Part 532 would set forth Board Rulings made under the Federal Home Loan Bank Act (12 U.S.C. § 1421 et seq.). New § 532.1 of said Part 532 would (1) set forth the Board's view with respect to the present applicability of 31 U.S.C. 463, and (2) interpret 31 U.S.C. 463 with respect to savings accounts in member institutions.

Sections 442 and 443 of Title 31 of the United States Code prohibit the acquisition or use of gold except pursuant to Treasury Department license and provide for the forfeiture of any gold acquired or used in violation of law. Pub. L. 93-373 revokes 31 U.S.C. §§ 442 and 443 effective December 31, 1974, but does not mention 31 U.S.C. § 463—the so-called Gold Clause Resolution of 1933. Section 463(a) provides, in part, that "[e]very provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation [incurred after June 5, 1933]." The Board believes that there is no inconsistency between private ownership of gold and the Gold Clause Resolution and is of the view that 31 U.S.C. § 463 remains in effect notwithstanding the enactment of 93-373. This view is shared by the Department of the Treasury.

As applied to institutions which are members of the Federal Home Loan Bank System, the Board interprets 31 U.S.C. § 463 as prohibiting the payment in gold (including any type of gold coin) or gold-related instruments or securities of all or any portion of the interest, dividends or principal with respect to any type of savings account in a member institution. The Board also interprets 31 U.S.C. § 463 as prohibiting the payment of such interest, dividends or principal in an amount of money determined in any manner involving or having reference to gold.

Accordingly, the Board hereby proposes (1) to amend Subchapter B by adding a new Part 532 thereto, and (2) to amend Part 523 by revising § 523.10 thereof, Part 524 by adding a new § 524.14 thereto, Part 525 by adding a new § 525.7 thereto and Part 526 by revising § 526.6 thereof, as set forth below.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 320 First Street, NW., Washington, D.C., 20552, by January 22, 1975, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 523.10 Definitions.

For the purposes of this section, § 523.11 and § 523.12:

(a) The term "cash" means cash on hand and unpledged demand deposits in a Federal Home Loan Bank, an insured bank, or the Bank for Savings and Loan Associations, Chicago, Illinois. The term "cash" does not include gold in any form.

* * * * *

(g) Prior to January 1, 1972, the term "liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under this paragraph, or would so qualify except for their maturities, and the book value of unpledged assets specified in subparagraphs (1) through (6) of this paragraph, without regard to the proviso contained in subparagraph (2) of this paragraph. Beginning on January 1, 1972, the term "liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under this paragraph, or would so qualify except for their maturities, and the book value of the following unpledged assets:

* * * * *

(6) general obligations (including such obligations held subject to a repurchase agreement), other than gold-related obligations, of any State, territory, or possession of the United States, or political subdivision of any of the foregoing, if:

* * * * *

§ 524.14 Gold and gold-related transactions.

Notwithstanding any other provision of this Part, no Bank may engage, as trustee or otherwise, in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities.

* * * * *

§ 525.7 Gold and gold-related securities ineligible as collateral.

Notwithstanding any other provision of this Part, no Bank may (a) make an advance to a member institution which is secured by gold or gold-related instruments or securities, or (b) accept gold or gold-related instruments or securities from a member institution as security for any obligation.

* * * * *

§ 526.6 Advertising of interest or dividends.

Every advertisement, announcement, or solicitation relating to the interest or dividends paid on savings accounts in member institutions shall be governed by the following rules:

* * * * *

(i) No such advertisement, announcement, or solicitation shall state that all or any portion of the interest or dividends on any type of savings account is payable in gold (including any type of gold coin), in gold-related instruments or securities, or in an amount of money determined in any manner involving or having reference to gold.

* * * * *

PART 532—BOARD RULINGS

§ 532.1 Payment in gold or its equivalent.

31 U.S.C. § 463(a) provides, in part, that "[e]very provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation [incurred after June 5, 1933]." The Board is of the view that 31 U.S.C. § 463 remains in effect notwithstanding that Public Law 93-373 invalidated laws prohibiting persons from purchasing, holding, selling, or otherwise dealing with gold, effective December 31, 1974. The Board interprets 31 U.S.C. § 463 as prohibiting the payment in gold (including any type of gold coin) or gold-related instruments or securities of all or any portion of the interest, dividends or principal with respect to any type of savings account in a member institution. The Board also interprets 31 U.S.C. § 463 as prohibiting the payment of such interest, dividends or principal in an amount of money determined in any manner involving or having reference to gold.

(Secs. 5A, 5B, 10, 11, 12, 17, 47 Stat. 727, 731, 733, 735, 736, as amended; 12 U.S.C. 1425a, 1430, 1431, 1432, 1437. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[FR Doc.75-414 Filed 1-6-75;8:45 am]

[No. 74-1422]

[12 CFR Parts 545 and 556]

FEDERAL SAVINGS AND LOAN SYSTEM

Proposed Amendments Relating to Gold

DECEMBER 3, 1974.

The following summary of the amendments proposed by this Resolution is provided for the reader's convenience and is subject to the full description in the preamble as well as the specific provisions in the regulations.

I. Present Regulations.

None.

II. Proposed Regulations.

A. Federal Associations.

1. Federal associations could not engage in any transaction involving gold or gold-related instruments.

B. Service Corporations in which Federals May Invest.

1. Federal associations should not invest in any service corporation which engages in transactions involving gold or gold-related instruments because gold-related transactions are not preapproved and service corporation applications to engage in such transactions will not be approved. (Statement of Policy).

III. Reason for Proposed Amendments.

1. Enactment of Pub.L. 93-373.

As a result of the enactment of Pub. L. 93-373 and after consulting with the other Federal financial regulatory agencies, the Federal Home Loan Bank Board considers it desirable to propose amendments to Parts 545 and 556 of the rules and regulations for the Federal Savings and Loan System (12 CFR Parts 545 and 556). Pub. L. 93-373 states in effect that no provision of any law in effect on September 21, 1973, and no rule, regulation or order in effect on December 31, 1974 "may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad."

Part 545 would be amended by adding a new § 545.11-1 thereto. Said new § 545.11-1 would provide that "[n]o Federal association may engage in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities." The Board believes that proposed new § 545.11-1 is consistent with Pub. L. 93-373. If the Home Owners' Loan Act of 1933 (12 U.S.C. § 1461 et seq.) does not authorize Federal associations to deal with gold and if Pub. L. 93-373 does not contain any authorization for Federal associations to deal with gold, then the Board lacks statutory authority to permit Federal associations to deal with gold. On the other hand, if the Home Owners' Loan Act authorizes Federal associations to deal with gold, or if Pub. L. 93-373 authorizes them to deal with gold, then the Board believes that either authorization is subject to the Board's general regulatory authority under section 5(a) of the Home Owners' Loan Act.

Part 556, captioned "Statements of Policy", would be amended by adding a new § 556.7 thereto, captioned "Service corporation involvement with gold or gold-related transactions." Said new § 556.7 would point out that § 545.9-1 authorizes Federal associations to invest in service corporations which engage in certain preapproved activities and any other activities which the Board approves on application. Section 556.7 would then state that Federal associations should

not invest or maintain an investment in a service corporation if such service corporation engages in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities. Federal associations should refrain from investing or maintaining an investment in such service corporations because engaging in such transactions or activities is not presently preapproved and the Board will not approve an application to engage in any such transaction or activity.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545 by adding a new § 545.11–1 thereto and to amend Part 556 by adding a new § 556.7 thereto, as set forth below.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 320 First Street NW., Washington, D.C. 20552, by January 22, 1975, as to whether this proposal should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 545.11–1 Gold and gold-related transactions.

No Federal association shall engage in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities.

§ 556.7 Service corporation involvement with gold or gold-related transactions.

Section 545.9–1 authorizes Federal associations to invest in service corporations engaging in certain preapproved activities and any other activities which the Board approves upon application. Federal associations should not invest or maintain an investment in a service corporation if such service corporation engages in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities, because engaging in such transactions or activities is not presently preapproved and the Board will not approve an application to engage in any such transaction or activity.

(Sec. 5, 48 Stat., 132, as amended; (12 U.S.C. § 1464). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

[SEAL]

By the Federal Home Loan Bank Board,

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[PR Doc.75-415 Filed 1-6-75;8:45 am]

[No. 74-1421]

[12 CFR Parts 571 and 588]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION; SAVINGS AND LOAN HOLDING COMPANIES

Proposed Amendments Relating to Gold

DECEMBER 3, 1974.

The following summary of the amendments proposed by this Resolution is provided for the reader's convenience and is subject to the full discussion in the following preamble and to the specific provisions of the regulations.

I. Present Regulations.

None.

II. Proposed Regulations.

A. State-chartered Insured Institutions and Their Service Corporations. (Statement of Policy).

1. The authority to deal with gold primarily is a matter of State law.

2. The Corporation will carefully scrutinize those institutions and service corporations which engage in transactions involving gold or gold-related instruments.

3. The Corporation will regulate or prohibit any such transaction which it determines to be unsafe or unsound.

B. Multiple Holding Companies. (Statement of Policy).

1. The Corporation will not approve applications by multiple holding companies or certain subsidiaries thereof to engage in transactions involving gold or gold-related instruments.

III. Reason for Proposed Amendments.

A. Enactment of Pub. L. 93–373.

As a result of the enactment of Pub. L. 93–373 and after consulting with the other Federal financial regulatory agencies, the Federal Home Loan Bank Board considers it desirable to propose amendments to Part 571 of the Rules and regulations for Insurance of Accounts and to propose the addition of a new Part 588 to the Regulations for Savings and Loan Holding Companies (12 CFR Part 571 and 588). Public Law 93–373 states in effect that no provision of any law in effect on September 21, 1973, and no rule, regulation or order in effect on December 31, 1974 "may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad."

Part 571, which contains statements of policy applicable to insured institutions, would be amended by adding a new § 571.10 thereto. Said new § 571.10 would state that the authority of State-chartered insured institutions and their service corporations to engage in transactions and activities involving gold (including any type of gold coin) or gold-related instruments or securities is primarily a matter of State Law. New § 571.10 would make clear, however, that the Corporation's supervisory and examining personnel will carefully scrutinize such transactions and activities by State-chartered insured institutions and their service corporations. The Corporation will regulate or prohibit any such transaction or activity if it determines that such transaction or activity is unsafe or unsound or otherwise inconsistent with the purposes of Title IV of the National Housing Act (12 U.S.C. § 1724 et seq.), as amended.

New Part 588 of the regulations for Savings and Loan Holding Companies would set forth statements of policy applicable to holding companies. New § 588.1 of said Part 588 would point out that § 584.2–1 (b) authorizes multiple holding companies and their subsidiaries (other than subsidiary insured institutions and service corporation subsidiaries of such institutions) to engage in certain prescribed services and activities, subject to certain conditions. New § 588.1 would also point out that multiple holding companies and their above-described subsidiaries may engage in other services and activities, as approved by the Corporation. New § 588.1 would then make clear that the Corporation will not approve an application to engage in any transaction or activity involving gold or gold-related instruments or securities.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 571 by adding a new § 571.10 thereto and to amend Subchapter F by adding a new Part 588 thereto, as set forth below.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 320 First Street, NW., Washington, D.C. 20552, by January 22, 1975, as to whether this proposal should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

PART 571—STATEMENTS OF POLICY

§ 571.10 Gold and gold-related transactions.

The authority of State-chartered insured institutions and their service corporations to engage in transactions and activities involving gold (including any type of gold coin) and gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities, is primarily a matter of State law. However, the Corporation's supervisory and examining personnel will carefully scrutinize such transactions and activities by insured institutions and their service corporations. The Corporation will regulate or prohibit any such transaction or activity if it determines that such transaction or activity constitutes an unsafe or unsound practice or is otherwise inconsistent with the purposes of Title IV of the National Housing Act, as amended.

PART 588—STATEMENTS OF POLICY

§ 588.1 Applications involving gold or gold-related transactions.

Section 584.2–1(b) authorizes multiple holding companies and their subsidiaries, other than subsidiary insured institu-

tions and service corporation subsidiaries of such institutions, to engage in certain prescribed services and activities, subject to certain conditions. Multiple holding companies and their above-described subsidiaries may engage in other services and activities, as approved by the Corporation pursuant to an application under § 584.2(b)(6). The Corporation will not approve an application under § 584.2(b)(6) to engage in any transaction or activity involving gold (including any type of gold coin) or gold-related instruments or securities, including buying, holding, selling or otherwise dealing with gold or gold-related instruments or securities.

(Sec. 408, 48 Stat. 1256, as amended; Sec. 408, 48 Stat. 1261, as added by 73 Stat. 691, as amended; 12 U.S.C. 1725, 1730a. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071).

By the Federal Home Loan Bank Board,

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[FR Doc.75-413 Filed 1-6-75;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 538]

[Docket No. 73-53]

RULES GOVERNING THE FILING OF INCREASES IN CONTRACT RATES ON LESS THAN STATUTORY NOTICE IN THE EVENT OF TARIFF CURRENCY DEPRECIATION

Order of Reopening

By Notice published in the FEDERAL REGISTER (38 FR 22495, August 21, 1973), the Commission issued its proposed rule regarding short-notice contract rate changes based upon tariff currency fluctuations. That Notice recited the Commission's concern with the impact of currency devaluations upon the operations of conferences and carriers operating in the foreign commerce of the United States and, in particular, those operating under dual rate systems. As a result of its concern, the Commission gave notice that the proposed rules in Docket No. 73-53 were its attempt to explore the possibilities of greater flexibility with regard to contract rate changes resulting from currency fluctuations than had prevailed previously under the terms of the Shipping Act, 1916 (section 14b), the decisions of the Commission and the terms of the Uniform Merchants' Contract.

Comments to the proposed rule were submitted by 11 parties, representing the views of 30 conferences and the Committee of European Shipowners. Twenty-seven of the conferences have dual rate contracts in effect, but do not represent *all* dual rate conferences. With but one exception, those conferences filing comments all serve Europe and Asia. It is also of note that no dual rate contract signatories or shippers submitted comments to these rules.

Hearing Counsel submitted their reply to comments. This reply suggested a sweeping modification of the originally proposed rule after consideration by Hearing Counsel of the various comments received. Thereafter, answers to Hearing Counsel's reply were received and the entire proceeding came before the Commission for its consideration.

Hearing Counsel's reply constituted a redraft of the rules as originally proposed and embodied concepts raised in the original comments, as well as other modifications proposed by Hearing Counsel. Upon consideration of the entire record of the proceeding, the Commission notes several areas in the rules as modified by Hearing Counsel which raise a need for clarification or amplification. As a result, the Commission has determined that clarification of certain points should be sought by addressing questions to Hearing Counsel regarding their reply. Following Hearing Counsel's replies to the questions posed, interested parties will be given opportunity to comment. The Commission has determined, therefore, to reopen the proceedings in the docket for the limited purpose of addressing questions to Hearing Counsel, obtaining answers to those queries and receiving comments on issues raised thereby from all interested parties.

Therefore, it is hereby ordered, That this proceeding be reopened for the limited purposes discussed herein.

It is further ordered, That Hearing Counsel shall submit their response to the questions attached hereto (Appendix) within 30 days of service of this Order with copy to each commenting party.

It is further ordered, That all parties wishing to comment upon any issues raised hereby shall submit such comments not later than March 4, 1975.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX

The questions contained in this Appendix refer to the rule proposed by Hearing Counsel in their reply to comments and references to sections and paragraphs are directed to that reply.

1. *Section 538.4(1), Rate Increases*, states that any surcharge imposition sought by a carrier or conference shall be based on a depreciation in the exchange rate of its tariff currency relative to "other major operating currencies." A "major operating currency" is defined therein as ". . . any currency in which the carrier or carriers incur two percent or more of total expenses allocated to the trade", including expenses allocable to vessel operating, overhead and capital expenses. In order to effect a surcharge imposition the party seeking to do so must determine the weighted nominal currency fluctuation with respect to these major operating currencies. When the weighted currency fluctuation shows a devaluation in the tariff currency of two percent or more, a surcharge is justified. The rule as proposed in Hearing Counsel's reply does not make explicit the practical application of this computation.

If one carrier (of a number of member lines in a conference) has only one or two major operating currencies and each has appreciated with respect to the U.S. dollar (the tariff currency), that carrier, by the computation in the rules, may be shown to justify a devaluation surcharge. May the conference (assuming no changes in the remaining major currencies of the conference members), therefore, amend its tariff under this rule in order to take into account this devaluation?

Additionally, in the case of two-way conferences, how would currency fluctuations be accounted for? It would seem that the deficiencies of situations such as that outlined above would be exacerbated. How would these conferences make use of the rule as proposed?

Finally, in a situation where there are two major currencies, one of which, standing alone, appreciates in an amount sufficient to trigger the provision, but the other currency decreases in value relative to the dollar, is it intended by the proviso in the third paragraph of § 538.4(1) that in determining the amount of the surcharge and also whether the article has been triggered, one can look only to the major currency which has appreciated relative to the dollar, or is it intended that one must sum out the appreciation and the depreciation?

2. *Section 538.4(1)*, paragraph one, provides that a carrier or conference of carriers *may* provide for the imposition of a surcharge on contract rates on less than statutory notice in the event of a depreciaiton in the exchange rate of its tariff currency by including in its form dual rate contract certain enabling language provided in the proposed modification of the Uniform Merchants' Contract. If a carrier or conference of carriers elects to include this language, paragraph 2 of § 538.4(1) makes it mandatory that "concurrent with the filing of . . . [that language] . . . the carrier or conference shall file a statement . . ." showing certain expense information in the trade or trades covered by the dual rate contract. This information "shall be updated and refiled with the Commission within 30 days after the beginning of each calendar quarter."

(a) Do these provisions mean that those proposed rules will provide the only method by which currency surcharges may be imposed?

(b) Is the data regarding expenses in given currencies necessary or even desirable prior to the actual effectuation of a tariff currency devaluation surcharge?

(c) Would it not be more effective to require the immediate filing of the appropriate language in the Uniform Merchants' Contract and the filing of this expense data at some time prior to the effectuation of a surcharge but not necessarily immediately and quarterly whether or not a surcharge is even imposed?

(d) Will the Federal Maritime Commission staff be able to verify the accuracy of such data?

(e) Can carriers or conferences provide such data with any degree of accuracy?

(f) If this data cannot be assured to be accurate, what precautions have been provided or can be provided to prevent general instability of rates dependent upon changing cost factors?

3. *Section 538.4(1)*, paragraph four, provides that "the authority for determining fluctuations in the exchange rates shall be the New York or other major currency market daily noon rates." The rules as proposed raise the following questions.

(a) Which of the world's currency exchanges qualify as a "major currency market"?

(b) May a conference select any of a number of currency markets for one particular date and any other market for the next day in order to justify a tariff surcharge?

(c) If a conference covers a number of trades and uses a number of major currencies, may it select one market ratio for one currency, and other market ratios for other currencies?

(d) When currency value fluctuations otherwise indicate that a reduction of a surcharge or removal of a surcharge be accomplished, may a particular currency market be selected by a conference/carrier which is not representative but which continues to justify the surcharge?

4. *Section 538.4(1)*, paragraph three, requires, in the event that notice of a tariff surcharge is served, that "such surcharge shall not exceed the amount necessary to restore the prior currency relationship measured from the time this provision was adopted. . . ." Further, paragraph five requires that simultaneous with notice filing the carrier or conference will file a statement with the Commission which will "cite the noon market rate for each major operating currency compared to the same rate in effect on the day this provision was adopted. . . ."

(a) Do these provisions, tied as they are to the "day this provision was adopted", allow for the effect of interim surcharges?

(b) Should not an attempt to impose a surcharge subsequent to the first such surcharge relate back to the most recent surcharge?

5. *Section 538.4(2)*, dealing with rate reductions, requires that

> * * * a carrier or conference providing in its dual rate contract for short notice currency adjustment surcharges due to currency depreciation is likewise obligated by section 14(d)(2) of the uniform contract * * * [as proposed] * * * to provide shippers with corresponding reductions in any such surcharge imposed in the event the value of its tariff currency appreciates * * *.

(a) Is this provision aimed at a rate reduction only if there had been made a previous increase due to a surcharge?

(b) If so, does implementation of this provision require that rates be reduced below the level which prevailed prior to the imposition of any surcharge?

6. The modification of Article 14 provides in proposed Article 14(d)(2) that:

> Any currency adjustment surcharge imposed hereunder will be correspondingly reduced using the same criteria applicable to increases * * * except that reductions may become effective on the date filed.

(a) May reductions become effective 90 days after the date filed, or 120, or longer?

(b) Should not this rule provide a specific time at which these reductions will become effective such as 15 days after filing or immediately?

[FR Doc.75-383 Filed 1-6-75;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 75-15]

FOREIGN CURRENCIES

Certification of Rates

DECEMBER 24, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 74-264 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
December 16, 1974	$0.0572
December 17, 1974	.0577
December 18, 1974	.0579
December 19, 1974	.0574
December 20, 1974	.0576
Belgium franc:	
December 16, 1974	0.027125
December 17, 1974	.027440
December 18, 1974	.027300
December 19, 1974	.027320
December 20, 1974	.027300
Denmark krone:	
December 16, 1974	0.1725
December 17, 1974	.1733
December 18, 1974	.1747
December 19, 1974	.1734
December 20, 1974	.1732
Finland markka:	
December 17, 1974	0.2757
December 18, 1974	.2776
December 19, 1974	.2776
December 20, 1974	.2767
France franc:	
December 17, 1974	0.2230
December 18, 1974	.2228
December 19, 1974	[1]
December 20, 1974	.2227
Germany deutsche mark:	
December 16, 1974	0.4095
December 17, 1974	.4130
December 18, 1974	.4114
December 19, 1974	.4085
December 20, 1974	.4108
Netherlands guilder:	
December 16, 1974	0.3944
December 17, 1974	.3975
December 18, 1974	.3953
December 19, 1974	.3939
December 20, 1974	.3938
Norway krone:	
December 17, 1974	0.1901
December 18, 1974	.1902
Sweden krona:	
December 16, 1974	0.2378
December 17, 1974	.2410
December 18, 1974	.2404
December 19, 1974	.2397
December 20, 1974	.2406
Switzerland franc:	
December 16, 1974	0.3851
December 17, 1974	.3930
December 18, 1974	.3900
December 19, 1974	.3837
December 20, 1974	.3900

[1] Use Quarterly Rate.

[SEAL] JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

[FR Doc.75-375 Filed 1-6-75;8:45 am]

Internal Revenue Service

[Order No. 139 (Rev. 1)]

DISTRICT DIRECTORS

Delegation of Authority

JANUARY 2, 1975.

1. Pursuant to the provisions of 26 CFR 53.4941(e)-1(d), 26 CFR 53.4941 (f)-1, 26 CFR 53.4942(a)-1(c), 26 CFR 53.4944-5, and 26 CFR 53.4945-1(e), the authority vested in the Commissioner of Internal Revenue to:

(a) Extend the correction period for acts of self-dealing, failures to distribute income, jeopardy investments, and taxable expenditures; and

(b) Extend the allowable distribution period for failures to distribute income is delegated to the District Director of Internal Revenue for each of the following Districts:

Key district(s)	*IRS districts covered*
CENTRAL REGION	
Cincinnati	Cincinnati, Louisville, Indianapolis.
Cleveland	Cleveland, Parkersburg.
Detroit	Detroit.
MID-ATLANTIC REGION	
Baltimore	Baltimore (which includes the District of Columbia and Office of International Operations), Pittsburgh, Richmond.
Philadelphia	Philadelphia, Wilmington.
Newark	Newark.
MIDWEST REGION	
Chicago	Chicago.
St. Paul	St. Paul, Fargo, Aberdeen, Milwaukee.
St. Louis	St. Louis, Springfield, Des Moines, Omaha.
NORTH ATLANTIC REGION	
Boston	Boston, Augusta, Burlington, Providence, Hartford, Portsmouth.
Manhattan	Manhattan.
Brooklyn	Brooklyn, Albany, Buffalo.
SOUTHEAST REGION	
Atlanta	Atlanta, Greensboro, Columbia, Nashville.
Jacksonville	Jacksonville, Jackson, Birmingham.
SOUTHWEST REGION	
Austin	Austin, New Orleans, Albuquerque, Denver, Cheyenne.
Dallas	Dallas, Oklahoma City, Little Rock, Wichita.
WESTERN REGION	
Los Angeles	Los Angeles, Phoenix, Honolulu.
San Francisco	San Francisco, Salt Lake City, Reno.
Seattle	Seattle, Portland, Anchorage, Boise, Helena.

2. The authority delegated herein may be redelegated, but not lower than to Group Managers.

3. This order supersedes Delegation Order No. 139, issued July 13, 1973.

Effective: January 2, 1975.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.75-435 Filed 1-6-75;8:45 am]

[Order No. 113 (Rev. 2)]

DISTRICT DIRECTORS

Delegation of Authority

JANUARY 2, 1975.

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-37, dated March 17, 1955, there is hereby delegated to the District Director of Internal Revenue for each of the following Districts:

Key district(s)	*IRS districts covered*
CENTRAL REGION	
Cincinnati	Cincinnati, Louisville, Indianapolis.
Cleveland	Cleveland, Parkersburg.
Detroit	Detroit.
MID-ATLANTIC REGION	
Baltimore	Baltimore (which includes the District of Columbia and Office of International Operations) Pittsburgh, Richmond.
Philadelphia	Philadelphia, Wilmington.
Newark	Newark.
MIDWEST REGION	
Chicago	Chicago.
St. Paul	St. Paul, Fargo, Aberdeen, Milwaukee.
St. Louis	St. Louis, Springfield, Des Moines, Omaha.

NORTH-ATLANTIC REGION	
Boston	Boston, Augusta, Burlington, Providence, Hartford, Portsmouth.
Manhattan	Manhattan.
Brooklyn	Brooklyn, Albany, Buffalo.
SOUTHEAST REGION	
Atlanta	Atlanta, Greensboro, Columbia, Nashville.
Jacksonville	Jacksonville, Jackson, Birmingham.
SOUTHWEST REGION	
Austin	Austin, New Orleans, Albuquerque, Denver, Cheyenne.
Dallas	Dallas, Oklahoma City, Little Rock, Wichita.
WESTERN REGION	
Los Angeles	Los Angeles, Phoenix, Honolulu.
San Francisco	San Francisco, Salt Lake City, Reno.
Seattle	Seattle, Portland, Anchorage, Boise, Helena.

the authority to:

1. Issue determination letters involving the provisions of the Internal Revenue Code of 1954 with respect to:

Exemption from Federal income tax under sections 501 and 521; the effect of section 502 on such exemption; the status of organizations under sections 507, 508, and 509; the imposition of unrelated business income tax under section 511 through 515; and the imposition of excise taxes under section 4940 through 4948; provided the requests present questions the answers to which are clear from an application of the provisions of the statute, Treasury decisions or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin.

2. Issue modifications or revocations of determination letters described above (see Commissioner Delegation Order No. 88 as revised for authority to issue notices of revocation of exemption relating to prohibited transactions as defined in section 503(c)).

3. Redelegate this authority as follows:

(a) With respect to issuance of determination letters, not below Internal Revenue Agent and Tax Law Specialist, GS–12, provided such individual is a person other than the initiator.

(b) With respect to revocation or modification of determination letters, not below Chief, Employee Plans and Exempt Organizations Division.

4. This Order supersedes Delegation Order No. 113 (Rev. 1), issued August 21, 1970.

Effective. January 2, 1975.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.75-434 Filed 1-6-75;8:45 am]

[Order No. 112 (Rev. 1)]

DISTRICT DIRECTORS

Delegation of Authority

JANUARY 2, 1975.

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150–37, dated March 17, 1955, there is hereby delegated to the District Director of Internal Revenue for each of the following Districts:

Key district(s)	*IRS districts covered*
CENTRAL REGION	
Cincinnati	Cincinnati, Louisville, Indianapolis.
Cleveland	Cleveland, Parkersburg.
Detroit	Detroit.
MID-ATLANTIC REGION	
Baltimore	Baltimore (which includes the District of Columbia and Office of International Operations), Pittsburgh, Richmond.
Philadelphia	Philadelphia, Wilmington.
Newark	Newark.
MIDWEST REGION	
Chicago	Chicago.
St. Paul	St. Paul, Fargo, Aberdeen, Milwaukee.
St. Louis	St. Louis, Springfield, Des Moines, Omaha.
NORTH-ATLANTIC REGION	
Boston	Boston, Augusta, Burlington, Providence, Hartford, Portsmouth.
Manhattan	Manhattan.
Brooklyn	Brooklyn, Albany, Buffalo.
SOUTHEAST REGION	
Atlanta	Atlanta, Greensboro, Columbia, Nashville.
Jacksonville	Jacksonville, Jackson, Birmingham.
SOUTHWEST REGION	
Austin	Austin, New Orleans, Albuquerque, Denver, Cheyenne.
Dallas	Dallas, Oklahoma City, Little Rock, Wichita.
WESTERN REGION	
Los Angeles	Los Angeles, Phoenix, Honolulu.
San Francisco	San Francisco, Salt Lake City, Reno.
Seattle	Seattle, Portland, Anchorage, Boise, Helena.

the authority to:

(1) Issue determination letters involving the provisions of sections 401, 405, and 501(a) of the Internal Revenue Code of 1954 with respect to:

(a) Initial qualification of stock bonus, pension, profit-sharing, annuity, and bond purchase plans;

(b) Initial exemption from Federal income tax under section 501(a) of trusts forming a part of such plans, provided that the determination does not involve application of section 502 (feeder organizations) or section 511 (unrelated business income), or the question of whether a proposed transaction will be a prohibited transaction under section 503;

(c) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4));

(d) Amendments, curtailments, or terminations of such plans and trusts; and

(e) Effect on qualification of such plans and exempt status of such trusts of investments of trust funds in the stocks or securities of the employer.

(2) Issue modifications or revocations of determination letters described above.

(3) Redelegate this authority as follows:

(a) With respect to issuance and modification of determination letters, not below Internal Revenue Agent and Tax Law Specialist, GS–12, provided such individual is a person other than the initiator.

(b) With respect to revocation of determination letters, not below Chief, Employee Plans and Exempt Organizations Division.

Delegation Order No. 112, issued January 30, 1970, is hereby superseded.

Effective. January 2, 1975.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.75-436 Filed 1-6-75;8:45 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

GUARDS AND INVESTIGATIONS COMMITTEE OF THE NATIONAL PRIVATE SECURITY ADVISORY COUNCIL

Notice of Meeting

Notice is hereby given that the Guards and Investigations Committee of the National Private Security Advisory Council to the Law Enforcement Assistance Administration, will meet January 14, 1975, at the Statler Hilton Hotel in New York City.

The topic of discussion will be recommendations for regulating security guard services.

The meeting will be open to the public.

For further information, please contact John Marshall, Law Enforcement Assistance Administration, U.S. Department of Justice, 1144 Indiana Building, 633 Indiana Avenue, NW, Washington, D.C. 20530. (202) 386–3317.

GERALD YAMADA,
Attorney-Advisor,
Office of General Counsel.

[FR Doc.75-371 Filed 1-6-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93–205).

Applicant:
Gordon W. Watson
Alaska Area Director
U.S. Fish and Wildlife Service
813 "D" Street
Anchorage, Alaska 99501

APPLICATION FOR A PERMIT TO HANDLE ALEUTIAN CANADA GEESE, AN ENDANGERED SPECIES

The following information is submitted as required by 50 CFR 13.12:

1. Area Director, Alaska Area, U.S. Fish and Wildlife Service, 813 "D" Street, Anchorage, Alaska 99501. Phone: (907) 265–4864.

2. N.A.

3. Incumbent—Gordon Watson. Authorities under permit to be delegated to specific members of the field staff for restricted periods.

4. Alaska—mainly Aleutian Islands NWR.

5. This permit is requested to allow continuation of a current program to restore *Branta canadensis leucopareia*, Aleutian Canada Geese, to a non-endangered status in the Aleutian Islands. The following information is in accordance with 50 CFR 17.23:

a. Goose, Aleutian Canada; *Branta canadensis leucopareia*. Activities to be conducted under this permit involve a wild population of 500–700 birds and the transplant allocations from a captive flock at the Patuxent Wildlife Research Center. Any one of these birds may be handled in this program.

b. This permit application concerns wildlife indigenous to the United States.

c. The application is for a permit to handle birds as may be necessary to conduct an approved program for the restoration of an endangered species to a nonendangered status over former wild range on the Aleutian Islands National Wildlife Refuge. The attached recovery plan contains the full justification and procedures for this project.

d. Aleutian Islands National Wildlife Refuge as described in the attached leaflet.

e. This application concerns both wild birds and those born in captivity.

f. The majority of birds to be used in the restocking program derive from the captive flock at the Patuxent Wildlife Research Center.

g. See attachment under (c).

6. N.A.

7. I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

I further state that I am acting as an agent of the United States Government in conducting a program for the restoration of an endangered species, the Aleutian Canada Goose, in accordance with the directives of the Endangered Species Conservation Act of 1969.

8. February 1, 1975.

9. November 1, 1974.

10. Gordon W. Watson, Alaska Area Director.

11. For more information refer to the Recovery Plan-Aleutian Canada Goose and the Project Plan for Restoration of the Aleutian Canada Goose 1974, as attached.

RECOVERY PLAN

ALEUTIAN CANADA GOOSE

INTRODUCTION

The Aleutian Canada goose (*Branta canadensis leucopareia*) apparently once bred from the eastern Aleutian Islands to the Kuril Islands, and was abundant in the western Aleutians at least. Today the only known population breeds on tiny Buldir Island, western Aleutians, and is estimated at about 300 birds. The Aleutian Canada goose appears on the Department of Interior's Endangered Species List.

PRESENT RANGE AND ABUNDANCE

The only known breeding population of Aleutian Canada geese includes about 300 birds on Buldir Island (Kenyon 1963, Smart pers. comm.). The migration route and wintering area of this population is unknown but recent sightings of Canada geese with neck rings in Japan (Kuroda, Yokata in litt.) may refer to Aleutian Canada geese. Recent sight records of Canada geese with neck rings also exist from the Alaska Peninsula (Jones in litt.) and the Pacific northwestern United States (Marshall pers. comm.), but the difficulty of satisfactorily separating *leucopareia* from *minima* and *taverneri* (see section on identification) makes most sight records in areas of sympatry questionable.

PLANS FOR RESTORING THE ALEUTIAN CANADA GOOSE

This recovery plan includes a detailed listing of anticipated tasks necessary to accomplish the prime objective, to restore the Aleutian Canada goose to a non-endangered status within its historic range. The plan has been developed to organize, implement, and guide a cooperative effort to accomplish the prime objective. For organizational purposes the prime objective has been subdivided into four major objectives. These are to:

1. Maintain the wild population of Aleutian Canada geese on the nesting areas at desirable levels.

All that is known about the remnant wild population of Aleutian Canada geese is its breeding location and its estimated size. A research program is planned to obtain the necessary information for proper maintenance. Currently the type and extent of intrusion by people on the nesting area is unknown. Part of this objective deals with getting this information and implementing procedures necessary to prevent detrimental intrusion. Predators may be detrimentally affecting wild geese on the nesting area. The extent of predation will be determined and effective control methods will be developed and employed as necessary.

2. Return the optimum number of geese to the breeding area by providing the essential requirements for the birds during migration and on the wintering area.

The migration route and wintering area of the Aleutian Canada goose is unknown. This information must be obtained and specific habitat requirements identified, so that the birds may be protected and their habitat requirements provided. International cooperation is required in this effort since these birds possibly use areas in Russia, Japan, Canada, and the United States.

3. Assure gene pool survival.

The present captive stock of Aleutian Canada geese must be maintained at a level which assures safety for the race. Captive birds will be used to re-establish populations in historic habitat (see objective 4), but the primary purpose of this objective is to provide a captive flock of Aleutian Canada geese as insurance against extinction in the event that the wild population is decimated. The feasibility of housing captive birds in one or more holding centers to provide safety in separation will be determined, and holding centers will be constructed and operated if deemed necessary.

4. Re-establish Aleutian Canada geese in four locations within their historic nesting area other than Buldir Island.

When four widely separated breeding populations of Aleutian Canada geese have become established within the historic range of the race, this bird will no longer be considered endangered. Initially the historic breeding range must be delineated as accurately as possible, and habitat requirements must be determined. Then four release sites will be selected and ranked according to priority. If required, release sites must be prepared before geese are released. Arctic foxes should be completely removed from release sites. When sites are ready, geese will be conditioned and released using techniques developed through research. Results of releases will be determined by researchers, and the program will be modified as required. The reintroduction program will be maintained by enforcing protective laws and by gaining public support through publicity.

The Recovery Plan attached to this application has been summarized because of space limitations. The complete Recovery Plan and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW, Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before February 6, 1975 will be considered.

Dated: December 30, 1974.

RICHARD M. PARSONS,
Acting Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service.

[FR Doc.75-386 Filed 1-6-75;8:45 am]

Geological Survey

BERING SEA AREA

Intention To Develop OCS Orders

Pursuant to 39 FR 654, February 20, 1974, the Department of the Interior solicited comments concerning areas of the Outer Continental Shelf with the greatest potential for production of oil and gas. Responses to this solicitation indicated that the Bering Sea OCS is of interest as a target for the future development of frontier oil and gas areas.

Should a decision be made to conduct a lease sale in the Bering Sea, it will be necessary to develop operating orders for this area prior to the commencement of drilling or producing operations. These orders will apply to the entire Bering Sea OCS Area, including the Bristol Bay and Norton Sound. OCS Orders are currently in effect in the Pacific and Gulf of Mexico Areas and are being developed for the Atlantic and Gulf of Alaska OCS Areas. It is anticipated that OCS Orders similar to those developed for the Gulf of Alaska may also be appropriate for Bering Sea operations.

Consistent with current procedures of the Geological Survey, comments and suggestions are solicited as to the content of the following proposed, or any additional, OCS Orders for the Bering Sea Area:

OCS Order No. 1: Marking of Wells, Platforms and Fixed Structures
OCS Order No. 2: Drilling Procedures
OCS Order No. 3: Plugging and Abandonment of Wells
OCS Order No. 4: Suspensions and Determination of Well Producibility
OCS Order No. 5: Installation of Subsurface Safety Devices
OCS Order No. 6: Procedures for Completion of Oil and Gas Wells

OCS Order No. 7: Pollution and Waste Disposal
OCS Order No. 8: Platforms and Structures
OCS Order No. 9: Approval Procedures for Oil and Gas Pipelines
OCS Order No. 11: Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights
OCS Order No. 12: Public Inspection of Records
OCS Order No. 13: Production Measurement and Commingling

Interested persons may submit written comments and suggestions to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600, 12201 Sunrise Valley Drive, Reston, Virginia 22092, on or before February 14, 1975.

V. E. McKELVEY,
Director.

[FR Doc.75-310 Filed 1-6-75;8:45 am]

Office of the Secretary

NATIONAL PETROLEUM COUNCIL

Renewal

This notice is published in accordance with the provisions of section 7(a) of the Office of Management and Budget Circular A-63, which was published in the FEDERAL REGISTER on April 5, 1974 (39 FR 12389). Following consultation with the Office of Management and Budget and pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Acting Secretary of the Interior has determined that renewal of the National Petroleum Council is necessary and in the public interest.

Further information regarding this renewal may be obtained from Ben Tafoya, Office of the Assistant Secretary—Energy and Minerals, U.S. Department of the Interior, Washington, D.C. 20240, telephone: 202-343-7976.

Dated: January 2, 1975.

JACK W. CARLSON,
Assistant Secretary of the Interior.

[FR Doc.75-372 Filed 1-6-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

NATIONAL SCHOOL LUNCH PROGRAM

National Average Payments for the Period January 1-June 30, 1975

Pursuant to § 210.4 and § 210.11 of the regulations governing the National School Lunch Program (7 CFR 210), notice is hereby given of adjustments in the national average factors for payment for lunches and the maximum rates of reimbursement. The national average factors for payment for lunches served during the six-month period January 1-June 30, 1975, to children participating in the National School Lunch Program are as follows: (a) 11.75 cents from general cash-for-food assistance funds for each lunch; (b) an additional 42.5 cents from special cash assistance funds for each reduced price lunch; and (c) an additional 52.5 cents from special cash assistance funds for each free lunch.

The total amount of general cash-for-food assistance payments and special cash assistance payments to be made to each State agency from the sums appropriated therefor, shall be based upon such national average factors.

The above factors represent a 5.79 percent increase in the factors prescribed for the period July-December 1974. This represents the percent of increase during the six-month period June-November 1974 (from 157.1 in May 1974 to 166.2 in November 1974) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

For the six-month period January 1-June 30, 1975, (a) the maximum rate of reimbursement from general cash-for-food assistance funds shall be 17.75 cents per lunch served; (b) the maximum per lunch reimbursement (from a combination of general cash-for-food assistance and special cash assistance funds) shall be 79.25 cents for a free lunch and 69.25 cents for a reduced price lunch.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210) and the regulations for determining eligibility for free and reduced price meals and free milk in schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Program No. 10.555, National Archives Reference Service)

Effective date. This notice shall become effective January 1, 1975.

Dated: December 31, 1974.

J. PHIL CAMPBELL,
Acting Secretary.

[FR Doc.75-356 Filed 1-6-75;8:45 am]

SCHOOL BREAKFAST PROGRAM

National Average Payments for the Period January 1-June 30, 1975

Pursuant to § 220.4 and § 220.9 of the regulations governing the School Breakfast Program (7 CFR 220), notice is hereby given that the national average breakfast factors for breakfasts served during the six-month period January-June 30, 1975, to children participating in the School Breakfast Program shall be: (a) 9.25 cents for all breakfasts; (b) an additional 17.50 cents for each reduced price breakfast; and (c) an additional 23.25 cents for each free breakfast. The total amount of breakfast assistance payments to be made to each State agency from the sums appropriated therefor, shall be based upon such national average factors: *Provided, however,* That additional payments shall be made in such amounts as are needed to finance reimbursement rates assigned in accordance with the provisions of § 220.9 (b-1) of the regulations.

The above factors represent a 5.79 percent increase in the factors prescribed for the period July-December 1974. This represents the percent of increase during the six-month period June-November 1974 (from 157.1 in May 1974 to 166.2 in November 1974) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

For nonespecially needy schools, the maximum rates of reimbursement for paid breakfasts, for reduced price breakfasts, and for free breakfasts shall be equal to the respective factors set out above.

For especially needy schools, the maximum rate of reimbursement for paid breakfasts shall be equal to the national average factor for all breakfasts; the maximum rate of reimbursement for reduced price and free breakfasts shall be 40 cents and 45 cents, respectively.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Program No. 10.553, National Archives Reference Service)

Effective date: This notice shall be effective January 1, 1975.

Dated: December 31, 1975.

J. PHIL CAMPBELL,
Acting Secretary.

[FR Doc.75-352 Filed 1-6-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

INDIANA UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 75-00051-38-74700. Applicant: Indiana University, Purchasing Department, 1101 East 17th Street, Bloomington, Ind. 47401. Article: OVEIIId Digitally Controlled Serial Speech Synthesizer. Manufacturer: AB Fonema, Sweden. Intended use of article: The article is intended to be used for basic research into the perception of speech sounds primarily in real time computer controlled perceptual experiments dealing with speech synthesis, perception and analysis, dichotic listening, selective attention, information processing and short-term memory. The article will be used by the principal investigator in collaboration with faculty and graduate students in Psychology, Linguistics and Speech Science for original independent research and teaching of course in these areas.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The applicant's use in audio perception experiments for the development of theories and models of the speech perception process as used in communication through spoken language requires simulation of the resonance chambers of the vocal tract. The foreign article provides this capability. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated November 5, 1974, that the capability of the article described above is pertinent to the purposes for which the article is intended to be used. HEW also advised that the most closely comparable domestic instrument, the Model 4516, manufactured by the Rockland Corporation, does not provide equivalent flexibility and the degree of simulation provided by analog resonators under digital control processed by the article.

For this reason, we find the Model 4516 is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.75-395 Filed 1-6-75;8:45 am]

MT. SINAI MEDICAL CENTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 75-00080-99-46040. Applicant: Mount Sinai Medical Center of Greater Miami, 4300 Alton Road, Miami Beach, Fla. 33140. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for instruction in which residents receive training in Anatomic and Clinical Pathology and routine diagnostic methods using the microscope to identify and demonstrate basic concepts of structure and ultrastructure in pathologic processes.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (August 31, 1973).

Reasons: This application is a resubmission of Docket Number 74-00173-33-46040 which was denied without prejudice to resubmission on February 27, 1974 for informational deficiencies. The applicant requires an electron microscope which is suitable for the instruction of beginners in basic electron microscopy and in teaching pathology. The foreign article is a relatively simple, medium resolution electron microscope (providing 7 Angstroms (A) point-to-point resolution and low distortion micrographs at 140X in the optical magnification range) which was designed for confident use [through ease of operation] by beginning students with a minimum of detailed programming.

Domestic instruments available at the time the initial application was received were the Model EMU-4C, supplied by the Adam David Company and the Model ETEM-101 manufactured by Elektros Incorporated. The Model EMU-4C is a relatively complex instrument designed for the use of an experienced operator which provides low distortion magnification at 500X and higher. The Model ETEM-101 is a relatively simple low resolution instrument (10Å point to point). The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated November 29, 1974 that for the applicant's intended uses (1) low distortion micrographs at 140X in the optical range (2) guaranteed resolution 7 Angstroms and (3) simplicity and ease of operation are pertinent. HEW also advises that the Model EMU-4C is too complex for the applicant's educational purposes and does not provide a 140X magnification. In addition, HEW advises that the Model ETEM-101 does not have an equal resolution or the 140X magnification.

We, therefore, find that neither the Model EMU-4C nor the Model ETEM-101 was of equivalent scientific value to the foreign article for such purposes as the article is intended to be used at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.75-396 Filed 1-6-75;8:45 am]

UNIVERSITY OF CALIFORNIA—LIVERMORE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 75-00089-75-47500. Applicant: University of California, Lawrence Livermore Laboratory, P.O. Box 808, Livermore, Ca. 94550. Article: Monochromator Type THRP with Photomultiplier attachment. Manufacturer: Jobin-Yvon, France. Intended use of article: The article is intended to be used in a laser isotope separation program to resolve chemiluminescence generated in chemical reactions, as well as to make basic spectroscopic measurements on uranium molecular vapors.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a resolution capability in excess of 1:270,000 in first order. Closely comparable domestic instruments can be represented by the high resolution monochromator manufactured by Spex Industries, Incorporated. This domestic instrument has a resolution in first order less than 1:100,000. We are advised by the National Bureau of Standards (NBS) in its memorandum dated December 6, 1974, that resolution greater than 1:270,000 in first order is pertinent to the applicant's intended purposes. NBS further advises that (1) it knows of no domestic instrument with resolution in first order greater than 1:100,000 and (2) it knows of no domestically manufactured instrument of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.75-393 Filed 1-6-75;8:45 am]

UNIVERSITY OF CINCINNATI

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub.

L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 75–00086–33–44795. Applicant: University of Cincinnati. Department of Environmental Health, Kettering Laboratory, 3223 Eden Avenue, Cincinnati, Ohio 45219. Article: 2 Electronic Motility Meters IR Type, 40 Sensors 110V/60Hz and accessories. Manufacturer: Motron Products, Sweden. Intended use of article: The article is intended to be used for the study of spontaneous motor activity (hyperactivity hyperkinesis) and behavior. An experimental model of the human disease, "lead encephalopathy" will be employed in investigations to:

(a) To see whether lead has an adverse biological effect at exposure levels in where the experimental subject is asymptomatic of the usually easily recognized signs of lead poisoning,

(b) further, to learn whether low levels of environmental pollutants (lead) influences normal development of the young as measured by behavior and learning,

(c) and to demonstrate the biochemical lesion in the brain chemistry which could account for altered behavior following lead exposure.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides accuracy (0.5 centimeter per second typical), good spatial resolution (40 millimeters) and insensitivity to fecal or urine material. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated November 29, 1974 that the capabilities described above are pertinent to the applicant's use in monitoring the activity of rodents in a study of lead poisoning effects on the developing young. HEW also advises that it knows of no domestic instrument which provides the pertinent capabilities of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.75-394 Filed 1-6-75;8:45 am]

UNIVERSITY OF ROCHESTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, DC. 20230.

Docket number: 75–00059–98–77045. Applicant: University of Rochester, Laser Energetics Laboratory, Wilson Blvd., Rochester, New York 14627. Article: Defocusing Crystal X-Ray Spectrometer. Manufacturer: The Culham Laboratory, United Kingdom. Intended use of article: The article is intended to be used for the study of the feasibility of exciting x-rays laser action from a plasma produced by a light laser.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a calibrated x-ray spectrometer with a suitable wavelength range capability (shorter than 15 Angstroms). The National Bureau of Standards (NBS) advises in its memorandum dated December 2, 1974 that the specification described above is pertinent to the applicant's intent to measure x-ray line spectra from an experimental plasma. NBS also advises that it knows of no domestic x-ray spectrometer of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.75-397 Filed 1-6-75;8:45 am]

NEW YORK UNIVERSITY MEDICAL CENTER, ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

Corrections

In FR Doc. 74–29971 appearing at page 44467 in the issue for Tuesday, December 24, 1974, the second line of Docket Number: 75–00228–99–6040 has been omitted, it should read as follows: "Applicant: Ohio University, Athens".

TELECOMMUNICATIONS EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Correction

In FR Doc. 74–30275 appearing at page 44791 in the issue for Friday, December 27, 1974, a Notice of Determination for the Telecommunications Equipment Technical Advisory Committee was filed as a part of the original document. It should have been printed in full as set forth below:

NOTICE OF DETERMINATION

In response to written requests of representatives of a substantial segment of the telecommunications industry, the Telecommunications Equipment Technical Advisory Committee was established by the Secretary of Commerce pursuant to section 5(c)(1) of the Export Administration Act of 1969, 50 U.S.C. App. section 2404(c)(1) (Supp. III, 1974), as amended, Public Law No. 93–500, section 5(b) (October 29, 1974), to advise the Department of Commerce with respect to questions involving technical matters, worldwide availability, and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to telecommunications equipment, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The Committee, which currently has six members representing industry and eight members representing government agencies, will terminate no later than April 5, 1975, unless extended by the Secretary of Commerce. All members of the Committee have the appropriate security clearance.

The Committee's activities are conducted in accordance with the provisions of section 5(c)(1) of the Export Administration Act of 1969, as amended, the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. II, 1972), and Office of Management and Budget Circular A–63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act provides, among other things, that the meetings of advisory committees are to be open to the public, and to public participation, unless the head of the agency (or his delegate) to which the committee reports determines in writing that all, or some portion, of the agenda of the meeting of the committee is concerned with matters listed in section 552(b) of title 5 of the United States Code.

Section 552(b)(1) of title 5, United States Code, provides that information may be withheld from the public if it concerns matters specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy.

Notices of Determination authorizing the closing of meetings, or portions thereof, of the Telecommunications Equipment Technical Advisory Committee and its formal subcommittees, dealing with security classified matters, were approved on June 12, 1973 for the meeting of June 27, 1973; on September 10, 1973 for the meeting of September 26, 1973; on November 28, 1973, covering a series of meetings for the period November 28, 1973 to April 30, 1974; and on May 16, 1974 for a series of meetings from May 1, 1974 through January 3, 1975.

In order to provide advice to the Department under the terms of its charter, the Committee and formal subcommittees thereof will continue to hold a series of meetings dealing with the matters set forth in the first paragraph of this Determination. These meetings will include discussions of the COCOM control list as it relates to the commodities and technical data under its purview, and with the foreign availability of these commodities and technical data. In addition, the Committee and its formal subcommittees will be preparing recommendations for the Department's consideration relating to the U.S. Government's negotiating position on COCOM-related matters. Much of the information relating to the COCOM control list, as well as proposed changes, is now or will be security classified for national security or foreign policy reasons, pursuant to Executive Order No. 11652, 3 CFR 339 (1974). In order for the Committee and its formal subcommittees to provide required advice to the U.S. Government, it will be necessary to provide the Committee and its formal subcommittees with such classified material. Therefore, the portions of the series of meetings of the Committee and of subcommittees thereof that will involve discussions of matters specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order, must be closed to the public. The remaining portions of the series of meetings will be open to the public.

Accordingly, I hereby determine, pursuant to section 10(d) of the Federal Advisory Committee Act that those portions of the series of meetings of the Committee and of any subcommittees thereof, dealing with the aforementioned classified materials shall be exempt, for the period January 4, 1975, to April 4, 1975, from the provisions of section 10 (a)(1) and (a)(3), relating to open meetings and public participation therein, because the Committee and subcommittee discussions will be concerned with matters listed in section 552(b)(1) of title 5, United States Code. The remaining portions of the meetings will be open to the public.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

DECEMBER 16, 1974.

ALFRED MEISNER,
Acting General Counsel.

DECEMBER 12, 1974.

[FR Doc.74-30275 Filed 12-26-74;8:45 am]

National Bureau of Standards

VISITING COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. III, 1973), notice is hereby given that the NBS Visiting Committee will meet in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland, beginning at 10 a.m. on February 19, 1975 and beginning at 9 a.m. on February 20, 1975.

The purpose of the meeting is for the NBS Visiting Committee to review the activities of the National Bureau of Standards and to inspect its laboratories in Gaithersburg, Maryland, in order to report to the Secretary of Commerce concerning the efficiency of the Bureau's scientific work and the condition of its equipment, as required by law.

The NBS Visiting Committee is composed of five members, prominent in the fields of science and technology, appointed by the Secretary of Commerce.

The agenda for the meeting on February 19–20, 1975, will consist of a general briefing on current NBS activities and plans, plus a review of selected laboratories.

A limited number of seats will be available to observers. Persons desiring to attend the meeting are requested to contact Mr. Stanley D. Rasberry, Executive Assistant, National Bureau of Standards, Washington, D.C. 20234 (telephone 301-921-3671).

Dated: December 30, 1974.

ROBERT S. WALLEIGH,
Acting Director.

[FR Doc.75-311 Filed 1-6-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

RENEWAL OF COMMITTEES

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat 770-776) the Health Resources Administration announces the renewal by the Secretary, DHEW, on December 20, 1974, with the concurrence by the Office of Management and Budget Committee Management Secretariat of the following committees:

Committee	*Termination date*
Health Care Technology Study Section.	June 30, 1976
Health Services Developmental Grants Study Section.	Do.
Health Services Research Study Section.	Do.

Authority for these committees will expire on the dates indicated, unless the Secretary formally determines that continuance is in the public interest.

Dated: January 2, 1975.

DANIEL F. WHITESIDE,
Associate Administrator for Operations and Management, Health Resources Administration.

[FR Doc.75-518 Filed 1-6-75;8:45 am]

Office of the Secretary

SUPPLEMENTARY MEDICAL INSURANCE FOR THE AGED AND DISABLED

Actuarial Rates and Premium Rate

Pursuant to authority contained in sections 1839(c)(1) and (4) of the Social Security Act (42 U.S.C. 1395r(c)(1) and (4)), as added by section 203(c) of Public Law 92-603, the Secretary of Health, Education, and Welfare is required to promulgate two adequate actuarial rates for the Medicare Supplementary Medical Insurance program for the period July 1975 through June 1976. One rate is equivalent to one-half of the estimated incurred cost of the program per aged enrollee, and the other is equivalent to one-half of the estimated incurred cost for each disabled enrollee. Pursuant to authority contained in section 1839(c)(3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), added by section 203(c) of Public Law 92-603, the Secretary is also required to promulgate a single premium rate for both aged and disabled enrollees which is derived from the adequate actuarial rate for the aged enrollees. The difference between the premium paid by enrollees and total incurred per capita costs is met from the general revenues of the Federal Government. The notices of these promulgations for the period July 1975 through June 1976 are as follows:

NOTICE OF ADEQUATE ACTUARIAL RATES

On the basis of the accompanying statement of actuarial assumptions and bases pursuant to sections 1839(c)(1) and (4) of the Social Security Act, I hereby determine that the adequate actuarial rates which shall be applicable for the 12-month period commencing July 1, 1975, are $7.50 for enrollees age 65 and over and $13.50 for disabled enrollees under age 65.

NOTICE OF PREMIUM RATE

Pursuant to authority contained in section 1839(c)(3) of the Social Security Act, I hereby determine and announce that the dollar amount which shall be applicable for premiums for purposes of section 1839(c)(3) of the Act shall be $6.70 monthly in the 12-month period beginning July 1975 and ending June 1976.

Due to a technical error in the drafting of Pub. L. 93-233, it is necessary to continue the rate of $6.70 which is also applicable to the 12-month period ending June 1975. The nature of this error is explained in the accompanying statement of actuarial assumptions and bases. I will seek legislative correction of this deficiency in the statute which, if enacted, would provide for permitting increases in the premium rate commensurate with increases in social security cash benefits.

Dated: December 30, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

STATEMENT OF ACTUARIAL ASSUMPTIONS AND BASES EMPLOYED IN DETERMINING THE ADEQUATE ACTUARIAL RATES AND THE STANDARD PREMIUM RATE FOR THE SUPPLEMENTARY MEDICAL INSURANCE PROGRAM BEGINNING JULY 1975

This is a statement of actuarial assumptions and bases employed in determining the adequate actuarial rates and the standard monthly premium rate for the supplementary medical insurance program for the period July 1975 through June 1976. The adequate actuarial rate for enrollees age 65 and over is $7.50. The adequate actuarial rate for disabled enrollees is $18.50. The standard premium rate for both types of enrollees is $6.70.

I. *Analysis of Supplementary Medical Insurance (SMI) Trust Fund.* The balance of the SMI Trust Fund at the end of each of the last three fiscal years, the liability outstanding for benefits and related administrative costs for services performed prior to the end of that fiscal year but not yet paid for at the end of that fiscal year ("liability for incurred but unpaid services"), and the monthly premium rate in effect for each of these fiscal years are as follows:

Year ending June 30	Monthly premium rate	Fund at end of period (in millions)	Liability for incurred but unpaid services (in millions)
1972	$5.60	$481	$917
1973	5.80	746	988
1974	6.30	1,272	1,315

Due to past deficiences in the premium rate, the fund on June 30, 1974, was about 97% of the liability outstanding. The liabilities outstanding on June 30, 1974, for incurred but unpaid services, are estimated to have been $1,315 million, while the balance in the trust fund on the same date amounted to $1,272 million.

It is expected that the trust fund balance will increase during fiscal year 1975. By the end of June 1975 the trust fund balance is estimated to be about $1,587 million, about 105% of the liability for incurred but unpaid services then outstanding. This slight surplus ($76 million) in the trust fund, if it materializes as projected, diminishes the size of required margins in the adequate rates for 1976. Approximately $75 million of this excess is expected to be generated by pay ments for the disabled and $1 million by payments for the aged.

II. *Adequate Actuarial Rate for Enrollees Age 65 and Older.* The determination of an adequate actuarial rate for the aged has been made on the basis of the actual operating experience under the program, projected through the year beginning July 1975. Virtually complete operating experience figures through June 30, 1974, are now available as to the cash income and disbursements under the program, and some data are available for the early months of fiscal year 1975. The adequate actuarial rate, however, must be sufficient to cover benefits and related administrative costs for all services performed during the period from July 1975 through June 1976 (fiscal year 1976). Experience on such a basis (hereafter called an "incurred" basis) is available for most components of the program through fiscal year 1973; that for the other components must be estimated.

ANALYSIS OF PAST EXPERIENCE

Estimates of the basic premium necessary to finance both benefit payments and administrative expenses are shown below, on both a cash and an incurred basis. Cash figures must be adjusted for the estimated increase in liability for incurred but unpaid services. Monthly premium rates on both cash and incurred bases are compared below for the three most recent fiscal years with the premium rate actually charged.

Fiscal year ending June 30	Premium rate charged	Premium rate required for benefits and administration expenses	
		Cash basis	Incurred basis
1972	$5.60	$5.29	$5.43
1973	5.80	5.38	5.52
1974	6.30	5.85	6.06

BASIC ESTIMATES FOR FUTURE EXPERIENCE ON AN INCURRED BASIS

In estimating the cost of the program for July 1975 through June 1976, it is necessary to project incurred results from fiscal year 1973. The actuarial assumptions used for the purpose of these projections are shown below:

Average increase assumed over previous year

[In percent]

Fiscal year	Physicians' services		Outpatient hospital	All other
	Fees [1]	Number and mix [2]		
1974	3.2	1.7	18.0	10
1975	7.2	1.7	18.0	10
1976	8.5	1.7	18.0	10

[1] As paid by the program.
[2] Increase in the number of services received per capita and greater relative use of more expensive services.

The increase in physician fees for fiscal year 1975 over 1974 of 7.2% results from an updating of customary and prevailing fees for fiscal year 1975 to the calendar year 1973 level of charges, as provided in the law. This increase is larger than would normally have occurred because the fiscal year 1974 fees recognized by the program were held down by price controls. An increase in recognized fees of 8.5% is anticipated for fiscal year 1976 based on the progress in the physician fee component of the consumer price index through October 1974 and projected through December. Calendar year 1974 fees will form the basis for 1976 reimbursement as specified in the law.

Both of these increase rates have been reduced to reflect the estimated impact of applying an economic index to prevailing fees as required by section 224 of Pub. L. 92-603. The estimated reduction in 1975 is 0.5% and in 1976, 1.0%. Administrative expenses incurred for the aged and disabled in fiscal year 1976 will be 12.8% of incurred benefits paid under both programs, based on the amounts in the fiscal year 1976 budget.

On the basis of the foregoing assumptions it is now estimated that the rate necessary so that income would cover both benefit payments and administrative expenses for aged enrollees on an incurred basis is $7.62 for fiscal year 1976. The projection of the adequate actuarial rate is summarized as follows:

Derivation of SMI rate required in fiscal years 1973-76

	1973	1974	1975	1976
Covered services (at level recognized):				
Physicians' reasonable charges	$6.50	$6.82	$7.44	$8.21
Radiology and pathology	.29	.30	.33	.37
Group practice plans	.12	.13	.15	.16
Independent lab	.05	.06	.07	.07
Home health agencies	.08	.09	.10	.10
Outpatient hospital and other institutions	.67	.79	.93	1.10
Total services	7.71	8.19	9.02	10.01
Cost sharing:				
Deductible	−1.53	−1.66	−1.67	−1.68
Coinsurance	−1.17	−1.23	−1.38	−1.57
Total benefits	5.01	5.30	5.97	6.76
Administrative expenses	.51	.76	.79	.86
Incurred expenditures	5.52	6.06	6.76	7.62
Value of interest on fund	−.09	−.13	−.16	−.18
Margin for contingencies and to amortize unfunded liabilities	.37	.37	.19	.06
Promulgated rate	5.80	6.30	6.79	7.50

CALCULATION OF ACTUARIALLY ADEQUATE RATE

The $7.62 rate for fiscal year 1976 is decreased by $.18 to allow for interest earnings on the trust fund. Therefore, the adequate rate before allowance for contingencies is $7.44. The margin of $.06 in the adequate actuarial rate of $7.50 will result in a surplus attributable to the aged of $32 million at the end of 1976 if all assumptions are exactly realized.

III. *Adequate Actuarial rate for the Disabled.* An adequate actuarial rate for disabled enrollees under age 65 must take into account (i) enrollees eligible because they have been entitled to disability insurance benefits for not less than 24 months, and (ii) enrollees meeting the end-stage renal disease provision. Only data on total cash flow of the SMI program is available on which to estimate the probable cost of these beneficiaries. These data are very incomplete because of the delay between the time expenses are incurred and the time bills are paid. As incurred data become available the error of the estimate should be substantially reduced.

Based on the data available, the rate required to pay benefits and administrative expenses for the disabled in fiscal year 1976 less an allowance for interest is $19.33. In view of the anticipated surplus in the trust fund at the end of fiscal year 1975 it is appropriate to decrease the adequate actuarial rate below that actually required to cover services rendered in fiscal year 1976. The adequate actuarial rate of $18.50 would result in a total surplus in funds contributed on behalf of the disabled of $38 million at the end of fiscal year 1976, a decrease of $37 million during the fiscal year. Thus, the total surplus for both the aged and disabled would be $70 million at the end of 1976 if all assumptions were realized exactly. This is about 1½ percent of anticipated outlays in fiscal year 1976.

IV. *Standard Premium Rate.* The Social Security Amendments of 1972 (Public Law 92-603), enacted October 30, 1972, provided that the standard premium rate to be paid by all enrollees is to be the smaller of:

A. The monthly adequate actuarial rate for enrollees age 65 and over, or

B. The premium rate most recently promulgated, increased in proportion to any increases in the old-age, survivors, and disability insurance (OASDI) benefit table between June 1 immediately preceding the current promulgation date and what is currently scheduled for the June 1 immediately following the promulgation date.

At the time Pub. L. 92-603 was enacted, the law also provided that any automatic increase in OASDI benefits based on increases in the consumer price index would be announced before November 1 and would be effective the following January 1. Thus, under the law in effect at that time, the table of benefits which would be in effect for the following June was provided in the law at the time the part B premium was to be promulgated—December of each year.

Public Law 93-233, enacted December 31, 1973, however, changed the effective date of any automatic OASDI increases to June 1 of a year and provided that the announcement of the increase would be made after the end of the first calendar quarter and prior to May 15 of that year. Thus, the benefit rate now scheduled in the law for June 1975 is the same as that scheduled for June 1974 when the last benefit increase occurred.

Thus, the $6.70 premium rate for fiscal year 1975 cannot be increased without a change in the law and must be promulgated as the premium rate for the twelve month period beginning July 1975. Because of the structure of current law, this situation is likely to reoccur each year unless remedial legislation is enacted.

[FR Doc.75-143 Filed 1-6-75;8:45 am]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Notice of Public Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Advisory Council on Social Security, established pursuant to section 706(a) of the Social Security Act, as amended, will meet on Saturday, January 18, 1975, from 10 a.m. to 6 p.m., and 8 p.m. to 10:30 p.m., and on Sunday, January 19, 1975 from 9 a.m. to 5:30 p.m. in the Mt. Vernon Room, Sheraton-Carlton Hotel, 16th and K Streets NW., Washington, D.C. Beginning at 6 p.m. on Saturday, January 18, two subcommittees of the Advisory Council will meet at the same location. One subcommittee deals with social security financing, the other with treatment of men and women under social security with respect to sex and marital status. A Task Force on the Purposes, Objectives, and Principles of the Social Security Program will also meet at 6 p.m. on Saturday, January 18 at the same location. The meetings of the Advisory Council, its subcommittees and task force are open to the public.

Further information on the Council and the task force may be obtained from John Trout, Executive Secretary of the Council, Room 440, Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2510. Further information on the Council's subcommittee on financing may be obtained from Mary Ross, Executive Secretary of the Subcommittee, Room 438, Altmeyer Building, telephone (301) 594-2514. Further information on the Council's subcommittee on treatment of men and women under social security may be obtained from James Crum, Executive Secretary of the Subcommittee, Room 454, Altmeyer Building, telephone (301) 594-2534. Members of the public planning to attend should send written notice of intent to the Executive Secretary.

(Catalog of Federal Domestic Assistance Programs Numbers 13.800-13.807, Social Security Programs)

Dated: December 24, 1974.

JOHN TROUT,
Executive Secretary,
Advisory Council on Social Security.

[FR Doc.75-370 Filed 1-6-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

GENERAL AVIATION ACCIDENT PREVENTION ADVISORY COMMITTEE

Notice of Renewal

Notice is hereby given that the General Aviation Accident Prevention Advisory Committee, sponsored by the Flight Standards Service, is being renewed. The Committee assists in the effort to reduce the general aviation accident rate by providing the FAA with advice and recommendations reflecting the knowledge and views of all levels of the general aviation community. Most recently, the Committee has been working on methods to make timely and real weather information more readily available to pilots.

The Secretary of Transportation has determined that the formation and use of the General Aviation Accident Prevention Advisory Committee is necessary in the public interest in connection with the performance of duties imposed on the Federal Aviation Administration by law.

Issued in Washington, D.C. on December 30, 1974.

B. J. WILKES,
Chairman, General Aviation Accident Prevention Advisory Committee.

[FR Doc.75-421 Filed 1-6-75;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-317]

BALTIMORE GAS AND ELECTRIC CO.

Notice of Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. DPR-53 issued to Baltimore Gas and Electric Company which revised Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Unit 1, located in Calvert County, Maryland. The amendment is effective as of its date of issuance.

The amendment modifies the Specifications to delete the applicability of some requirements related to calibration of power channels and setting in-core detector alarms during escalation-to-power testing and to add special requirements, applicable only to escalation-to-power testing, for power channel calibration and in-core detector alarms.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commis-

sion has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

For further details with respect to this action, see (1) the application for amendment, dated December 24, 1974, (2) Amendment No. 8 to License No. DPR–53, with any attachments, and (3) the related safety evaluation contained in the Commission's letter to Baltimore Gas and Electric Company. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland 20678.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 27th day of December 1974.

For the Atomic Energy Commission.

GEORGE W. RIVENBARK,
Acting Chief, Light Water Reactors, Project Branch 1–3, Directorate of Licensing.

[FR Doc.75–362 Filed 1–6–75;8:45 am]

[Docket No. 50–324]

BRUNSWICK STEAM ELECTRIC PLANT, UNIT 2

Notice of Availability of Initial Decision of the Atomic Safety and Licensing Board and Issuance of a Facility Operating License

Pursuant to the National Environmental Policy Act of 1969 and the United States Energy Commission's regulations in Appendix D, section A.9 and A.11, to 10 CFR Part 50, notice is hereby given that an initial decision, dated December 26, 1974, by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of an operating license to Carolina Power & Light Company for authorization to operate the Brunswick Steam Electric Plant, Unit 2 facility located at the licensee's site on the Cape Fear River, near Southport in Brunswick County, North Carolina, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and in the Southport-Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

The initial decision is also being made available at the Office of Intergovernmental Relations, 116 West Jones Street, Raleigh, North Carolina 27603 and at the Cape Fear Council of Governments, 1 North Third, Suite 206, Wilmington, North Carolina 28401.

The initial decision of the Atomic Safety and Licensing Board modified in certain respects the contents of the final environmental statement prepared by the Commission's Directorate of Licensing relating to the operation of the Brunswick Steam Electric Plant, Unit 2. A copy of this final environmental statement is also available for public inspection at the above designated locations.

Pursuant to the provisions of 10 CFR Part 50, Appendix D, Section A.11, the final environmental statement is deemed modified to the extent that the findings and conclusions relating to environmental matters contained in the initial decision are different from those contained in the final environmental statement, dated January 1974. As required by Section A.11 of Appendix D, copies of the initial decision by the Atomic Safety and Licensing Board and the final environmental statement have been transmitted to the Council on Environmental Quality and made available to the public as noted herein.

Pursuant to the above mentioned initial decision, the Atomic Energy Commission (the Commission) has issued Facility Operating License No. DPR–62 to Carolina Power & Light Company for operation of the Brunswick Steam Electric Plant, Unit 2, a boiling water reactor, at steady state reactor core levels not to exceed 2436 megawatts thermal. The license is effective as of its date of issuance and shall expire on February 6, 2010.

In addition to the initial decision, copies of (1) Facility Operating License No. DPR–62, (2) the report of the Advisory Committee on Reactor Safeguards, dated December 11, 1973, (3) the Directorate of Licensing's Safety Evaluation, dated November 1973, (4) Supplement No. 1 to the safety evaluation, dated January 31, 1974, (5) Supplement No. 2 to the safety evaluation, dated December 23, 1974, (6) the final safety analysis report and amendments thereto, (7) the applicant's environmental statement, dated June 15, 1973 and (8) the final environmental statement, dated January 1974, are available for public inspection at the above designated locations in Washington, D.C. and in Southport and Wilmington, North Carolina. Single copies of the initial decision by the Atomic Safety and Licensing Board, Facility Operating License No. DPR–62, the final environmental statement, and the safety evaluation and amendments may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 27th day of December 1974.

For the Atomic Energy Commission.

RAYMOND R. POWELL,
Acting Chief, Light Water Reactors Project Branch 1–2, Directorate of Licensing.

[FR Doc.75–363 Filed 1–6–75;8:45 am]

[Docket No. 50–265]

COMMONWEALTH EDISON CO. AND IOWA-ILLINOIS GAS AND ELECTRIC CO.

Notice of Proposed Issuance of Amendment to Facility Operating License

The Atomic Energy Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR–30 issued to the Commonwealth Edison Company (acting for itself and on behalf of the Iowa-Illinois Gas and Electric Company) for operation of Quad-Cities Unit 2 (the facility), a boiling water reactor located in Rock Island County, Illinois, and currently authorized for operation at power levels up to 2511 MWt.

The amendment would change the provisions of the Technical Specifications to permit operation of the facility using a partial fuel loading of 8×8 fuel assemblies and with modifications to the reactor vessel safety and relief valves in accordance with the licensee's application for license amendment dated December 13, 1974.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Act and the Commission's regulations.

Any person whose interest may be affected by the proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license on or before February 6, 1975. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section by February 6, 1975. A copy of the petition and/or request for a hearing should be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545 and to John W. Rowe, Esquire, the attorney for the applicant, One First National Plaza, Chicago, Illinois 60670.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or the licensing board designated by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the

conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see (1) the application for amendment dated December 13, 1974, (2) the Technical Report on the General Electric Company 8 x 8 Fuel Assembly dated February 5, 1974, by the Directorate of Licensing, and (3) the Report of the Advisory Committee on Reactor Safeguards dated February 12, 1974, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D. C., and at the Moline Public Library at 504—17th Street, Moline, Illinois 61265. As the Safety Evaluation report to be prepared by the Directorate of Licensing on the application and the license amendment become available, they may be inspected at the above locations and a single copy of each may be obtained. A single copy of items (2) and (3) above may be obtained upon request addressed to the U. S. Atomic Energy Commission, Washington, D. C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 26th day of December, 1974.

For the Atomic Energy Commission.

FREDRIC D. ANDERSON,
Acting Chief, Operating Reactors Branch # 2, Directorate of Licensing.

[FR Doc.75-358 Filed 1-6-75;8:45 am]

[Docket No. 50-213]

CONNECTICUT YANKEE ATOMIC POWER CO. (HADDAM NECK NUCLEAR POWER PLANT)

Notice of Issuance of a Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Facility Operating License No. DPR-61 to Connecticut Yankee Atomic Power Company (licensee) authorizing operation of the Haddam Neck Plant at steady state reactor core power levels not in excess of 1825 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications. The Haddam Neck Plant is a pressurized light-water nuclear reactor located in the town of Haddam, Middlesex County, Connecticut.

The Haddam Neck Plant has been operated since June 30, 1967, under Provisional Operating License No. DPR-14. Facility Operating License No. DPR-61 supersedes Provisional Operating License No. DPR-14 in its entirety.

Notice of Proposed Issuance of Full-Term Operating License was published in the FEDERAL REGISTER on July 13, 1971 (36 FR 13051) and a Supplementary Notice was published in the FEDERAL REGISTER on July 18, 1973 (38 FR 19149). The full-term operating license was not issued previously, pending review of the environmental considerations required by the September 9, 1971, revision of Appendix D to 10 CFR Part 50. The Regulatory staff has completed its review and the final environmental statement was issued in October 1973, notice of which was published in the FEDERAL REGISTER on October 3, 1973 (38 FR 27434).

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license. The application for the license complies with the standards and requirements of the Act and the Commission's rules and regulations.

The license is effective as of its date of issuance and shall expire on May 26, 2004.

For further information concerning this action, see copies of (1) Facility Operating License No. DPR-61, complete with technical specifications; (2) the Commission's final environmental statement for the Haddam Neck Plant, dated October 1973; (3) the licensee's application for conversion of Provisional Operating License No. DPR-14 to a full-term operating license, dated December 31, 1969; (4) the licensee's environmental report, dated June 27, 1972, as amended; (5) the report of the Advisory Committee on Reactor Safeguards, dated April 7, 1971; (6) a related safety evaluation prepared by the Commission's Directorate of Licensing, dated July 1, 1971; and (7) Supplement to the safety evaluation prepared by the Commission's Directorate of Licensing, dated December 27, 1974, which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut.

A copy of items (1), (2), (5), (6), and (7) may be obtained upon request addressed to the United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 27th day of December, 1974.

For the Atomic Energy Commission.

ROBERT A. PURPLE, *Chief, Operating Reactors Branch No. 1, Directorate of Licensing.*

[FR Doc. 75-361. Filed 1-6-75; 8:45 am]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Notice of Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. DPR-46 issued to Nebraska Public Power District which revised Appendix B, Environmental Technical Specifications for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance.

The amendment permits modification to the Environmental Technical Specification, Maximum ΔT Across Condenser to more accurately define intent.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

For further details with respect to this action, see (1) Amendment No. 9 to License No. DPR-46 with any attachments, and (2) the letter to Nebraska Public Power District transmitting Amendment No. 9 and containing details relating to the Regulatory staff's review of the application, dated December 27, 1974. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Auburn Public Library, 1118-15th Street, Auburn, Nebraska 68305.

A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 27th day of December 1974.

For the Atomic Energy Commission.

FREDRIC ANDERSON,
Acting Chief, Operating Reactors Branch No. 2, Directorate of Licensing.

[FR Doc.75-364 Filed 1-6-75;8:45 am]

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO.

Notice of Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. DPR-7 issued to Pacific Gas and Electric Company which revised Technical Specifications for operation of the Humboldt Bay Power Plant Unit No. 3, located near Eureka, California. The amendment is effective as of its date of issuance.

This amendment incorporates: (1) Changes in the Technical Specifications necessary to permit operation of the Humboldt Bay reactor with the reload core (Cycle 10), and (2) a reduction in the rated thermal power (maximum power level) from 240 MWt to 220 MWt.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

For further details with respect to this action, see (1) the applications for amendment dated October 18, 1974 and November 19, 1974, (2) Amendment No. 6

to License No. DPR–7 with Change No. 48, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Public Information Office of the Commission's San Francisco Operations Office at 1333 Broadway, Oakland, California 94612. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 24th day of December, 1974.

For the Atomic Energy Commission.

FREDERIC D. ANDERSON,
Acting Chief, Operating Reactors Branch No. 2, Directorate of Licensing.

[FR Doc.75-366 Filed 1-6-75;8:45 am]

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO.

Order for Modification of License

In the matter of Pacific Gas and Electric Company (Humboldt Bay Power Plant Unit No. 3).

I. The Pacific Gas and Electric Company (the licensee) is the holder of Facility License DPR–7, which authorizes operation of the Humboldt Bay Power Plant Unit No. 3 (the plant) in Eureka, California. This license expressly provides, inter alia, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II. On November 14, 1972, the AEC Regulatory Staff (the staff) issued a report entitled "Technical Report on Densification of Light Water Reactor Fuels" (the report). By letter of November 20, 1972, the staff requested the licensee to submit analyses and data specified in the report related to determining the consequences of fuel densification for normal operation of the plant, for operation of the plant during various maneuvers and transients, and under postulated accidents situations, including the design basis loss-of-coolant accidents. On January 4, 1973, the licensee provided the requested information including, by reference, the General Electric Company Report NEDM–10735, "Densification Considerations in BWR Fuel Design and Performance" dated December, 1972. The staff reviewed densification considerations for boiling water reactor fuels and issued reports for both GE fuel designs and Exxon fuel designs. The "Technical Report on Densification of General Electric Reactor Fuels" was issued on August 23, 1973, and a supplement was issued on December 14, 1973. The "Technical Report on Densification of Exxon Nuclear BWR Fuels" was issued on September 4, 1973, and a supplement was issued on December 17, 1973.

These reports were transmitted to the licensee on August 19, 1974, along with a request for analysis in conformity with these staff reports to account for fuel densification in the Humboldt Bay core.

On June 21, 1974, the licensee requested an extension of time until March 31, 1975, in which to submit an evaluation of ECCS performance for the Humboldt Bay plant in accordance with the requirements of 10 CFR 50.46. This extension was granted by the Director of Regulation on August 5, 1974, provided a preliminary evaluation of ECCS performance was submitted by October 31, 1974. This was subsequently extended until the end of the refueling outage scheduled for completion on December 6, 1974. A preliminary evaluation was submitted on December 11, 1974.

During the course of staff review in connection with the extension granted on October 31, 1974, it appeared that the licensee had not properly considered the effects of fuel densification in connection with facility operation including its effects on ECCS cooling performance. The licensee was so informed by our letter dated November 27, 1974 and in its December 11, 1974 submittal, the licensee included certain restrictions on maximum heat flux which the licensee indicated would assure conformance to the IAC limits on peak clad temperatures. These limitations were also based upon a maximum steady state power level of 220 MWt, corresponding to a requested change in the license to lower the maximum power level from 240 MWt to 220 MWt. This change was effected by license amendment issued December 24, 1974. These limits establish an upper bound on linear heat generation rate which in turn limits calculated peak clad temperatures, and, accordingly, facility operation should be restricted so as not to exceed these limits. However, the licensee's analysis of the effects of densification has not been adequately described and still does not take properly into account the considerations set forth in the staff technical reports on GE and Exxon fuels referenced above.

With respect to the effects of fuel densification on ECCS cooling performance, the licensee has employed a very conservative value of gap conductance of 300 BTU/hr-ft²-°F.

Although the licensee has not properly treated pellet shrinking and power spikes, the low value of gap conductance would more than compensate for possible power spiking or for determining initial stored energy for ECCS cooling performance calculations, provided that cladding collapse does not occur and that there are no large axial gaps. Similarly, with respect to ECCS cooling performance considerations in connection with Interim Acceptance Criteria, the effects of densification on initial stored energy used in these calculations for Humboldt Bay would be conservative, provided cladding collapse does not occur and there are no large axial gaps.

Thus far, no fuel collapse or large axial gaps have appeared in Humboldt Bay fuels, even for fuels which have undergone the full expected lifetime exposure of four refueling cycles. Over the course of operation of Humboldt Bay, which has thus far completed nine such cycles, there have been many fuel elements which have experienced full lifetime fuel burnup without clad collapse appearing on post irradition inspection. Further, post irradiation examinations, some of which have recently been inspected by the staff, have shown no tendency to reveal large axial gaps.

Further, major axial gaps would not be anticipated with the fuels used in Humboldt Bay since both types of fuel, GE and Exxon, are of sufficient, 94.3 and 93.5 percent TD, respectively, to be classified as stable fuel and the fuel column length of 77 inches is sufficiently short to reduce their probability of large axial gap formation.

Although these considerations provide assurance that cladding collapse and major axial gap formation would be unlikely for some time, the absence of adequate analytical treatment makes prediction of the time to collapse beyond a short period imprudent. The staff believes that operation beyond 60 days should not be authorized in the absence of an adequate analytical assessment of the effects of fuel densification which satisfies the considerations set forth in the Technical Reports on GE and Exxon fuels referenced above. Moreover, operation during this period should be restricted to the maximum heat-flux values set forth in the licensee's December 11, 1974 submittal.

III. In view of the foregoing, the Acting Director of Licensing finds that the public health, safety, and interest require that the following Order be made effective immediately. Pursuant to the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR §§ 2.204 and 50.54.

It is ordered that:

1. Effective immediately, Specification V.B.1.b.(2) of the Technical Specifications for Facility License No. DPR–7 is hereby amended to include as operating limits, the following restrictions on Maximum Heat Flux.

(2) *Maximum Heat Flux*—Peak fuel rod heat flux shall not exceed the following values when evaluated at 125% of the rated power level:

Fuel type	Heat flux	
	British thermal unit per hour-square foot	kilowatt per foot
Type III	440,000	18.9
Type IV	438,000	18.8

2. As soon as practicable but in no event later than 60 days from the date of this Order, the licensee shall submit an analysis of the effects of fuel densification for the Humboldt Bay core as required by the "Technical Report on Densification of General Electric Reactor Fuels" dated August 23, 1973, and supplement thereto, dated December 14, 1973, and the "Technical Report on Densification of Exxon Nuclear BWR Fuels" dated September 4, 1973, and supplement thereto, dated December 17, 1973.

IV. On or before February 6, 1975, the licensee may file a request for a hearing with respect to this order. Also within the same time period any other person whose interest may be affected may file a request for a hearing with respect to this order in accordance with the provisions of 10 CFR § 2.714 of the Commission's rules of practice. If a request for a hearing is filed within the time prescribed herein, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this action, see (1) the licensee's submittal dated December 11, 1974, (2) the staff's technical report on Densification of Light Water Reactor Fuels dated November 14, 1972, (3) the staff's Technical Report on Densification of General Electric Reactor Fuels dated August 23, 1973, and supplement thereto dated December 14, 1973, (4) the staff's Technical Report on Densification of Exxon Nuclear BWR Fuels dated September 4, 1973 and supplement thereto dated December 17, 1973, (5) the licensee's submittal dated October 18, 1974, (6) the licensee's submittal dated November 19, 1974, (7) Amendment No. 6 to Facility License No. DPR–7 with Change No. 48 and (8) the Commission's related Safety Evaluation. All of these items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Public Information Office of the Commission's San Francisco Operations Office at 1333 Broadway, Oakland, California 94612.

A single copy each of items (7) and (8) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland this 24th day of December, 1974.

For the Atomic Energy Commission.

EDSON G. CASE,
Acting Director,
Directorate of Licensing.

[FR Doc.75-367 Filed 1-6-75;8:45 am]

REGULATORY GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued two new guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the AEC Regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.92, "Combination of Modes and Spatial Components in Seismic Response Analysis," describes methods acceptable to the Regulatory staff for combining the values of the response of individual modes and the response to the three independent spatial components of an earthquake in a seismic dynamic analysis of a nuclear power plant structure, system, or component.

Regulatory Guide 1.93, "Availability of Electric Power Sources," describes operating procedures and restrictions acceptable to the Regulatory staff that should be implemented if the available electric power sources are less than the limiting conditions for operation. This guide is applicable to single- and multi-unit plants, including multi-unit plants that share the required electric power sources.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed (listed below) or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guides 1.92 and 1.93 will, however, be particularly useful in evaluating the need for early revisions if received by March 10, 1975.

Comments should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 1 Regulatory Guides currently being developed include the following:

Primary Reactor Containment (Concrete) Design and Analysis
Prevention of Fracture of Structural Discontinuities in Reactor Pressure Vessel
Material Limitations for Component Supports
Protection Against Postulated Events and Accidents Outside of Containment
Fracture Toughness Requirement for Materials for Class 2 and 3 Components
Maintenance of Water Purity in PWR Secondary Systems
Criteria for Heatup and Cooldown Procedures
Effects of Residual Elements on Predicted Radiation Damage
Surveillance Testing and Inservice Inspection of Thermal Barrier and Steam Generator Materials in High-Temperature Gas-Cooled Reactors
Surveillance and Postirradiation Examination of Fuel Rods in Lead Assemblies
Design Load Combinations for Component Supports
Interim Guide on Tornado Missiles
Criteria for Plugging Steam Generator Tubes
Structural Design Criteria for Fuel Assemblies in Light-Water-Cooled Reactors
Overhead Crane Handling Systems for Nuclear Power Plants
Recommended Procedure for Resintering Test to Monitor Densification Stability of Production Fuel
Tornado Design Classification
Overpressure Protection of Low-Pressure Systems Connected to Reactor Coolant Pressure Boundary
Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident
Investigation of Material Underneath Nuclear Power Plant Foundations
Protective Coatings for Light-Water Nuclear Reactor Containment Facilities
Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems
Quality Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete and Structural Steel during the Construction Phase of Nuclear Power Plants
Assumptions Used for Evaluating the Potential Radiological Consequences of a BWR Radioactive Offgas System Failure
Fire Protection Criteria for Nuclear Power Plants
Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants
Quality Assurance Requirements for Control of Procurement of Equipment, Materials, and Services for Nuclear Power Plants
Quality Assurance Requirements for Lifting Equipment
Maintenance and Testing of Batteries
Qualification Test of Class IE Cables, Connections, and Field Splices for Nuclear Power Plants
Seismic Qualification of Class I Electric Equipment
Design of Main Steam Line Isolation Value Leakage Control Systems for Direct Cycle Boiling Water Reactor Nuclear Power Plants
Fuel Oil Supplies for Standby Diesel Generators
Quality Assurance Requirements for the Manufacture of Class IE Instrumentation and Electric Equipment for Nuclear Power Plants
Assumptions Used for Evaluating the Potential Radiological Consequences of a Liquid Radioactive Waste System Accident
Containment Isolation Provisions
Instrument Span and Setpoints
Protection of Nuclear Power Plant Control Room Operators Against an Onsite Chlorine Release
Initial Startup Testing Program for Facility Shutdown from Outside the Control Room
Periodic Testing of Diesel Generators Qualification of Inspection, Examination, and Testing Personnel for Nuclear Facilities
Quality Assurance Program Requirements for Nuclear Power Plant Fuels
Testing of Nuclear Air Cleaning Systems
Preoperational and Initial Startup Testing of Feedwater Systems for BWRs
Design Criteria for Overload Protection of Motor-Operated Valves
Probable Maximum Storm Surge Flooding on Lakes and Sea Shores
Protection of Nuclear Power Plants Against Industrial Sabotage
Evaluation of Explosions Postulated to Occur on Transportation Routes near Nuclear Power Plant Sites

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 26th day of December, 1974.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.75-359 Filed 1-6-75;8:45 am]

REGULATORY GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued three new guides in its Regulatory Guide Series. This series has been developed to describe and make available to

the public methods acceptable to the AEC Regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.25, "Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities," provides guidance on the preparation of Safety Analysis Reports to be submitted with applications for permits and licenses for commercial uranium enrichment facilities. It outlines the safety-related technical information on the nature of these facilities and the plans for their use that is needed by the Commission in its evaluation of applications for construction permits or operating licenses.

Regulatory Guide 4.9, "Preparation of Environmental Reports for Commercial Uranium Enrichment Facilities," provides guidance on the preparation of environmental reports for commercial uranium enrichment facilities. It identifies the information that should be included in environmental reports accompanying applications for construction permits or operating licenses for these facilities.

Regulatory Guide 5.45, "Standard Format and Content for the Special Nuclear Material Control and Accounting Section of a Special Nuclear Material License Application," provides guidance on the preparation of the material control and accounting section of special nuclear material license applications for all fuel cycle facilities, including commercial uranium enrichment facilities. It identifies the information needed by the Commission in its evaluation of the applicant's plans, procedures, and systems, including quality assurance programs for design, construction, and operation, related to nuclear material control and accounting.

Regulatory Guides 3.25 and 5.45 refer to an AEC regulation being developed by the Regulatory staff but which has not been approved by the Commission or published for comment in the FEDERAL REGISTER. The guides are being issued to provide information to the public and guidance to the industry on information needed in possible future license applications for privately owned uranium enrichment facilities.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guides 3.25, 4.9, and 5.45 will, however, be particularly useful in evaluating the need for an early revision if received by March 10, 1975.

Comments should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 26th day of December 1974.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.75-365 Filed 1-6-75;8:45 am]

[Docket Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Notice of Issuance of Amendments to Facility Operating Licenses

No request for a hearing or petition for leave to intervene having been filed following publication of the notice of proposed action in the FEDERAL REGISTER on November 20, 1974 (39 FR 40810), the Atomic Energy Commission (the Commission) has issued Amendments No. 4 to Facility Operating Licenses No. DPR-32 and DPR-37 issued to Virginia Electric & Power Company (VEPCO) which revised technical specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the provisions in the Technical Specifications relating to the replacement of 84 of 157 fuel assemblies in the reactor core, constituting refueling of the core for second cycle operation of Unit 1.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

For further details with respect to this action, see (1) the application for amendments dated October 17, 1974, as supplemented November 20, 1974, (2) Amendments No. 4 to Licenses No. DPR-32 and DPR-37, with any attachments, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Swem Library, College of William & Mary, Williamsburg, Virginia 23185.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 27th day of December 1974.

For the Atomic Energy Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch No. 1, Directorate of Licensing.

[FR Doc.75-360 Filed 1-6-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Change in Meeting Agenda

DECEMBER 31, 1974.

The agenda of the January 9-11, 1975 meeting of the Atomic Energy Commission's Advisory Committee on Reactor Safeguards, notice of which was published at 39 FR 44481 on December 23, 1974, is revised as follows.

The session previously scheduled on January 10, 1975 from 11 a.m.-12:30 p.m. and 1:30 p.m.-2:30 p.m., to meet with representatives of the AEC Staff to hear presentations and discuss the Report on Reactor Safety Study—An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants (WASH-1400) has been cancelled.

This time will now be used by the Committee to meet in executive session for internal deliberative discussions concerning WASH-1400.

I have determined in accordance with subsection 10(d) of Pub. L. 92-463, that this executive session will consist of an exchange of opinions leading to the formulation of recommendations, the discussion of which, if written would fall within exemption (5) of 5 U.S.C. 552(b); that any non-exempt material that may be discussed during this executive session will be inextricably intertwined with the discussion of the exempt material and no separation is practical; and it is necessary to close this portion of the meeting to protect the free interchange of internal views and avoid undue interference with agency or Committee operation.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.75-405 Filed 1-6-75;8:45 am]

[Docket Nos. STN 50-454 and STN 50-455]

COMMONWEALTH EDISON CO., BYRON STATION, UNITS 1 AND 2

Availability of Partial Initial Decision of the Atomic Safety and Licensing Board

Pursuant to the National Environmental Policy Act of 1969 and the Commission's regulations in Appendix D of 10 CFR Part 50, notice is hereby given that a Partial Initial Decision dated Decem-

ber 6, 1974, by the Atomic Safety and Licensing Board in the above-captioned proceeding relating to environmental and site suitability matters is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and in the Byron Public Library, Third and Washington Streets, Byron, Illinois.

The Partial Initial Decision is also being made available at the Office of Planning & Analysis, 216 E. Monroe Street, Springfield, Illinois, and at the Northeastern Illinois Planning Commission, 400 W. Madison Street, Chicago, Illinois.

Based on the record developed in the public hearing in the above-captioned matter, the Partial Initial Decision modified in certain respects the contents of the Final Environmental Statement prepared by the Commission's Directorate of Licensing relating to construction of the Byron Station, Units 1 and 2.

Pursuant to the provisions of 10 CFR Part 50, Appendix D, the Final Environmental Statement is deemed modified to the extent that the Findings and Conclusions contained in the Partial Initial Decision differ from those contained in the Final Environmental Statement. As required by 10 CFR Part 51, a copy of the Partial Initial Decision, which modifies the Final Environmental Statement, has been transmitted to the Council on Environmental Quality, the Environmental Protection Agency, and other interested agencies and persons.

Single copies of the Partial Initial Decision and the Final Environmental Statement may be obtained by request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 30th day of December 1974.

For the Atomic Energy Commission.

B. J. YOUNGBLOOD,
Chief, Environmental Projects Branch 3, Directorate of Licensing.

[FR Doc.75-406 Filed 1-6-75;8:45 am]

[Docket No. 50-315]

INDIANA AND MICHIGAN ELECTRIC CO. AND INDIANA AND MICHIGAN POWER CO.

Notice of Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 2 to Facility Operating License No. DPR-58 issued to Indiana and Michigan Electric Co. and Indiana and Michigan Power Co. The amendment is effective as of its date of issuance.

The amendment permits performance of certain subcritical testing of the reactor simultaneously with the completion of cleaning the ice from the air flow channels of the ice condenser in accordance with the provisions of the license and Change No. 2 to the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

For further details with respect to this action, see (1) the application for amendment dated December 27, 1974, (2) Amendment No. 2 to License No. DPR-58, with any attachments, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 27th day of December 1974.

For the Atomic Energy Commission.

LESTER L. KINTNER,
Acting Chief, Light Water Reactors Branch 2-2 Directorate of Licensing.

[FR Doc.75-407 Filed 1-6-75;8:45 am]

RENEWAL OF FEDERAL ADVISORY COMMITTEES

DECEMBER 31, 1974.

In accordance with section 14 of Pub. L. 92-463 (Federal Advisory Committee Act) AEC has determined that renewal of the following advisory committees for the period February 1, 1975, through February 1, 1977, is in the public interest.

Advisory Committee on Medical Uses of Isotopes
Atomic Energy Labor-Management Advisory Committee
Committee on Senior Reviewers
High Energy Physics Advisory Panel
Historical Advisory Committee
Senior Utility Steering Committee
Senior Utility Technical Advisory Committee

In accordance with subsection 14(a)(1)(B) of Pub. L. 92-463, the Advisory Committee on Reactor Safeguards and the General Advisory Committee, established by the Atomic Energy Act of 1954, as amended, have been determined to be of continuing duration.

New charters for these committees have been filed in accordance with sections 9 and 14 of Pub. L. 92-463.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.75-410 Filed 1-6-75;8:45 am]

[Docket No. 50-208]

TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

Order Extending Construction Completion Date

The Trustees of Columbia University in the City of New York (Columbia) are the holders of Construction Permit No. CPRR-78, issued by the Commission on December 30, 1963, for construction of a TRIGA Mark II nuclear reactor presently under construction on its campus in New York, New York.

On November 19, 1974, Columbia filed a request for an extension of the latest construction completion date set forth in CPRR-78 on the ground that Columbia is now making a review of its own with respect to the reactor following completion of the judicial review of the licensing proceedings, but that its review would not be completed in time to prepare the reactor for startup until some time in 1975. This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in a staff evaluation dated

It is hereby ordered That the latest completion date for Construction Permit No. CPRR-78 is extended from December 31, 1974, to June 30, 1975.

Date of Issuance: December 26, 1974.

For the Atomic Energy Commission.

ROBERT A. PURPLE,
Acting Assistant Director for Operating Reactors, Directorate of Licensing.

[FR Doc.75-409 Filed 1-6-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 20472]

PHILADELPHIA-ROCHESTER/SYRACUSE CASE

Reassignment of Proceeding

Administrative Law Judge Robert M. Johnson has retired and is therefore no longer available for preparation of the Initial Decision. Accordingly, the proceeding is hereby reassigned to Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., January 2, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-416 Filed 1-6-75;8:45 am]

[Order 75-1-2; Docket No. 26654]

REEVE ALEUTIAN AIRWAYS, INC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of January, 1975.

On April 26, 1974, Reeve Aleutian Airways, Inc. filed a motion for leave to file

an otherwise unauthorized document, accompanied by a petition requesting the Board to approve and establish, under section 406 of the Federal Aviation Act of 1958, a fuel surcharge applicable to mail transported by Reeve in its intra-Alaska service. Reeve does not desire at this time to institute proceedings leading to a general reexamination of its service mail rates but only requests that a fuel surcharge to be effective April 27, 1974,[1] be added to its present service mail rate.[2] Reeve's petition describes the substantial increases in fuel prices which have occurred since final service mail rates were established for the carrier's intra-Alaska services and seeks the establishment of a fuel surcharge based on current fuel costs. By answer filed May 1, 1974, the U.S. Postal Service indicates its support for the relief requested by Reeve.

Under the Board's rules,[3] a petition seeking an adjustment in a mail rate must challenge that rate. Since Reeve makes no request that its entire mail rate be opened, the carrier's petition fails to meet the requirements of our rules and does not serve to open its service mail rates. We will, however, treat Reeve's filing as a petition requesting the Board to institute a mail rate proceeding to determine a fuel-related surcharge on a prospective basis for its intra-Alaska mail service.[4] We take this action because we are aware that Reeve, like other air carriers, has experienced significant fuel cost increases.

Reeve's petition at the time of its filing was also deficient in that the reported fuel data on file with the Board did not support the carrier's claims. Pursuant to special permission, Reeve filed revised fuel data reports on December 12, 1974, which we have reviewed and find adequately support the carrier's claims. In view of this, we will institute a proceeding proposing to amend Reeve's present intra-Alaska service mail rates to establish for the future a fuel-related surcharge. We will, therefore, open Reeve's intra-Alaska service mail rates to the extent necessary to consider an appropriate fuel surcharge. It is not the intent of this proceeding to conduct a definitive inquiry into all aspects of Reeve's mail operations, but to deal primarily with whatever reasonable adjustment is needed, under the present circumstances, to reflect increased fuel costs.

In support of its petition, Reeve states that Chevron International Oil Company, Inc., supplying approximately 70 percent of Reeve's aviation fuel, had informed the carrier that effective May 1, 1974 pricing charges would reflect increased costs for foreign crude in the ratio of 40 percent foreign and 60 percent domestic. Reeve's second source of fuel (30 percent) is the Department of Defense. In May 1973, Reeve's base price for this military fuel was $0.146 a gallon and on July 1, 1974 rose to $0.380 per gallon. Based on the carrier's computations for the month of March 1974, the foregoing produce a 58.8 percent increase in fuel cost per great-circle mail ton-mile over the fiscal year 1969 base period or an increase of 5.03 cents per great-circle mail ton-mile. Based on our review of the foregoing coupled with the reported fuel costs for the quarter ended September 30, 1974, we conclude that the carrier's claim has been reasonably supported.[5]

In view of the extraordinary price increases experienced by the air carrier, we have determined to propose a fuel surcharge of 5.03 cents per ton-mile applicable to the carriage of mail by Reeve, effective on and after the adoption of this order. We also propose that upon application by Reeve or the Postmaster General, further adjustments of this surcharge may be made as warranted by any significant fluctuation in fuel costs which would otherwise constitute an undue burden upon the carrier or the U.S. Postal Service.

As we have previously indicated, this proceeding is primarily concerned with the limited issue of escalating fuel costs experienced by Reeve. Nevertheless, it is found from an examination of reported results that there is no reason to believe that Reeve's costs for transporting mail have declined, nor that the productivity achieved by this carrier could compensate for experienced fuel cost increases that have occurred since Reeve's intra-Alaska service mail rate was computed on the basis of fiscal year 1969 cost data. Based on the available information, it is clear that the addition of the fuel surcharge requested by Reeve is reasonable and will not result in an overpayment to the carrier for the carriage of mail.[6] While the Board does not favor opening a rate for an adjustment based on a change in only one element of cost, we recognize the unprecedented situation that has been occasioned by the world energy crisis and the resultant precipitous increase in fuel costs. Under the circumstances, no useful purpose would be served by a complete review of Reeve's intra-Alaska service mail rate and this is particularly relevant since the Postmaster General supports the petitioner's request for a fuel-related surcharge. However, our action herein is limited to the specific circumstances of this case and is not to be considered a precedent in future proceedings.

Based on the foregoing, the Board tentatively finds and concludes that on and after January 2, 1975, the fair and reasonable final rate of compensation to be paid by the Postmaster General to Reeve Aleutian Airways, Inc., for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith, is the 68 cents per mail ton-mile rate established in Order 71-7-111, July 20, 1971, plus a fuel surcharge of 5.03 cents per great-circle mail ton-mile, *Provided, however*, That if there is a further significant variation in the fuel cost per revenue ton-mile for scheduled services, the aforesaid fuel surcharge may be adjusted by further order of the Board upon application by the carrier or the Postmaster General accompanied by supportive fuel cost data.

Accordingly, pursuant to the Federal Aviation Act of 1958, particularly sections 204(a) and 406 thereof, and the Regulations promulgated in 14 CFR, Part 302,

It is ordered, That: 1. All interested persons, and particularly Reeve Aleutian Airways, Inc., and the Postmaster General, are directed to show cause why the Board should not amend 71-7-111, July 20, 1971, so as to adopt the service mail rate per great-circle mail ton-mile of $0.7303 effective on and after January 2, 1975, subject to the terms and conditions as set forth in Order 71-7-111;

2. The motion filed by Reeve is denied except to the extent granted herein;

3. Further procedures herein shall be in accordance with the rules of practice, 14 CFR Part 302, and if there is any objection to the rates and charges or to the related findings and conclusions proposed herein, notice thereof shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after the date of service of this order;

4. If notice of objection is not filed within 10 days, or if notice is filed and answer is not filed within 30 days after service of this order, or if an answer timely filed raises no material issue of fact, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of an order fixing a final service mail rate and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the rate herein specified;

5. If notice of objection and answer are filed presenting issues for hearing, issues going to the establishment of the fair and reasonable rate herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR, § 302.307; and

6. This order shall be served upon Reeve Aleutian Airways, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-418 Filed 1-6-75;8:45 am]

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[1] The beginning of the Postal Service accounting period which most nearly corresponds to May 1, 1974.

[2] Established by Order 71-7-28, July 6, 1971 and Order 71-7-111, July 20, 1971

[3] Section 302.303(b) of the Board's Procedural Regulations.

[4] Therefore, Reeve's motion to file an unauthorized document will be denied except to the extent granted herein.

[5] Reported results for the quarter ended September 30, 1974, already indicate a rise in fuel expense for Reeve Aleutian of 4.83 cents per ton-mile, even without the further increases in fuel costs reflected in the revised P-5(b) reports.

[6] Total operating expenses per revenue ton-mile reported for the year ended June 30, 1974, were 83.97 cents compared with 69.10 cents per revenue ton-mile in fiscal year 1969.

CIVIL SERVICE COMMISSION

COST-OF-LIVING INCREASES

Notice of Reduction

Following a reduction in the previously reported Consumer Price Index by the Bureau of Labor Statistics, the U.S. Civil Service Commission has reached the following decisions:

1. The cost-of-living increase for Federal civil service annuitants which became effective July 1, 1974, will be reduced from the previously announced 6.4 percent to 6.3 percent.

2. The cost-of-living increase for Federal civil service annuitants which becomes effective January 1, 1975, will be reduced from the previously announced 7.4 percent to 7.3 percent.

3. Recovery of the small overpayments ($1 per month in most cases) to civil service annuitants resulting from the July 1, 1974, increase will be waived for the period of July 1, 1974, through December 31, 1974. Further overpayments resulting from the July increase but made for the months of January, February, and March 1975 will occur because of time needed to make changes in computer programs, but these will be recovered.

"The Commission's decision, under authority of the retirement law, to waive the portion of overpayments occurring between July and December, and prior to discovery of the CPI computation error, is based primarily on considerations of equity to the annuitants who were overpaid through no fault of their own," CSC Chairman Robert E. Hampton said. "However, there is no basis for not recovering those future overpayments that will result in the months of January, February, and March, for annuitants are now on effective notice that such overpayments will occur," he added.

The recovery of the January–March overpayments will be accomplished through small reductions in checks delivered on May 1. This will be done automatically and there is no need for annuitants to contact the Commission. A complete explanation will be sent to each annuitant as soon as possible.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant,
to the Commissioners.

[FR Doc.75-429 Filed 1-6-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

BOOKMATCHES

Acceptance of Offer To Develop Safety Standards and Summary of Terms of Offer

By notice in the FEDERAL REGISTER of September 4, 1974 (39 FR 32050), the Consumer Product Safety Commission commenced a proceeding pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) for the development of a consumer product safety standard applicable to bookmatches. The notice invited any person to submit to the Commission on or before October 4, 1974, either of the following:

1. One or more existing standards as a proposed consumer product safety standard in this proceeding; or

2. An offer to develop one or more proposed consumer product safety standards applicable to bookmatches to reduce or eliminate any or all of the unreasonable risks of injury associated with bookmatches identified in this notice.

In response to the October 4 FEDERAL REGISTER notice, the Commission received two offers to develop a standard applicable to bookmatches. The purpose of this notice is to announce the acceptance of an offer to develop a consumer product safety standard applicable to bookmatches.

On October 24, 1974, the Consumer Product Safety Commission, after minor modifications in the offer were made, accepted the offer of the American Society for Testing and Materials (ASTM) (1916 Race Street, Philadelphia, Pennsylvania 19103) to develop a consumer product safety standard applicable to bookmatches. The Commission determined that ASTM (1) is technically competent, (2) is likely to develop an appropriate standard within the 150-day period specified in the notice of proceeding, and (3) will comply with the regulations issued by the Commission under section 7 (16 CFR Part 1105 promulgated May 7, 1974; 39 FR 16206) of the Consumer Product Safety Act applicable to the development of the standard. The agreement was formalized on December 30, 1974.

METHOD OF DEVELOPMENT

After the informal agreement was reached, ASTM proceeded with the development of the standard through a Management Committee and six task forces. The Management Committee is coordinating the offeror's activities with the Commission; coordinating the activities of the task forces; managing the budget; ensuring the participation of consumers and other interested persons; maintaining a record of all relevant correspondence, comments, and suggestions; preparing the final recommended standard for presentation to the Commission and otherwise managing the development of standards. The six task forces are addressing the areas of: Risk analysis; performance requirements; test methods; economic and environmental impact; consumer education; and research. The principal responsibility of the Research Task Force is to address and make recommendations for the solution of the primary hazard identified by the CPSC, namely, "burn injuries sustained by children and others including mentally or physically impaired persons, who play with or otherwise improperly use bookmatches".

Meetings of the Management Committee and the Task Forces have been open to attendance and participation by all interested persons.

PARTICIPATION BY CONSUMERS AND OTHER INTERESTED PERSONS

In accordance with the Commission's regulations and the terms of ASTM's offer, all persons are invited to participate in the standard development process. In order to ensure participation in the development of the standard by all interested persons, ASTM has provided notice of opportunity to participate to all interested parties through (1) a press release, (2) announcements requested of other publications and groups, such as: (a) The Product Safety Letter, (b) the Product Safety and Liability Reporter, (c) the Commerce Clearing House, (d) Consumers Union, (e) Public Citizen, (f) and others; (3) special mailing to consumer organizations, coordinated with the National Consumers League; (4) mailing to 257 members of ASTM Committee F-15 on Consumer Product Safety; (5) mailing to ASTM Sounding Boards which provide the Task Forces a means of conferring with a cross-section of ultimate consumers; and (6) mailing to 50 state representatives.

According to ASTM regulations any individual or organization will be given an opportunity to participate in person or by correspondence, unless excluded for reasons of balance. ASTM regulations stipulate that the number of consumer/general interest participants must exceed the number of producer interests. Consumer participants requesting financial assistance have their requests reviewed by the Management Committee. All those who express a desire to participate by correspondence are placed on a permanent list and receive all meeting notices, minutes, and ballots. No individual or consumer organization is required to pay an ASTM administrative fee to participate in this activity. The National Consumer League coordinates all the consumer input relative to the development of the standard.

ASTM has estimated a budget totaling $173,840 for the development of the standard. Of this amount, the estimated cost to industry representatives is $108,000, the cost to ASTM for management of the offer $51,440, and the cost to ASTM for consumer interest participation $14,400. ASTM has requested no cost contribution from the CPSC.

LABORATORY TESTING

ASTM is making all the facilities at ASTM Headquarters in Philadelphia, Pennsylvania available for the development of the standard. In addition, all the match manufacturers who have made commitments to ASTM are making their laboratories available, as needed, for inter-laboratory testing and vertification of test methods. The Test Method Task Force makes evaluations of existing test methods and develops new ones, if necessary. It manages inter-laboratory testing and prepares statements on precision and accuracy. The Task Force, moreover, prepares and provides any necessary instruments for evaluation of the final standard.

ASTM has committed itself to using its best efforts to develop a standard applicable to bookmatches to reduce or eliminate the unreasonable risk of injury associated with bookmatches within the 150 day period specified in the September 4 FEDERAL REGISTER notice of proceeding. The Commission reaffirms its requirement that the development period for the standard shall end on February 1, 1975. However, the Commission may, by notice in the FEDERAL REGISTER, extend the period for development if it finds for good cause that a different period of time is appropriate.

Copies of ASTM's offer to develop a standard applicable to bookmatches, ASTM's letter of October 24, 1974, clarifying a number of points raised by the Commission, and a copy of the formal agreement entered into between the Consumer Product Safety Commission and ASTM are available for inspection in the Office of the Secretary, Room 1025, 1750 K St., Washington, D.C.

Interested persons should contact Bernard J. Corrigan, Director, Consumer Product Safety Standards Division of ASTM, 1916 Race Street, Philadelphia, Pennsylvania, 19103, telephone (215) 569-4200, for additional information.

Dated: January 2, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-378 Filed 1-6-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 316-7]

WATER POLLUTION PREVENTION AND CONTROL

Addition to the List of Categories of Sources

Section 306(b)(1)(A) of the Federal Water Pollution Control Act, as amended October 18, 1972 (Pub. L. 92-500), directs the Administrator of the Environmental Protection Agency to publish, and from time to time revise a list of categories of sources which shall, at the minimum, include those listed in section 306(b)(1)(A). As soon as practicable, but in no case more than one year after the inclusion of a category of sources in such list, the Administrator is required to propose and publish regulations establishing Federal standards of performance for new sources within such categories. The original list of 27 source categories was published January 16, 1973 (38 FR 1624). Standards of performance have been promulgated for all 27 source categories.

The Administrator, after evaluating available information, has determined that paving and roofing materials (tars and asphalt) is an additional category of point sources which meets the above requirements. Evaluation of other point source categories is in progress, and the list will be supplemented from time to time as the Administrator deems appropriate. Accordingly, notice is given that the Administrator, pursuant to section 306(b)(1)(A) of the Act amends the list of categories of sources as follows:

LIST OF CATEGORIES OF SOURCES

28. Paving and roofing materials (tars and asphalt)

Proposed effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources applicable to the above point source categories appear elsewhere in this issue of the FEDERAL REGISTER.

Dated: December 26, 1974.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.75-403 Filed 1-6-75;8:45 am]

[FRL 316-5]

ZOECON CORP.

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 5H5070) has been filed by Zoecon Corp., 975 California Avenue, Palo Alto, CA 94304, proposing the issuance of a regulation (21 CFR Part 121) to provide for the safe use of the insect growth regulator methoprene (isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in processed feed supplements for cattle in an amount not to exceed 0.025 percent by weight of the processed feed supplement.

Dated: December 23, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.75-399 Filed 1-6-75;8:45 am]

[FRL 316-2]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

New Public Hearing Date for Kellogg, Idaho; Sulfur Oxides Control Strategy

Notice is hereby given that the date of the public hearing to be held in Kellogg, Idaho, which was originally scheduled for November 14, 1974 (see 39 FR 37653), and was subsequently postponed to January 6, 1975 (see 39 FR 40590), has been changed. The new hearing date is January 22, 1975.

As previously announced, the purpose of the public hearing is to solicit public comment on the proposed regulations for the control of sulfur oxides from the Bunker Hill smelter complex (39 FR 36018). Please see the original hearing notice for a more complete description of the hearing and its purpose.

The location of the hearing remains unchanged. The hearing will be held Wednesday, January 22, 1975, at one o'clock p.m. in the conference room of the Washington Water Power Building, 120 North Hill Road, Kellogg, Idaho.

Dated: December 31, 1974.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.75-402 Filed 1-6-75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 733]

COMMON CARRIER SERVICES INFORMATION [1]

DECEMBER 23, 1974.

Domestic Public Radio Services Applications Accepted for Filing [2]

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to §§ 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20884-CD-P-(3)-75 The Mountain States Telephone and Telegraph Company (KOF

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

327) C.P. to relocate facilities, change antenna system and replace transmitters operating on 152.60 & 152.72 HMz. located 16 miles southeast of Thermopolis, Wyoming.

20885–CD–P–75 Unity Telephone Company (KLF540) C.P. to relocate facilities and change antenna system operating on 152.-72 MHz. located 4.5 miles at 69 degrees from Dixmont, Maine.

20886–CD–P–(2)–75 Euclid Telecommunications, Inc. (KQC880) C.P. for additional facilities to operate on 152.210 MHz. at Loc. #2: 5767 Mayfield Road, Mayfield Heights, Ohio; same facilities listed above for Loc. #3: 4540 Hillside Road, Seven Hills, Ohio.

20887–CD–P–75 The Lincoln Telephone and Telegraph Company (NEW) C.P. for a new station to operate on 35.58 MHz. to be located at 445 North 6th Street, Beatrice, Nebraska.

20888–CD–P–75 Radio Relay Corp. (KQC877) C.P. to relocate facilities operating on 35.-58 MHz. at Loc. #2: 5536 Colerain Avenue, Cincinnati, Ohio.

20889—CD–P–75 Mobilphone Systems, Inc. (NEW) C.P. for a new station to operate on 454.050 MHz. to be located at 1400 Tyne Boulevard, Nashville, Tennesse.

20890–CD–P–75 New England Telephone and Telegraph Company (KCC261) C.P. to replace transmitter operating on 152.63 MHz. located at 1012 Outer Broadway, Bangor, Maine.

20891–CD–P–75 Empire Paging Corporation (KRS674) C.P. to change antenna system and increase power operating on 454.150 MHz. located at General Motors Building, 767 Fifth Avenue, New York, New York.

20892–CD–P–75 Harold's Radio Service, Inc. (KSD321) C.P. to relocate facilities operating on 152.12 MHz. at Loc. #2: 1501 North Main Street, Evansville, Indiana.

20893–CD–AL–75 Harold Stovall d/b/a Harold's Radio Service Consent to Assignment of License from Harold Stovall d/b/a Harold's Radio Service, ASSIGNOR to Harold's Radio Service, Inc., ASSIGNEE. Station; KSD321, Evansville, Indiana.

20894–CD–P–75 Harold's Radio Radio Service, Inc. (KUO648) C.P. to relocate facilities operating on 158.70 MHz. to be located at 1501 North Main Street, Evansville, Indiana.

20895–CD–AL–75 Harold Stovall d/b/a Harold's Radio Service Consent to Assignment of License from Harold Stovall d/b/a Harold's Radio Service, ASSIGNOR to Harold's Radio Service, Inc., ASSIGNEE. Station: KUO648, Evansville, Indiana.

20896–CD–P–75 Radio Telephone Communications, Inc. (KIQ515) C.P. to relocate facilities and change antenna system operating on 152.15 MHz. located 300 feet West of Maple Avenue, 0.4 mile East of city limits, Panama City, Florida.

20897–CD–P–75 Radio Telephone Communications, Inc. (KUO605) C.P. to relocate facilities and change antenna system operating on 152.24 MHz. located 300 feet west of Maple Avenue, 0.4 mile east of city limits, Panama City, Florida.

20898–CD–P–75 Hawaiian Telephone Company (KLF527) C.P. for additional facilities to operate on 35.22 MHz. at Loc. #14: Corner of Makakilo Drive and Nohohale Street, Makakilo, Hawaii.

20899–CD–P–75 Comex, Inc. (KCC797) C.P. for additional Repeater facilities to operate on 454.325 MHz. to be located at North Peak, Mt. Ascutney, Vermont.

20900–CD–P–(2)–75 Tel-Missouri, Inc. (KRS636) C.P. for additional facilities to operate on 158.70 MHz. at Loc. #3: Existing KETC–TV tower, St. Louis, Missouri; same facilities listed above for Loc. #4: 1.9 miles NE of city center, Ellisville, Missouri.

20901–CD–P–(2)–75 Tel-Missouri, Inc. (KDN 396) C.P. for additional facilities to operate on 35.58 MHz, at Loc. #3: Existing KETC–TV tower, St. Louis, Missouri; same facilities listed above for Loc. #4: 1.9 miles NE of city center, Ellisville, Missouri.

RURAL RADIO

60213–CR–P–75 Ritter, Inc. (NEW) C.P. for a new rural subscriber station to operate on 158.490 MHz. to be located 7 miles S.S.E. of Joliet, Montana.

POINT TO POINT MICROWAVE RADIO SERVICE

1974–CF–P–75 The Western Union Telegraph Company (KSO65) 4.9 Miles ESE of Clarksdale, Illinois. Lat. 39 27 10 N.—Long. 89 17 03 W. C.P. to add frequency 5974.8V MHz toward Carlinville, Illinois on azimuth 238° 53' and 6004.5V MHz toward Decatur, Illinois on azimuth 190° 39'.

1975–CF–P–75 Same (KSO64) 0.5 Miles West of Harristown, Illinois. Lat. 39 51 05 N.—Long. 89 05 58 W. C.P. to add frequency 6404.8V MHz toward Taylorville, Illinois on azimuth 199° 46' and 6256.5V MHz toward Clinton, Illinois on azimuth 30° 56'.

1976–CF–P–75 Same (KSO63) 2.5 Miles NW of DeWitt, Illinois. Lat. 40 13 15 N.—Long. 88 48 37 W. C.P. to add frequency 6034.2V MHz toward Decatur, Illinois on azimuth 211° 08' and 6123.1V MHz toward Fisher, Illinois on azimuth 69° 00'.

1977–CF–P–75 Same (KSO62) 2 Miles SE of Foosland, Illinois. Lat. 40 20 21 N.—Long. 88 24 18 W. C.P. to add frequency 6286.2V toward Clinton, Illinois on azimuth 249° 16' and 6256.5V MHz toward Paxton, Illinois on azimuth 57° 24'.

1978–CF–P–75 Same (KSO61) 1 Mile West of Paxton, Illinois. Lat. 40 28 17 N.—Long. 88 08 01 W. C.P. to add frequency 6034.2V MHz toward Fisher, Illinois on azimuth 273° 35' and 6004.5V MHz toward Watseka, Illinois on azimuth 47° 07'.

1979–CF–P–75 Same (KSO60) 2.3 Miles west of Woodland, Illinois. Lat. 40 43 16 N.—Long. 87 46 46 W. C.P. to add frequency 6286.2V MHz toward Paxton, Illinois on azimuth 227° 21' and 6256.5V MHz toward Enos, Illinois on azimuth 32° 26'.

1980–CF–P–75 Same (KSG93) 3.5 Miles NW of Enos, Indiana. Lat. 41 02 41 N.—Long. 87 30 27 W. C.P. to add frequency 6034.2V MHz toward Watseka, Illinois on azimuth 212° 37'.

1963–CF–P–75 Same (KSN50) 7.5 Miles SE of Carlinville, Illinois. Lat. 39 13 33 N.—Long. 89 45 56 W. C.P. to add frequency 6197.2V MHz toward Taylorville, Illinois on azimuth 58° 35'.

1972–CF–P–75 Western States Telephone Company (New) N.E. corner of 2nd Street, West and 3rd Street South, St. Johns Arizona. Lat. 34 30 09 N.—Long. 109 22 03 W. C.P. for a new station on 2117.2V MHz towards Springerville, Arizona on azimuth 217 degrees/04 minutes.

1973–CF–P–75 Same (KPX27) Cerro Montosa, 19 Miles NW of Springerville, Arizona. Lat. 34 16 25 N.—Long. 109 34 32 W. C.P. to add 2167.2V MHz towards a new point of communication at Saint Johns, Arizona on azimuth 36 degrees/57 minutes.

1992–CF–P–75 American Telephone and Telegraph Company (KQD81) Cutlerville, 3.8 miles SE of Byron Center, Michigan. Lat. 42 47 48 N.—Long. 85 39 14 W. C.P. to add 3770H MHz towards Kalamazoo, Michigan on azimuth 177 degrees/38 minutes 3770H MHz towards Grand Rapids, Michigan on azimuth 356 degrees/16 minutes.

1993–CF–P–75 Same (KQH36) 114 North Division Street, Grand Rapids, Michigan Lat. 42 57 57 N.—Long. 85 40 03 W. C.P. to add 3730H HMz towards Cutlerville, Michigan on azimuth 176 degrees/16 minutes.

1994–CF–P–75 Same (KQP31) 0.2 miles South of Lacey, Michigan. Lat. 42 29 27 N.—Long. 85 11 28 W. C.P. to add 3930V MHz towards Kalamazoo, Michigan on azimuth 245 degrees/49 minutes.

1995–CF–P–75 Same (KQD79) 2.5 miles NW of Kalamazoo, Michigan. Lat. 42 20 40 N.—Long. 85 37 41 W. C.P. to add 4050V MHz towards Lacey, Michigan on azimuth 65 degrees/31 minutes; 3730H MHz towards Cutlerville, Michigan on azimuth 357 degrees/43 minutes.

1791–CF–P–75 Midwestern Relay Company (WLJ52) Rear 720 East Capitol Drive, Milwaukee, Wisconsin. Lat. 43 05 29 N.—Long. 87 54 07, W. C.P. to add (by power split) frequency 11585H MHz on azimuth 306° 04' toward Studios of WITI–TV and frequency 11585H MHz on azimuth 206° 37' toward Studios of WISN–TV. The azimuths toward WITI–TV and WISN–TV are corrected to the above values for previously authorized channels.

1881–CF–TC–(5)–75 Grayson Enterprises, Inc. Consent to Transfer of Control from Grayson Enterprises, Inc. TRANSFEROR, to Theodore Shanbaum, Dr. Ellis Carp, and Lee Optical & Associated Companies, Retirement Plan Trust. TRANSFEREE for Stations: KLV73—Amarillo, Texas; KLV74—Canyon, Texas; KLV75—Masaroth, Texas, KLV76—Hart Camp, Texas; KLV–77—Whitharrel, Texas.

1940–CF–Ap–(1)–75 Eastern Shore Microwave Relay Company. Consent to Assignment of Permit from Eastern Shore Microwave Relay Company, ASSIGNOR, to John J. McGuire, ASSIGNEE for Station KJG82—Approx. 1 Mile NE of St. Helena, North Carolina.

1960–CF–P–75 Eastern Microwave, Inc. (KEM59). Sentinel Heights, New York. Lat. 42 56 45 N.—Long. 76 07 09 W. C.P. to construct new tower structure and transfer existing antennas to same.

1961–CF–P–75 Same. (WDD74), Penobscot Mtn., (#3), 0.8 Mile North of Mountain Top, Pennsylvania. Lat. 41 10 57 N.—Long. 75 52 23 W. Mod. of C.P. (2974–C1–P–74) to relocate station to foregoing coordinates.

1962–CF–P–75 General Telephone Company of the Midwest (KAK40) 3.0 Miles WSW of Prairie Home, Missouri. Lat. 38 48 20 N.—Long. 92 38 41 W. C.P. to change antenna systems & location, frequency, emission disignator; to replace transmitter; to increase transmitter output power; and to change point of communication to Columbia (KOMU–TV), Missouri.

CORRECTIONS

1513–CF–ML–75 American Telephone and Telegraph Company (KSP73) Correct: Station location to read: 1.2 miles SE of Hardinsburg, Indiana. (Rest same as reported on Public Notice dated November 25, 1974.)

1535–CF–P–75 General Telephone Company of Kentucky (New) Correct: entry to read: C.P. for a new station on 2176.8H MHz towards Reynoldsville, Kentucky on azimuth 321 degrees/34 minutes. (Rest same as reported on Public Notice dated December 2, 1974.

Major Amendments

382–CF–P–75 RCA Global Communications, Inc. (New) Corner of Route 535 and Route 571, Hightstown, New Jersey. Lat 40 17 38 N.—Long. 74 33 40 W. Application Amended: (a) to change frequency to 6735H MHz towards Edison, New Jersey on azimuth 28 degrees/20 minutes and (b) to change freq. to 6715 MHz towards Wyndmoor, Pennsylvania on azimuth 246 degrees/34 minutes.

Informative

It appears that the following sets of applications may be mutually exclusive and subject to the Commission's Rules regarding ex-parte presentations, reasons of potential economic competition:

1772-CF-P-75. United Video, Inc. (WPG33) 2 Miles East of Raytown, Missouri. Lat. 39 01 46 N. -Long. 94 24 19 W. C.P. to change antenna system and add 6197.2V MH3 toward Odessa, Missouri on azimuth 99° 07'.

1773-CF-P-75 Same. Odessa, Missouri. Lat. 38 58 18 N. -Long. 93 57 03 W. C.P. to change antenna system and add 6034.2V MHz toward Warrensburg, Missouri, on azimuth 129° 91'.

1774-CF-P-75 Same. (WPG26). 6 miles East of Warrensburg, Missouri, Lat. 38 45 35 N. -Long. 93 37 39 W. C.P. to change antenna system and add 6197.2V MHz toward Sedalia, Missouri on azimuth 106° 94'.

1775-CF-P-75 Same. (WCZ35) 2 Miles South of Sedalia, Missouri. Lat. 38 40 13 N. -Long. 93 15 19 W. C P. to change antenna system and add 5945.2 MHz toward Warsaw, Missouri on azimuth 186° 54'.

1776-CF-P-75 Same. (WCZ33). 3 miles east of Warsaw, Missouri. Lat. 38 14 17 N. -Long. 93 19 05 W. C.P. to change antenna system and add 6315.9H MHz toward Urbana, Missouri on azimuth 164°34'.

1777-CF-P-75 Same. (WCZ30) Urbana, Missouri. Lat. 37 52 16 N. -Long. 93 11 25.3 W. C.P. to change antenna system and add 6034.2V MHz toward Lebanon, Missouri on azimuth 112° 44'.

1778-CF-P-75 Same. (WAN79) Lebanon, Missouri. Lat. 37 42 39 N. -Long. 92 42 43 W. C.P. to change antenna system and add 6197.2H MHz toward Marshfield, Missouri on azimuth 200° 43'.

1779-CF-P-75 Same. (WAN80) ⅛ mile South of Marshfield, Missouri. Lat. 37 19 32 N. -Long. 92 53 40 W/ C.P. to add 6034.2H MHz toward Springfield, Missouri, on azimuth 243° 34'.

1780-CF-P-75 Same. (WAN81) 2½ Miles South of Springfield, Missouri. Lat. 37 08 57 N. -Long. 93 20 08 W. C.P. to add 6256.5H MHz toward Phelps, Missouri on azimuth 275°44'.

1781-CF-P-75 Same. (WAN82) 7 Miles N of Scott City, Missouri. Lat. 37 11 43 N. -Long. 93 55 39 W. C.P. to add 5974.8V MHz toward Joplin, Missouri on azimuth 245° 05'.

1782-CF-P-75 Same. (WAY25). Hwy. 66 and Schifferdecker Ave, Joplin, Missouri Lat. 37 04 49 N. -Long. 94 33 25 W. C.P. to add 10975.0H MHz toward Pittsburg, Kansas on azimuth 335° 22'.

1783-CF-P-75. Same. (WAY25). Joplin, Missouri. C.P. to add 11135.0 MHz toward Pittsburg, Kansas on azimuth 335° 22'.

[FR Doc.75-392 Filed 1-6-75;8:45 am]

[FCC 74-1412, 29256, Docket Nos. 20305, 20306, 20307, 20308; File Nos. BRCT-53, BPCT-4578, BPCT-4579, BPCT-4580]

POST-NEWSWEEK STATIONS ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

1. The Commission has before it the mutually exclusive applications of Post-Newsweek Stations of Florida, Inc. (hereafter "Post-Newsweek") (BRCT-53), for renewal of license for WJXT-TV, channel 4, Jacksonville, Florida, Trans-Florida Television, Inc. (Trans-Florida) (BPCT-4578), Florida Television Broadcasting Co. (Florida) (BPCT-4579) and St. Johns Television Co. (St. Johns) (BPCT-4980), for construction permits for new television broadcast stations to operate on channel 4, Jacksonville. Since grant of the proposed operations on channel 4 in Jacksonville, would result in mutually destructive interference, these applications must be designated for consolidated hearing to determine, in a comparative basis, which of the applications would best serve the public interest, convenience and necessity.

2. A number of pleadings and various submissions have been filed in connection with the above-captioned applications which will be treated in our consideration of each of the applications. When an applicant for a new station seeks the facilities of an existing station, we require, before making a finding that the applicant is financially qualified, the demonstration of the availability of sufficient current and liquid assets to construct the proposed station and to operate without revenues for three months. Orange Nine Inc., 7 FCC 2d 788, 9 RR 2d 1157 (1967).

3. Trans-Florida Television, Inc.—BPCT-4578

On the basis of the data submitted in its application, Trans-Florida will require at least $2,328,704 itemized as follows:

Down payment on equipment (valued at $2,500,000)	$625,000
4 months payment on equipment balance	156,004
4 months interest on equipment balance @ 7%	43,750
Miscellaneous	736,700
3 months interest on $3,000,000 loan @ 2% above prime (12%)	90,000
3 months working capital	677,250
	2,328,704

To meet the cash need requirement for the first year, the applicant's balance sheet as of March 27, 1974, shows cash of $15,567.62 and prepaid expenses of $98,437.75. In addition, applicant relies on $263,900 in subscriptions receivable plus a $3,000,000 loan dated December 28, 1972.

4. Messrs. Busby, Jones, Penland, Powell and Richardson have subscribed for shares in the following amounts respectively: $50,000, $75,000, $75,000, $145,000 and $48,000. The balance sheets submitted for each of these shareholders (except for Richardson) [1] do not show sufficient liquid funds to meet their respective commitments and the balance sheets are not current. If the balance sheets were current, Mr. Busby could only meet $35,000 of his $50,000 commitment, Jones $55,000/75,000, Penland $55,000/75,000 and Powell $110,000/145,000. Since the bank loan upon which G. Richardson relies is outdated, and since he has not filed a balance sheet, no finding can be made as to his ability to meet his commitment. Thus, instead of paid in capital plus subscriptions receivable of $423,200, the applicant only has demonstrated the availability of $86,300 paid in capital plus subscriptions receivable of $800 for a total of $87,100. Moreover, the bank loan, in addition to being outdated, fails to state the rate of interest and requires the personal endorsement of stockholders and their wives which endorsements have not been filed. Consequently, the bank loan cannot be considered to be available, it cannot be determined that Trans-Florida is financially qualified, and an appropriate issue will be specified.

5. Florida Television Broadcasting Company—BPCT-4579

Based upon data submitted it appears that cash in the amount of $2,502,355 will be required for the first year costs of construction and operation [2] as follows:

Down payment on equipment valued @ $2,774,000	$693,500
4 months (3+1) payments on equipment balance	173,375
4 months interest based on 7% time price differential	55,480
Land	18,000
Miscellaneous (includes grant fee)	755,000
3 months interest on $3,500,000 loan @ 12%	105,000
3 months working capital	702,000
Total	2,502,355

To meet these costs applicant relies on existing capital, new capital and a bank loan. The bank loan dated September 11, 1974, in the amount of $3,500,000 is a good commitment and the applicant is financially qualified.

6. An informal objection has been filed by the Florida Chapter of the N.A.A.C.P. against Florida asserting that a presently pending suit against Mr. Ed Ball and others by the S.E.C. in the U.S. District Court (D.C. Cir.) casts doubt as to the qualifications of Mr. Ball and his associates. The suit, *S.E.C. v. Florida East Coast Railway Company; Alfred I. Dupont Testamentary Trust, Ed Ball, Co-Trustee; Florida National Bank of Jacksonville, Florida, corporate trustee; et al.*, charges the defendant with alleged violations of the anti-trust provisions (proxy requirements) of section 17A of the Exchange Act of 1933, and sections 10(b) and 14(a) of the Securities and Exchange Act of 1934, and seeks a permanent and final injunction against such activities. The defendants have entered general denials and have interposed a defense saying that FEC is a common carrier not subject to the Securities Act of 1933 nor the Securities and Exchange Act of 1934. Mr. Ball, a principal in Florida, is a principal stockholder of Florida East Coast Railway Company and is chairman of the Board. He is also a substantial stockholder in the Florida National Banks of Florida, Inc., a holding company, and the Florida National Group of Banks, coordinator for all members of the Florida National Group of Banks in Florida.

7. We are of the view that no issue is required at this time. We will, however, provide that in the event Florida is successful in the comparative proceeding its grant will be without prejudice to whatever action may be required as a result of the pending litigation.

[1] Richardson relies on a bank loan, $50,000 dated June 19, 1973, to meet his commitment.

[2] Application of three month test.

8. On August 14, 1974, Post-Newsweek filed a "submission" in which it asserts that certain of its program logs were discovered to be missing in March 1974, and that they were ultimately found to be in the possession of Florida Television. Receipt of the letter was acknowledged, possession of the missing logs was confirmed, and on July 12, 1974, the logs were returned. In addition, Post-Newsweek received photostatic copies of its program logs for August 1–15, 1972. Post-Newsweek asserts that the facts warrant full inquiry to determine the possible effect upon the qualifications of Florida Television. On September 20, 1974, Florida Television filed comments regarding Post-Newsweeks "submission". In substance, Florida Television argues that the proper course for specification of the requested issue is a petition to enlarge under § 1.229 of the rules, supported by appropriate affidavits of a person or persons having knowledge. Florida Television contends that the request is premature, supported by faulty affidavits and must be dismissed. Florida Television's pleading also suggests the possibility that the logs may have been "planted" in order to compromise Florida. Finally, Florida Television requests that should the Commission be of the view that an issue is warranted, it should be so framed to permit inquiry into whether or not Post-Newsweek attempted to compromise Florida Television by delivering or causing to be delivered into its possession program logs of channel 4. Despite Florida Television's technical objections to the Post-Newsweek request for an issue, it is an admitted fact that the program logs of channel 4 which were missing were in the possession of Florida Television. The how, why, when, where and who are factual questions which must be explored in an evidentiary hearing. We find no merit in deferring consideration of these questions to a motion to enlarge issues after designation. Accordingly, issues will be specified to permit inquiry in the facts and circumstances surrounding the acquisition of the WJXT program logs by Florida Television and to determine whether such acquisition reflects adversely in the qualifications of Florida Television to be a licensee or whether it should be assessed a comparative demerit. As for Florida Television's request that if an issue be specified, it should include examination of the facts into the possibility that Post-Newsweek may have been responsible for Florida Television's acquisition, no facts have been alleged which warrant such issue.

9. St. Johns Television Company—BPCT–4580

On June 22, 1974, the Commission adopted a Memorandum Opinion and Order (FCC 74–652) in which it denied Post-Newsweek's requests to dismiss St. Johns' application asserting that the amendment of the application changing the applicant from partnership to corporation and changing 82 percent of the ownership, in substance, was a new application after the cut-off date. Post-Newsweek also urged that such changes and others were there was no intent to prosecute the application as originally filed and therefore raised substantial questions as to the bona fides of the original filing. We held in our decision that while the amendments to the application were acceptable, questions as to the bona fides of the original filing would be considered at the time of designation of the application for hearing. The factual background, in brief, is as follows: The last day for filing a competing application against Post-Newsweek's application for renewal was January 2, 1973. On that date the partnership of Edward L. Baker, Winthrop Bancroft, and George D. Auchter, III, d/b as St. Johns Broadcasting Company filed the application BPCT–4580. As filed, the application specified for its plan of finance a bank loan dependent on the continued participation of substantially all the partners and $300,000 in paid-in capital to be contributed equally by the partners. In addition, the applicant's ascertainment survey specified an area containing a population in excess of 550,000 of which 77 percent is white. The community leaders surveyed consisted of some twenty-two (22) persons (nine of whom are retired) and no apparent contact was made with racial minorities and labor organizations, i.e. a reasonable cross-section of the community. Moreover, other than a statement that the general public was contacted by telephone, there is no factual support for concluding that a proper ascertainment had been made. These facts, and the subsequent amendments, in our view require inquiry into the bona fides of the application as originally filed and issues will be specified, to permit inquiry into the facts and circumstances surrounding the filing and whether in the evidence, St. Johns discloses lack of intent to prosecute as filed and should be disqualified or assessed a comparative demerit. Based upon information submitted, it appears that funds in the amount of $2,474,917 will be required by St. Johns to construct the station and to operate for three months, itemized as follows:

Down payment on equipment valued at $2,600,000	$650,000
3 months payments on equipment balance	162,500
3 months interest on equipment balance at 7%	44,167
Land	317,500
Miscellaneous (assumes STL and Mobile included in equipment valued at $2,600,000)	534,000
Interest on $3,000,000 loan at 2% above prime (12%)	90,000
3 months working capital requirement (¼ of 2,707,000)	676,750
Total	2,474,917

To meet this cash requirement applicant relies on existing capital, pre-paid expenses and a bank loan in the amount of $3,000,000. However, the bank loan is not a firm commitment since on its face, the letter states the loan is conditioned on St. Johns' "request from us [of] a formal lending commitment." Thus, the applicant appears to have only $173,000, as indicated in its balance sheet, to meet the required costs. As a consequence, a financial issue will be specified.

10. It is noted that Mr. Albert Ernest, Jr., President, Director, General Manager, and 13.70 percent stockholder in St. Johns, transferred to his daughter, Lise Sims Ernest, a 1.33 percent interest in channel 12, Jacksonville. Miss Ernest is a minor, eleven years of age, and lives with her parents. In the absence of other information, it is assumed that Mr. Ernest still has control over that stock and that, in the event of a grant, prohibited cross interest would result. Therefore, any grant which might be made would be subject to a condition requiring disposition of the channel 12 stock.

11. Post-Newsweek is qualified to own and operate television station WJXT, and Trans-Florida, Florida Television and St. Johns are qualified, except with respect to the matters discussed above, to construct, own, and operate a television broadcast station. Because the applications are mutually exclusive, the Commission is of the opinion they must be designated for hearing in a consolidated proceeding on the issues set forth below.

Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Post-Newsweek stations of Florida, Inc., and Trans-Florida Television, Inc., Florida Television Broadcasting Company and St. Johns Television Company, are designated for hearing in a consolidated proceeding, at a time and place to be specified, upon the following issues:

(1) (a) To determine with respect to Trans-Florida whether Messrs. Busby, Jones, Penland, Powell and Richardson can meet their stock subscriptions.

(b) Whether the bank loan from the St. Johns River Bank in the amount of $3,000,000 will be available.

(c) To determine in light of the evidence adduced pursuant to issues (a) and (b) above whether Trans-Florida is financially qualified to construct, own and operate the proposed television broadcast station.

(2) (a) To determine the facts and circumstances surrounding the acquisition by Florida Television of the station WJXT program logs for November 1972, and photostatic copies of the August 1–15, 1972, program logs.

(b) To determine what use, if any, has been made by Florida Television of the WJXT program logs.

(c) In light of the evidence adduced on the above issues (a) and (b) whether Florida Television has the requisite character qualifications to be a Commission licensee or a comparative demerit should be assessed against it.

(3) (a) To determine the facts and circumstances surrounding the original filing of St. Johns application (BPCT–4580).

(b) In light of the evidence adduced on the above issue whether the application was bona fide.

(c) To determine in light of the evidence adduced pursuant to issues 3 (a) and (b) above whether St. Johns Television should be disqualified from becoming a Commission licensee, or a comparative demerit assessed against it.

(4) (a) To determine whether the letter from the Barnett Bank of Jacksonville dated March 2, 1973, is a firm commitment.

(b) In light of the evidence adduced pursuant to 4(a) above whether a bank loan in the amount of $3,000,000 is available to St. Johns.

(c) In light of issues 4 (a) and (b) above whether St. Johns is financially qualified to construct, own and operate the proposed television broadcast station.

(5) To determine, on a comparative basis, which of the above-captioned applications, if granted, would best serve the public interest.

(6) To determine in light of evidence on the above issues which of the applications should be granted.

It is further ordered, That in the event the application of Florida Television is granted, such grant will be without prejudice to any action the Commission may be required to take as a result of the pending proceeding in the U.S. District Court (D.C. Cir.) in *S.E.C. v. Florida East Coast Railway Company et al.*

It is further ordered, That in the event the application of St. Johns Television Company is granted, such grant will be subject to the condition that prior to the issuance of any operating authority, the cross-interest problem will have to be eliminated.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commision in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That, the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and manner prescribed in such rule, and shall advise the Commission of thep ublication of such notice as required by § 1.594(g) of the rules.

Adopted: December 18, 1974.

Released: January 3, 1975.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.75-388 Filed 1-6-75;8:45 am]

[FCC 74-1398; Docket Nos. 20298, 20299; File Nos. BPI-25, BPI-51]

WNJR RADIO CO.

Memorandum Opinion and Order Designating Oral Argument

1. The Commission has for consideration the interim authority issued to WNJR Radio Company to operate station WNJR, 1430 ASSOCIATES, A Joint VENTURE, Newark, New Jersey, pending the Commission's disposition of competing applications for regular authority to operate WNJR; the decision of the United States Court of Appeals for the District of Columbia Circuit, *Fidelity Voices, Inc., et al.* v. *Federal Communications Commission*, 155 U.S. App. D.C. 363, 477 F. 2d 1248, 27 RR 2d 168 (1973), remanding the matter of the interim operation to the Commission for further consideration; the Commission's Memorandum Opinion and Order released June 18, 1974 (FCC 74-626),[1] announcing that alternative proposals for interim operation of WNJR would be accepted and considered; and an alternative proposal filed by Sound Radio, Inc., proposing a joint interim operation with the participation of all interested applicants under the firm name, 1430 Associates.

2. The following applications for regular authority to operate WNJR are now pending:

Gilbert Broadcasting Corp. file No. BP-19047
Community Group for North Jersey Radio, Inc., file No. BP-19079
Sound Radio, Inc., file No. BP-19080
Fidelity Voices, Inc., file No. BP-19081
W. M. E. D. Associates, Inc., file No. BP-19083
Venture III Corp. file No. BP-19086

3. Of the six applicants, the following three are now participating in the present interim operation: Gilbert Broadcasting Corp., Community Group of North Jersey Radio, Inc., and Venture III Corp. Fidelity Voices, Inc., has consistently rejected the terms offered for its participation in the present operation. Sound Radio has indicated that its efforts to join the operation on acceptable and reasonable terms have been unsuccessful. W. M. E. D. Associates has never advised the Commission of its position on the question of interim operation.

4. In its order released June 18, 1974, the Commission indicated that, if some means of continuing the operation of WNJR on an interim basis and within the scope of the mandate of the Court of Appeals could not be found, the Commission would refer any conflicting proposals and related problems to the Commission's Review Board for its disposition after an appropriate hearing.[3]

5. Since the filing of the Sound Radio proposal, the Commission now has the presently authorized interim operation by WNJR Radio Co., in which three of the six regular applicants are participating, and the conflicting alternative proposal submitted by Sound Radio. Sound Radio's proposal for interim operating authority, under the name 1430 Associates, appears to differ in some respects from the terms of the WNJR Radio Co. operation. Thus far, only Sound Radio has adopted the 1430 Associates proposal by its action in filing the proposal. The Commission has not been advised whether any other applicant has yet offered to join the 1430 Associates operation, nor has the Commission received any comments on the proposal.

6. In view of the foregoing, there is, at this time, no indication of what the composition of any future interim operator might be, and there is no indication of the extent of any agreement among more than three of the applicants; i.e., the applicants now participating in the present interim operation. It appears, therefore, that the matter of conflicting interim proposals and the aspects of the present operation, of

[2] Commissoner Hooks concurring.

[1] WNJR Radio Company, 47 FCC 2d 533.

[3] The Commission also continued the WNJR Radio Co. authorization in effect, and WNJR continues to serve Newark.

which the Court of Appeals disapproved, must be designated for oral argument before the Review Board. In referring this matter to the Board, the Commission is delegating to the Board full authority to approve the establishment of a satisfactory interim operation within the scope of the Court's mandate, to approve an equitable formula for joint interim operation in the event it is determined that an interim operation would serve the public interest, and to make the required findings of basic qualifications of the entity which shall be granted the interim operating authority.

7. Parties to this proceeding include the present interim operator, WNJR Radio Company, and the proponent of the alternative interim proposal, Sound Radio, Inc. As prospective participants in any interim operation, the other five applicants for regular authority also have an interest in this matter, and, therefore, they will be made parties to the proceeding.

8. Accordingly, *it is ordered*, That pursuant to sections 5(d) and 309(a) of the Communications Act of 1934, as amended, the above matters are designated for oral argument before the Review Board at a time and place to be designated in a subsequent Order upon the following issues:

1. To determine whether the present interim operation of WNJR, Newark, New Jersey, by WNJR Radio Company should be continued in effect and, if so, the terms and conditions under which parties not now in the interim operation might be allowed to participate.

2. To determine, if it is concluded that the interim operation of WNJR Radio Company should not be continued, whether interim operating authority should be granted to 1430 Associates and the terms and conditions of such interim operation.

9. *It is further ordered*, That the Gilbert Broadcasting Corporation, Community Group for New Jersey Radio, Inc., Fidelity Voices, Inc., W. M. E. D. Associates, Inc., and Venture III Corp. are made parties to the proceeding.

10. *It is further ordered*, That should the parties to this proceeding agree to a formula for joint interim operation prior to the holding of Oral Argument, the Review Board shall be empowered to consider and act upon the merits of any such proposal.

11. *It is further ordered*, That, if the parties fail to agree on the terms of the joint interim operation (as to the amount of their respective initial capital contributions, monthly contributions to operating expenses, station management, etc.), the Review Board is empowered to recommend an equitable formula for joint voluntary operation.

12. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent hereto, shall, within five (5) days of the release of this order, file with the Commission an original and two (2) copies of a written appearance stating an intention to appear on the date fixed for the Oral Argument and present evidence on the issues specified in this order.

13. *It is further ordered*, That WNJR Radio Company and Sound Radio, Inc., shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, forthwith, upon the release of the order fixing the time and date of the Oral Argument, cause to be published in a daily newspaper of general circulation in Newark, New Jersey, a notice of the hearing, either individually or jointly. WNJR Radio Company shall broadcast notices of the hearing on station WNJR on four consecutive days as soon as practicable following the release of the order fixing the date and time of the Oral Argument. Following such publication and broadcasts, the applicants shall forthwith file statements in triplicate setting forth the date of the publication and the dates and times of the announcements and the texts thereof. The notices of the hearing shall include the names of the applicants, frequency and location of the proposed interim operation, time and place of the Oral Argument, and the issues specified in this Order.

Adopted: December 17, 1974.

Released: January 2, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-391 Filed 1-6-75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CONFERENCE TO PROMOTE COOPERATION AMONG PUBLISHERS OF ENERGY INFORMATION

Notice of Meeting

Notice is hereby given that a "Conference to Promote Cooperation Among Publishers of Energy Information" will be held from 9 am. to 5 pm. on January 23, 1975, and from 9 am. to 12:30 pm. on January 24, 1975. The location of the Conference will be the Stouffer's National Center Inn, 2399 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

January 23, 1975

9-9:15	Welcome to Attendees
9:15-9:25	The Flow of Energy Information: Government Sector
9:25-10:15	Overview of Federal Data Bases
10:15-10:45	Information Essential to Regulatory Functions
11-11:30	Government Bibliographic Systems
11:30-12	Legal and Policy Considerations in the Release of Data
2:15-2:30	The Flow of Energy Information: Private Information Publishers
2:30-3	Traditional Media in the Energy Field
3-3:30	Non-Traditional Media in the Energy Field
3:45-4:15	Professional Society and Not-for-Profit Information Services
4:15-4:45	Prototypes for Cooperation Between Government and Private Sector

January 24, 1975

9-9:45	Overview of FEA's Programs: Potential for Information Products and Services
9:45-10:30	Conservation and Environment—Programs and Users
10:45-11:15	Energy Resource Development—Programs and Users
11:15-11:30	National Energy Information Center: State/Federal Clearinghouse
11:30-12	Policy and Analysis, Project Independence

The purpose of the meeting is to provide for an exchange of information and ideas among publishers of energy information aimed at developing cooperation between the various participating organizations of Government and the private sector.

Invitees to the Conference will be from government agencies and organizations that collect, process, and publish and/or offer services involving energy data and information, such as publishers, abstracting and indexing services, and trade magazines.

All meetings are open to the public at no charge. (In addition, the public may attend a luncheon and a reception, for which a registration fee will be charged.)

Further information concerning the Conference may be obtained from the National Energy Information Center, Federal Energy Administration, Room 1407, Federal Building, Washington, D.C. 20461, 202-961-8685. It is requested that persons planning to attend notify FEA at the above address.

Issued at Washington, D.C., on December 31, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel.

[FR Doc.75-368; Filed 1-6-75;8:45 am]

FEDERAL POWER COMMISSION

[Dockets Nos. RI75-82 and RI75-83]

SKELLY OIL CO. AND BELCO PETROLEUM CO.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

DECEMBER 24, 1974.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

[1] Does not consolidate for hearing or dispose of the several matters herein.

The Commission finds. It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders. (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI75-82	Skelly Oil Co.	47	31	El Paso Natural Gas Co. (San Juan Basin Area, San Juan and Rio Arriba Counties, N. Mex.) (San Juan Basin Sub Area) (Rocky Mountain Area).	$5,313	11-25-74	.....	6-1-75	[2] 26.9314	[2] 27.4368	RI74-114
						11-25-74	.....	6-1-75	[2][3] 28.8117	[2] 29.3172	RI74-114
		141	26		4,058	11-25-74	.....	6-1-75	[2] 26.9314	[2] 27.4368	RI74-132
						11-25-74	.....	6-1-75	[2] 28.8117	[2] 29.3172	RI74-132
		90	28	El Paso Natural Gas Co. (San Juan Basin Area, Rio Arriba County, N. Mex.) (San Juan Basin Sub Area) (Rocky Mountain Area).	3,526	11-25-74	.....	6-1-75	[2] 26.9314	[2] 27.4368	RI74-114
					3,839	11-25-74	.....	6-1-75	[2] 28.8117	[2] 29.3172	RI74-114
		131	23		1,211	11-25-74	.....	6-1-75	[2] 26.9314	[2] 27.4368	RI74-132
		107	25	Northwest Pipeline Corp. (San Juan Basin Area, Rio Arriba County, N. Mex. and LaPlata County, Colo.) (San Juan Basin Sub Area) (Rocky Mountain Area).	973	11-25-74	.....	6-1-75	[2][3] 26.9314	[2][4] 27.4368	RI74-114
					1,130	11-25-74	.....	6-1-75	[2][3] 28.8117	[2][3] 29.3172	RI74-114
		116	11	El Paso Natural Gas Co. (Ignacio-Blanco Field, LaPlata County, Colo.) (San Juan Basin Sub Area) (Rocky Mountain Area).	332	11-25-74	.....	6-1-75	[2][4] 25.0	[2][4] 25.5	RI74-132
						11-25-74	.....	6-1-75	[2][3] 28.5	[2][3] 29.0	RI74-132
		140	16		1,227	11-25-74	.....	6-1-75	[2][4] 25.0	[2][4] 25.5	RI74-132
						11-25-74	.....	6-1-75	[2][3] 28.5	[2][3] 29.0	RI74-132
		126	14	El Paso Natural Gas Co. (San Juan Basin Area, San Juan Basin Area, San Juan County, N. Mex.) (San Juan Basin Sub Area) (Rocky Mountain Area).	194	11-25-74	.....	6-1-75	[5] 26.9314	[5] 27.4368	RI74-132
		129	15		860	11-25-74	.....	6-1-75	[5] 26.9314	[5] 27.4368	RI74-132
RI75-83	Belco Petroleum Co.	1	40	Northwest Pipeline Corp. (Rocky Mountain Area).	$553,092	12-2-74	.....	7-7-75	[4] 41.72	42.72	
		2	28		553,092	12-2-74	.....	7-7-75	[4] 41.72	42.72	
		3	26		1,478,066	12-2-74	.....	7-7-75	[4] 41.72	42.72	
		5	14		156,061	12-2-74	.....	7-7-75	[4] 41.72	42.72	
		6	24		1,266,936	12-2-74	.....	7-7-75	[4] 41.72	42.72	

* Unless otherwise stated, the pressure base is 15.025 lb/in²a.
[1] New Mexico production.
[2] Applicable to gas produced from wells completed on or after June 1, 1970.
[3] Subject to applicable Btu adjustment.
[4] Applicable to gas produced from wells completed prior to June 1, 1970.
[5] Suspended in docket No. RI75-27.

The proposed rate increases exceed the applicable area ceiling rate set forth in Opinion No. 658, and they are suspended for five months from the contractual due date or the date the underlying rate becomes effective subject to refund, whichever is later.

In regard to any sale of natural gas for which the proposed increased rate is filed under the provisions of Opinion No. 699-H, issued December 4, 1974, in Docket No. R-389-B, no part of the proposed rate increase above the prior applicable area ceiling rate may be made effective until the seller submits a statement in writing demonstrating that Opinion No. 699-H is applicable to the particular increased rate filing, in whole or in part. The proposed increased rates for which such support shall have been satisfactorily demonstrated on or before January 31, 1975, will be made effective as of June 21, 1974.

[FR Doc.75-349 Filed 1-6-75;8:45 am]

[Dockets Nos. RI75-84 and RI75-85]

SKELLY OIL CO. AND MOBIL OIL CO.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

DECEMBER 24, 1974.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds. It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders. (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I], and the Commission's rules of practice and proce-

[1] Does not consolidate for hearing or dispose of the several matters herein.

dure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI75-84	Skelly Oil Co.	265	8	El Paso Natural Gas Co. (Cedar Canyon Unit, Eddy Co., N. Mex.) (Permian Basin).	$29,114	11-25-74		6-1-75	[1] 37.4047	[1] 38.4156	RI74-124
					387,360	11-25-74	1-1-75	[2] Accepted	[3] 50.0	[3] 51.0	
		159	[4] 12	West Texas Gathering Co. (Emeror (Deep) Fld, Winkler County, Tex.) (Permian Basin)	13,716	[5] 11-25-74		6-1-75	29.0	30.1125	RI74-122
		187	[6] 19	El Paso Natural Gas Co. (West Jal Fld, Lea County, N. Mex.) (Permian Basin).	4,304	11-27-74		6-1-75	36.3038	37.4047	RI74-124
RI75-85	Mobil Oil Corp.	241	26	El Paso Natural Gas Co. (Brown-Bassett (Ellenburger) Fld, Terrell County, Tex.) (Permian Basin).	61,794	11-29-74		6-1-75	[7] 29.0	30.0	RI74-93

* Unless otherwise stated, the pressure base is 14.65 lb/in²a.

[1] Applicable to production from all wells except well No. 3 in section 15.
[2] Applicable to production from well No. 3 in section 15 which was commenced on and after Jan. 1, 1973.
[3] Not used.
[4] Applicable to acreage added by supplement No. 1 (Letter amendment dated Feb. 26, 1962).
[5] Correction filed Dec. 5, 1974.
[6] Applicable to production from formations below the base of the Strawn formation.
[7] Previously reported as 26.4620¢/Mcf (29.0¢ less 2.538¢ treating charge).
[8] Accepted, as of the date set forth in the "Effective Date Unless Suspended" column.

With the exception of Skelly's proposed rate increase under its FPC Gas Rate Schedule No. 265 which qualifies for and does not exceed the national rate prescribed in Opinion No. 699-H, the proposed rate increases exceed the applicable area ceiling rate in Opinion No. 662 and they are suspended for five months.

In regard to any sale of natural gas for which the proposed increased rate is filed under the provisions of Opinion No. 699-H, issued December 4, 1974, in Docket No. R-389-B, no part of the proposed rate increase above the prior applicable area ceiling rate may be made effective until the seller submits a statement in writing demonstrating that Opinion No. 699-H is applicable to the particular increased rate filing, in whole or in part. The proposed increased rates for which such support shall have been satisfactorily demonstrated on or before January 31, 1975, will be made effective as of June 21, 1974.

[FR Doc.75-350 Filed 1-6-75;8:45 am]

[Docket Nos. CP69-41; CP75-138]

ALGONQUIN GAS TRANSMISSION CO. AND TEXAS EASTERN TRANSMISSION CORP.

Application

DECEMBER 27, 1974.

Findings and orders after statutory hearings granting applications and application to amend, consolidating proceedings, and permitting, interventions.

On November 1, 1974, Algonquin Gas Transmission Co. filed an alternate application pursuant to section 7 of the Natural Gas Act requesting a limited term amendment to its certificate of public convenience and necessity to sell synthetic gas as mixed with natural gas to Elizabethtown Gas Co. (Elizabethtown) and Pottsville Gas Co., et al. (Pottsville) on a "best efforts" basis. Algonquin's November 1 filing is in lieu of and withdraws an application filed October 11, 1974, in which Algonquin requested certification to sell such gas for resale to Texas Eastern Transmission Corp. (TETCO).

The volumes of synthetic gas which Algonquin proposes to sell constitute excess output available from its synthetic gas plant near Fall River, Massachusetts. Algonquin previously has been granted a certificate of public convenience and necessity as amended [1] for the transportation and sale for resale of synthetic gas produced at its facility. The additional sales which Algonquin proposes to make herein would also be made under its Rate Schedule SNG-1, at a rate of $3.96 per Mcf.

In addition, Algonquin on October 10, 1974, filed an amendment to its certificate requesting authorization to shorten the delivery period under its SNG-1 Rate Schedule so that the SNG-1 gas will be delivered during a 151-day period from November 1 through March 31, rather than the 182-day period originally contemplated.

[1] On March 4, 1969, Algonquin was issued a certificate of public convenience and necessity in Docket No. CP69-41 for the construction and operation of facilities to render natural gas service to its customers. Subsequently the Commission in Opinion No. 637 and 637-A, issued December 7, 1972, and February 6, 1973, granted Algonquin certification to sell and transport synthetic gas as mixed with natural gas purchased from Algonquin SNG, Inc. modifying in part the certificate issued in CP69-41.

TETCO on November 6, 1974, filed an application in Docket No. CP75-138, requesting a temporary and a permanent certificate to deliver the above-described gas volumes by displacement to Elizabethtown and Pottsville, TETCO's application also withdraws its filing of October 15, 1974 in Docket No. RP75-23 which sought to recover the cost of purchasing synthetic gas from Algonquin under TETCO's PGA provisions. TETCO now requests authorization only to deliver approximately 10,425 MMBTU of gas to Pottsville and 2,000 MMBTU of gas to Elizabethtown for the account of Algonquin. Such deliveries would be carried out in accordance with a letter agreement dated November 5, 1974 between Algonquin and TETCO, whereby TETCO agrees to make the deliveries and to reduce deliveries to Algonquin by an equivalent quantity of gas.

In support of its application, Algonquin states that excess volumes of its SNG-1 gas are anticipated this winter, and that Elizabethtown and Pottsville are both experiencing curtailments. Since it is anticipated that commencing with the next (1975-76) heating season, all of the SNG-1 volumes will be required by Algonquin's regular customers, Algonquin herein seeks only a limited term certificate ending April 15, 1975.

Temporary certificate of public convenience and necessity for the proposed operations were issued to Algonquin and TETCO by letter dated November 25, 1974, from the Commission Secretary.

Petitions to intervene were filed in Docket No. CP69-41 by Elizabethtown, Pottsville, Rhode Island Consumer's Council, and TETCO. The New Jersey Public Utilities Commission also filed a

notice of intervention. Pottsville filed a petition to intervene in Docket No. CP75–138. None of the intervenors opposes these applications or requests a hearing.

Having reviewed the petitions to intervene, we are convinced that the petitioners all have sufficient interest in these proceedings to warrant intervention. We also note that there exists an interrelationship between the two applications which can best be resolved in a consolidated proceeding, and we shall so order.

At a hearing held on December 23, 1975, the Commission on its own motion received and made a part of the record in Docket No. CP69–41 and CP75–138 all evidence, including the applications and exhibits attached thereto, submitted in support of the authorizations sought therein, and upon consideration, the Commission finds that the service and sales proposed is required by the public convenience and necessity, and furthermore,

The Commission orders. (A) Docket No. CP69–41 and Docket No. CP75–138 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) Algonquin Gas Transmission Co. is granted an amendment for a limited term ending April 15, 1975, to its certificate of public convenience and necessity, for the sale of available volumes of gas to Elizabethtown Gas Co. and Pottsville Gas Co. Such sales shall be made pursuant to Rate Schedule SNG–1 of Algonquin Gas' FPC Gas Tariff, Original Volume No. 1, and shall be limited to those volumes of SNG–1 gas available in excess of the requirements of Algonquin's regular customers.

(D) Algonquin Gas is further granted a permanent amendment to its certificate of public convenience and necessity to shorten the delivery period contemplated by Rate Schedule SNG–1 from 182-days to 151-day period from November 1 through March 31.

(E) Texas Eastern Transmission Corp. is granted a certificate of public convenience and necessity, for a limited term ending April 15, 1975, to make deliveries by displacement, for the account of Algonquin, of the volumes of gas which Algonquin makes available to Elizabethtown and Pottsville pursuant to ordering paragraph (C) above.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-343 Filed 1-6-75;8:45 am]

[Docket No. E-9123]

ARIZONA PUBLIC SERVICE CO.

Application

DECEMBER 26, 1974.

Take notice that on November 25, 1974, Arizona Public Service Co. (APS) tendered for filing pursuant to section 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, Service Schedule C–3 dated November 14, 1974 to the July 9, 1963 Interconnection Agreement with Utah Power & Light Co. (UP&L), designated APS Rate Schedule FPC No. 26. Service Schedule C–3 provides for the short term exchange of power, with APS making up to 100 mw of capacity and associated energy available to UP&L from December 1, 1974 through January 31, 1975, limited to an approximately 50 percent load-factor. The terms of the exchange agreement provide that UP&L may return its entitlement anytime from December 1, 1974 through January 31, 1977. It is requested that Service Schedule C–3 take effect December 1, 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 17, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-321 Filed 1-6-75;8:45 am]

[Docket No. CP75-175]

BLUE DOLPHIN PIPE LINE CO.

Application

DECEMBER 26, 1974.

Take notice that on December 16, 1974, Blue Dolphin Pipe Line Co. (Applicant), Two Shell Plaza, Houston, Texas 77001, filed in Docket No. CP75–175 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations thereunder (18 CFR 157.7(c)), for a certificate of public convenience and necessity authorizing Applicant during the twelve-month period commencing January 1, 1975, to expand a total of $10,000 to make miscellaneous rearrangements to its existing transportation facilities, which rearrangements will not result in any material change in the transportation service presently rendered by Applicant, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The application states no facilities will be installed under the requested certificate through which Applicant would deliver volumes of gas in excess of 100,000 Mcf annually, nor will any gas delivered through the facilities to be installed under the requested certificate be used for boiler fuel purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 1975, 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.75—330 Filed 1-6-75;8:45 am]

[Docket No. E-9166]

BOSTON EDISON CO.

Proposed Initial Rate Schedule and Proposed Transmission Agreement

DECEMBER 27, 1974.

Take notice that on December 10, 1974, Boston Edison Co. (Edison) separately tendered for filing proposed initial rate schedules for purchase by municipal light companies of a percentage of the capacity, and the energy corresponding thereto, of Edison's Pilgrim Unit No. 1.

The proposed effective date of each of the tendered rate schedules is December 1, 1974; the furnishing of said capacity and energy corresponding thereto is to commence, pursuant to Pilgrim Unit No. 1 power purchase agreements,

December 1, 1974 and continue through December 31, 2000.

On December 10, 1974, Edison also separately tendered for filing—on behalf of the Connecticut Light and Power Company, the Hartford Electric Light Company, and Western Massachusetts Electric Company (collectively, the "NU Companies"); New England Power Company (NEPCO); and Edison—proposed initial rate schedules for transmission services related to the above described purchases. The City of Holyoke, Gas and Electric Department and the City of Westfield, Gas and Electric Light Department will receive transmission services from the NU Companies and Edison. The other municipal light departments will receive transmission services from NEPCO and Edison.

The proposed effective date of each of the tendered rate schedules for transmission services is December 1, 1974, and the term of each of the transmission agreements is to be concurrent with its corresponding Pilgrim Unit No. 1 power purchase agreement described above.

It has been requested that pursuant to § 35.11 of the Commission's regulations the thirty day notice period be waived and that the Commission allow the proposed rate schedules described herein to become effective as of December 1, 1974.

Any person desiring to be heard or to make any protest with reference to the subject matter of this notice should on or before January 3, 1975, file with the Federal Power Commission, 825 North Capitol Street NE, 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, 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 protestants parties to any proceeding. Persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The documents referred to herein are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-334 Filed 1-6-75;8:45 am]

[Docket No. E-8884]

CAROLINA POWER AND LIGHT CO.

Further Extension of Procedural Dates

DECEMBER 23, 1974.

On December 16, 1974, Staff Counsel filed a motion to extend the procedural dates fixed by order issued August 26, 1974, as most recently modified by notice issued November 22, 1974, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the Phase I procedural dates in the above matter are modified as follows:

Service of Staff's Testimony, January 31, 1975.
Service of Intervenor's Testimony, February 14, 1975.
Service of Company Rebuttal, February 28, 1975.
Hearing, March 18, 1975 (10 a.m. e.d.t.).

The Phase II procedural dates are modified as follows:

Service of Intervenor's Testimony, March 13, 1975.
Service of Staff's Testimony, April 1, 1975.
Service of Company's Testimony, April 10, 1975.
Service of Intervenor's Rebuttal, April 24, 1975.
Hearing, May 15, 1975 (10 a.m. e.d.t.)

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-323 Filed 1-6-75;8:45 am]

[Docket No. E-9176]

CENTRAL HUDSON GAS AND ELECTRIC CORP.

Filing of Rate Schedule Supplement

DECEMBER 26, 1974.

Take notice that on December 16, 1974, Central Hudson Gas and Electric Corp. (Central Hudson) tendered for filing as a supplement to its Rate Schedule F.P.C. No. 22 a Letter of Notification of wage adjustment dated December 10, 1974, from Central Hudson to New York State Electric and Gas Corp. Central Hudson states that this letter provides for an increase in the annual operation and maintenance charge from $16,419 to $17,656 in accordance with Article IV.2 of its Rate Schedule F.P.C. No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-315 Filed 1-6-75;8:45 am]

[Docket No. E-9177]

CENTRAL HUDSON GAS AND ELECTRIC CORP.

Filing of Contract Supplement

DECEMBER 26, 1974.

Take notice that on December 16, 1974, Central Hudson Gas and Electric Corporation (Central Hudson) tendered for filing Supplement No. 3 to Contract No. 44 between Central Hudson and Consolidated Edison Company of New York, Inc. Central Hudson states that this supplement cancels Contract No. 44 on November 26, 1974, in accordance with the terms of the agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-314 Filed 1-6-75;8:45 am]

[Docket No. RP75-27]

CITIES SERVICE GAS CO.

Order Granting Further Interventions

DECEMBER 23, 1974.

On October 23, 1974, Cities Service Gas Co. (Cities Service) tendered for filing proposed changes in its FPC Gas Tariff Second Revised Volume No. 1.[1] Cities Service's filing was noticed by the Commission on November 1, 1974, with protests and petitions to intervene due on or before November 15, 1974. Additional timely protests and petitions to intervene were filed by the Midwest Gas Users Association, the Armco Steal Cooperation (Sheffield Division), the City Group Gas Defense Association and the City of Springfield, Missouri and the Board of Utilities of Springfield, Missouri. An untimely petition to intervene was filed by the Union Gas System, Inc.

Having reviewed the above petitions to intervene we believe that the petitioners have sufficient interest in the proceedings to warrant interventions.

The Commission finds. It is desirable and in the public interest to allow the above-named petitioners to intervene.

The Commission orders. (A) The above-named petitioners are hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission; *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the

[1] Eleventh Revised Sheet PGA-1, Second Revised Sheet No. 37D, Original Sheet Nos. 37H, 37I and 37J.

Commission entered in this proceeding.

(B) The untimely intervention of Union Gas System, Inc. granted herein shall not be the basis for delaying or deferring and procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-326 Filed 1-6-75;8:45 am]

[Docket No. RP71-106 (1973 Phase)]

CITIES SERVICE GAS CO.

Compliance Filing

DECEMBER 27, 1974.

Take notice that on December 16, 1974, Cities Service Gas Co. tendered for filing copies of its Report of Collections from jurisdictional customers. The company states that its tender is made in accordance with the Commission's September 5, 1974, order in the above docket and pursuant to Article II, Section 1 of the April 24, 1974, Stipulation and Agreement.

The company also states that copies of the filing are being served on each of its jurisdictional customers, each affected state commission and each party in the above docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 17, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-347 Filed 1-6-75;8:45 am]

[Docket No. CP75-176]

COLORADO INTERSTATE GAS CO.

Application

DECEMBER 27, 1974.

Take notice that on December 16, 1975, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP75-176 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the Twombly gas purchase facilities in northeast Colorado, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the Twombly Purchase Meter Station, which consists of a meter facility, a small 2,000,000 standard cubic feet per day field dehydrator and approximately 476 feet of 4-inch pipeline, all of which facilities will be dismantled and returned to stock. Applicant states that these facilities were constructed pursuant to budget authorization issued to Applicant in Docket No. CP70-197 on April 20, 1970.

Applicant further states that the Twombly facilities are no longer required since the Twombly No. 1 well, from which the subject facilities were constructed to receive natural gas, has been plugged since April 1973, when the producer experienced production and operational dificulties.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 15, 1975, 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.75-336 Filed 1-6-75;8:45 am]

[Docket No. E-9170]

CONNECTICUT LIGHT AND POWER CO.

Amendment To Purchase Agreement

DECEMBER 27, 1974.

Take notice that on December 12, 1974, the Connecticut Light and Power Co. (CL&P) filed an amendment to the purchase agreement between it, the Hartford Electric Light Co. (HELCO) and Montaup Electric Co. (Montaup) which was filed on October 17, 1974, in Docket No. E-9066.

CL&P states that the amendment increases Montaup's entitlements in the five gas turbine units from 15.8898% to 52.9661% for the period December 1, 1974 through April 30, 1975. The Amendment to Purchase Agreement is dated as of November 20, 1974.

CL&P states that the Amendment to the Purchase Agreement has been mailed or delivered to CL&P, HELCO, and Montaup.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 3, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-335 Filed 1-6-75;8:45 am]

[Docket No. E-7045]

DEPARTMENT OF THE INTERIOR, ALASKA POWER ADMINISTRATION, EKLUTNA PROJECT

Request for Approval of Rates and Charges

DECEMBER 23, 1974.

Notice is hereby given that the Secretary of the Interior (Secretary), acting on behalf of Alaska Power Administration (APA) and pursuant to section 2 of the Eklutna Project Act of July 31, 1950 (64 Stat. 382), filed with the Federal Power Commission on December 9, 1974, a request in Docket No. E-7045 for the Commission's confirmation and approval of APA's rates and charges for the sale of power and energy from the Eklutna Project included in Rate Schedules A-F7, A-N6, A-L6, and A-M2, effective for a five-year period from the date of approval.

Proposed Rate Schedule A-F7 for wholesale firm power service, available to wholesale power customers, provides for a charge of 10.3 mills per kilowatt-hour for all firm energy, with no capacity charge. This charge represents an increase of one mill, or 10.75 percent, over the 9.3 mills per kilowatt-hour contained in the currently approved Rate Schedule A-F6 which it supersedes.

Proposed Rate Schedule A-N6 for nonfirm power service, available to firm power customers normally maintaining their own generating facilities, supersedes currently approved Rate Schedule A-N5.

There is no change proposed in the rate which is 3.0 mills per kilowatt-hour for all energy, with no capacity charge.

Proposed Rate Schedule A–L6 applies to domestic or residential service within towns, camps, and installations operated in connection with Federal project construction, operation or maintenance, over Government-owned low voltage distribution systems. Charges for each 4-week period include 3 cents per kilowatt-hour for the first 100 kilowatt-hours, 2 cents per kilowatt-hour for the next 100 kilowatt-hours, 1.25 cents per kilowatt-hour for the subsequent 400 kilowatt-hours, and all additional energy at 1 cent per kilowatt-hour. This is the same rate as that contained in the currently approved Rate Schedule A–L5 which it supersedes.

Proposed Rate Schedule A–M2 continues the special rate of 6 mils per watt-hour for nonfirm energy delivered to Elmendorf and Fort Richardson military installations pursuant to existing contract terms, as established in currently approved Rate Schedule A–M1 which it supersedes.

In support of the proposed rate schedules, the Secretary submitted to the Commission rate and repayment studies for the purpose of showing that the proposed rates will produce revenues which, together with revenues collected to date, will be sufficient over the remaining years of the repayment schedule to achieve payout in the 50th year of project operation.

The proposed rate schedules and supporting data are on file with the Commission and are available for public inspection. Copies of the rate schedules and the rate and repayment study were furnished by APA to all of its wholesale customers. Any person desiring to make comments or suggestions for the Commission's consideration with respect to the proposed rate schedules should submit the same in writing on or before January 10, 1975, to the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-324 Filed 1-6-75;8:45 am]

[Docket No. RP74-22; Docket No. RP74-23]

EL PASO NATURAL GAS CO. AND NORTHWEST PIPELINE CORP.

Further Extension of Time

DECEMBER 26, 1974.

On December 24, 1974, El Paso Natural Gas Co. filed a motion for an extension of time within which to file briefs on exceptions and briefs opposing exceptions to the Presiding Administrative Law Judge's Initial Decision issued August 28, 1974, in the above-designated matter. The motion states that all parties have been contacted and have no objection.

Upon consideration, notice is hereby given that the date for filing briefs on exceptions is extended to January 29, 1975, and the date for filing briefs opposing exceptions is extended to February 10, 1975.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-313 Filed 1-6-75;8:45 am]

[Docket No. E-9091]

GEORGIA POWER CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Denying Request to Reject, Providing for Hearing Procedures and Granting Interventions

DECEMBER 26, 1974.

On October 31, 1974, Georgia Power Co. (Georgia Power) tendered for filing proposed changes[1] in its FPC Electric Tariff, Original Volume No. 1. Georgia Power contends that the proposed changes would increase revenues from jurisdictional sales and service by $42,981,351, based on the twelve month period ending December 31, 1975. This revenue increase would, according to Georgia Power, permit the Company to earn an overall rate of return of 10.03 per cent, including a 14.5 per cent on common equity.

The instant filing contains proposed Rate Schedule WR–8, which would replace Rate Schedule WR–7, currently the subject of consideration in Docket No. E–8170. Georgia Power requests that the WR–8 rate be made effective as of December 1, 1974, and suspended until April 1, 1975. The Company states that this suspension period has been requested in accordance with the provisions of the Settlement Agreement agreed to by Georgia Power in Docket No. E–8170.

Review of Georgia Power's filing found it to be deficient with respect to certain requirements of the Commission's Regulations. Accordingly, the Commission Secretary, by letter dated November 19, 1974, informed the Company of the deficiency, stating further that a filing date would not be assigned its submittal until the deficiency was cured. On November 26, 1974, Georgia Power submitted additional data which fulfills the filing requirements of the Commission's Regulations. Accordingly, we shall assign an official filing date of November 26, 1974.

In support of its filing, Georgia Power states that the increased rates are necessary to provide the Company with revenues sufficient to finance new facilities needed to adequately serve its customers. Georgia Power further asserts that, due to increased costs and reduced earnings, the Company's coverage ratios have fallen below the level required for issuance of first mortgage bonds and preferred stock.

Notice of Georgia Power's filing was issued on November 7, 1974, with comments, protests or petitions to intervene due on or before November 19, 1974. Petitions to intervene were timely filed by The Water, Light and Sinking Fund Commission of the City of Dalton, Georgia (Dalton), Oglethorpe Electric Membership Corporation jointly with seven of its member cooperatives (Cooperatives)[2], and the Power Section of the Georgia Municipal Association, Inc., jointly with forty-nine municipal corporations (Municipals)[3]. On November 20, 1974, the Municipals filed a paragraph to be added to their Petition to Intervene, alleging that such paragraph was inadvertently deleted from said petition.

Dalton's petition states that Dalton has a direct and substantial interest in Georgia Power's rate filing, since Dalton purchases electric power at wholesale from the Company. Further, Dalton states that it is opposed to the proposed rate increase, and requests that the Commission suspend such increase for the full statutory period.

In support of their "Petition to Intervene and Motion to Suspend", the Cooperatives contend that:

(1) The rate of return sought by Georgia Power is excessive;

(2) Georgia Power has included construction work in progress (CWIP) in its rate base, contrary to Commission policy;

(3) Georgia Power has increased its rate base by adding minimum bank balances to working capital, contrary to Commission policy;

(4) Georgia Power's method of allocating demand-related costs has placed upon the wholesale customers a greater revenue responsibility than said customers should bear;

(5) Georgia Power has improperly calculated the tax credit to working capital; and

(6) The proposed fuel clause erroneously includes a fixed efficiency formula.

The Cooperatives conclude by praying that the Commission suspend the proposed increase so that it becomes effective, subject to refund, not earlier than April 1, 1975.

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[1] The proposed changes include Cover Sheet, Second Revised Sheet Nos. 1 and 25 through 34, Third Revised Sheet Nos. 23 and 24, and Fourth Revised Sheet No. 35.

[2] Mitchell County Electric Membership Corp., Snapping Shoals Electric Membership Corp., Flint Electric Membership Corp., Three Notch Electric Membership Corp., Habersham Electric Membership Corp., Jackson Electric Membership Corp., and Satilla Rural Electric Membership Corp.

[3] The Cities of Acworth, Adel, Albany, Barnesville, Blakely, Braselton, Brinson, Buford, Cairo, Calhoun, Camilla, Cartersville, College Park, Commerce, Covington, Doerun, Douglas, East Point, Elberton, Ellaville, Fairburn, Fitzgerald, Forsyth, Fort Valley, Grantville, Griffin, Hampton, Hogansville, Jackson, LaFayette, LaGrange, Lawrenceville, Mansfield, Marietta, Monroe, Monticello, Moultrie, Newnan, Norcross, Palmetto, Quitman, Sandersville, Sylvania, Sylvester, Thomaston, Thomasville, Washington, West Point, and Whigham, Georgia, all municipal corporations organized and existing under the laws of the State of Georgia.

In their "Petition * * * for leave to Intervene, Protest and Request for Rejection or Suspension of Rate Schedules", the Municipals contend that Georgia Power's filing should be rejected for the following reasons:

(1) Georgia Power has failed to comply with the portion of § 35.13(b) (4) (iii) of the Commission's regulations requiring submission of cost of service data "for the most recent twelve consecutive months for which actual data are available (Period I) * * * ". In this regard, the Municipals assert that a portion of the filing "consists of data for the 12-month period ending August 31, 1974 while the balance of the data submitted only relates to the 12-month period ending March 31, 1974." More recent data is obviously available, the Municipals contend, and should have been submitted;

(2) Georgia Power's filed "Period II" data is contrary to that portion of § 35.14 (b) (4) (iii) of the Regulations requiring that Period II data begin "* * * no later than the date the rates are proposed to become effective * * * ". The Municipals contend that the proposed effective date is December 1, 1974, and that calendar year 1975 is, therefore, an improper "Period II".

(3) Georgia Power has failed to comply with the sixty-day prefiling requirement of §§ 35.13(b) (4) (i) and (5) of the Commission's regulations; and

(4) The Company's proposed WR–8 rate is "promotional" in that the Company has altered its traditional demand and energy rate design to recover less than its variable operating costs under the energy component of the rate. This "promotional" rate, say the Municipals, is contrary to current national policy of enegy and fuel resources conservation. The Municipals conclude by praying that the Commission reject Georgia Power's filing for the four reasons cited above, or, in the alternative, suspend the filing for the maximum period permitted by law.

On December 16, 1974, Georgia Power filed an "Answer * * * to Petitions for Intervention, Protest and Requests for Rejection or Suspension." In this pleading, Georgia Power contends that the Municipals' Motion to Reject and Request for suspension until May 1, 1975, should be denied. The Company does state, however, that it supports the Cooperatives' Motion to Suspend until April 1, 1975. In conclusion, the Company submits that the proposed rate increase should be accepted for filing, and that good cause does not exist to suspend the rate increase beyond April 1, 1975.

Our review of the Municipal's four arguments for rejection of Georgia Power's filing, as outlined above, leaves us unpersuaded as to the merits of such arguments. For the following reasons, therefore, the Municipals' request that we reject the filing shall be denied:

(1) Regarding the timeliness of "Period I" data submitted by Georgia Power, we believe that the Company's statements in its "Answer" filed December 16, 1974, indicate that it has made a good faith effort to submit the most recent data available at the time preparation for the filing was begun. Moreover, Georgia Power also states that it will supply "more current information" should the Municipals request it. For these reasons, we find that good cause does not exist to reject the filing for the alleged failure to submit sufficient "Period I" data.

(2) The Municipals' contention regarding the timeliness of "Period II" data rests on the construction of that portion of the Commission's regulations requiring that "Period II" data begin "* * * no later than the date the rates are proposed to become effective * * *" We note that in Opinion No. 711[4] the Commission accepted, with certain exceptions not here relevant, a Settlement Agreement between the Company and 88 of its 89 customers.[5] Paragraph 3.6 of this Settlement Agreement states in part as follows:

> GPC presently intends to file increased rates for wholesale service on or about October 1, 1974, and to specify in such filing an effective date thirty days later. In spite of such specification, GPC agrees to request the Federal Power Commission not to permit such increased rates to become collectible, either finally or subject to refund pending Commission review, for service rendered prior to April 1, 1975, and GPC shall not collect such increased rates for service tendered prior to April 1, 1975.

Georgia Power cited this language in its transmittal letter of October 31, 1974, in stating its position regarding the effective date for the proposed rate increase. We believe that a reasonable construction of this Settlement Agreement language, together with Georgia Power's transmittal letter, leads to the conclusion that the "requested effective date" of the proposed rate increase is April 1, 1975, for purposes of determining compliance with the timeliness provision of the "Period II" data requirement contained in § 35.13(b) (4) (iii) of the regulations. Therefore, use of calendar year—1975 data does comply with such requirement.

(3) With regard to Georgia Power's alleged failure to comply with the 60-day prefiling requirements of our regulations,[6] the Municipals state: "We recognize that the Commission has apparently decided to follow the decision of the United States Court of Appeals for the District of Columbia Circuit in Indiana & Michigan Electric Company v. Federal Power Commission[7] which held the 60-day prefiling requirements of § 35.13(b) (4) (i) and (5) of the Commission's regulations invalid under section 205(d) of the Federal Power Act." Nevertheless, say the Municipals, the United States Court of Appeals for the Fifth Circuit upheld the Commission's authority to require a notice period in excess of 30-days for a proposed rate filing * * *", citing Placid Oil Company v. Federal Commission[8] for this proposition. The Municipals, therefore, urge the Commission to enforce the 60-day requirement "[p]ending a definitive resolution of this issue or the revision of its present regulations * * *"

In the portion of the Placid opinion here relevant, the court was addressing itself to the issue of whether the Commission's authority[9] to delay the effectiveness of rate filings applies only before a given rate has been found "just and reasonable", or whether the Commission also has authority to delay the effectiveness of a rate after it has been found "just and reasonable". Thus, the Placid court did not squarely face the issue of the 60-day prefiling requirement, and the validity of this regulation vis-a-vis section 205(d) of the Federal Power Act, as did the court in Indiana & Michigan. For this reason, we believe that the Placid opinion is not directly relevant to the issue of the validity of the 60-day requirement, and that the Indiana & Michigan decision is controlling. Accordingly, we shall follow the Indiana & Michigan opinion on this issue.

(4) With regard to the Municipals' allegation that Georgia Power's WR–8 rate is "promotional" and, therefore, contrary to national policy, we agree with the Company's statement[10] that "Rate design is an appropriate issue for consideration in a rate case, but disagreement over rate design is no ground for rejection of a rate filing." We do note, however, that Georgia Power's rate filing does contain a declining block rate structure, whereby the average charge per kWh to a customer declines as purchases of electricity increase. Further, we believe that this rate form may be inconsistent with our stated goals of promoting energy conservation and encouraging a more efficient allocation and use of this nation's scarce energy resources.[11] Accordingly, the parties in their evidentiary presentations should direct their attention to the issue of whether Georgia Power's rate design is consonant with sound conservation policy.

Our review of Georgia Power's filing and of certain allegations raised by the above-mentioned Petitions to Intervene indicates that certain issues are raised which may require development in evidentiary proceedings. The proposed increase in rates and charges has not been

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[4] Opinion No. 711, issued November 15, 1974, in Docket Nos. E–7548 and E–8170.

[5] All of the parties collectively referred to herein as the "Municipals" agreed to such settlement.

[6] Sections 35.13(b) (4) (i) and (5).

[7] ____ F. 2d ____ (D.C. Cir. 1974, Docket No. 72–2168, issued February 14, 1974, order on rehearing issued August 14, 1974.

[8] Placid Oil Company v. Federal Power Commission, 483 F. 2d 880 (1973).

[9] The Placid court was construing Section 4(d) of the Natural Gas Act, whose language is virtually identical to that in Section 205(d) of the Federal Power Act.

[10] "Answer of Georgia Power Co. to Petitions for Intervention, Protest and Requests for Rejection or Suspension", page 4, filed December 16, 1974, in Docket No. E–9091.

[11] See, in this regard: Iowa Public Service Co., Docket No. E–8815, order issued December 11, 1974; Order No. 495, issued November 29, 1973; Notice of Proposed Rulemaking, Revision to Regulations Under Federal Power Act to Provide for Filing of Rate Design Information, issued April 26, 1974, in Docket No. RM74–20.

shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall suspend the proposed rate filing, based on the filing date of November 26, 1974, for five months until May 26, 1975, and establish hearing procedures to determine the justness and reasonableness of the proposed rates and charges.

The Commission finds. (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Georgia Power's FPC Electric Tariff, Original Volume No. 1, as proposed to be amended in this docket, and that the tendered revised tariff sheets be suspended as hereinafter provided.

(2) Good cause does not exist to reject Georgia Power's filing as requested by the Municipals.

(3) Participation in this proceeding of the above-named petitioners to intervene may be in the public interest.

The Commission orders. (A) Pursuant to the authority of the Federal Power Act, particularly sections 205 and 206 thereof, the Commission's rules of practice and procedure, and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held on May 20, 1975, at 10 a.m., e.d.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, concerning the lawfulness of the rates and charges contained in Georgia Power's instant rate filing.

(B) On or before April 8, 1975, the Commission Staff shall serve its prepared testimony and exhibits. Any intervenor evidence will be filed on or before April 22, 1975. Any rebuttal evidence by Georgia Power shall be served on or before May 6, 1975.

(C) Pending a hearing and a decision thereon, Georgia Power's proposed changes in rates and charges, tender of which was cured on November 26, 1974, are accepted for filing and suspended for five months, the use thereof deferred until May 26, 1975, when said proposed rates and charges shall become effective, subject to refund.

(D) The Municipals' request to reject Georgia Power's filing is hereby denied.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure.

(F) The above mentioned petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interest specifically set forth in the respective petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(G) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to § 1.18 of the Commission's rules of practice and procedure.

(H) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-340 Filed 1-6-75;8:45 am]

INTER-CITY MINNESOTA PIPELINES LIMITED, INC.

[Docket No. RP73-66, PGA75-2]

Proposed Changes in FPC Gas Tariff Under Purchased Gas Adjustment Clause Provision

DECEMBER 27, 1974.

Take notice that Inter-City Minnesota Pipelines Limited, Inc. on December 5, 1974, and as supplemented on December 10, 1974, tendered for filing Third Revised Sheet No. 4 (Second Revised PGA-1) to its FPC Gas Tariff, Original Volume No. 1 proposed to be effective January 1, 1975.

Minnesota Pipelines states that the purpose of filing this revised tariff sheet is to reflect the increased costs of gas purchased from ICG Transmission Limited, effective January 1, 1975.

Minnesota Pipelines also states that copies of this filing have been served upon all its customers.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-348 Filed 1-6-75;8:45 am]

[Docket No. CP75-177]

KANSAS-NEBRASKA NATURAL GAS CO. INC.

Application

DECEMBER 26, 1974.

Take notice that on December 17, 1974, Kansas-Nebraska Natural Gas Co., Inc. (Applicant), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. CP75-177 an application pursuant to section 7 of the Natural Gas Act, as implemented by paragraphs (b), (e), and (g) of § 157.7 of the regulations thereunder (18 CFR 157.7 (b), (e), (g)), for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1975, and operation of gas purchase facilities, for permission and approval, also during the calendar year 1975, to abandon certain direct sales measuring station and related minor facilities, and for authorization for the construction, relocation, removal or abandonment, during the calendar year 1975, and operation of field compression and related metering and appurtenant facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The purposes of this budget-type application are (1) to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which will not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the application, and (2) to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally co-extensive with said system, and (3) to enable Applicant to abandon direct sales measuring facilities when deliveries to any one direct sale customer through any one of the sales measuring facilities to be abandoned have not exceeded 100,000 Mcf annually during the last year of service.

Applicant states that the total cost for construction of the gas purchase facilities will not exceed $3,975,000, with no single project to exceed $990,000, and that the abandonment, removal and relocation, and construction of additional field compression facilities will not exceed $2,000,000, with no single project to exceed $500,000. Applicant states further that the cost of the new facilities will be met out of current working capital or will be obtained by interim bank loans, which at a later date will be funded by a security issue.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 15, 1975, 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.75-319 Filed 1-6-75;8:45 am]

[Docket No. RP75-43]

KNOXVILLE UTILITIES BOARD AND TENNESSEE GAS PIPELINE CO.

Complaint and Request for an Order to Show Cause

DECEMBER 26, 1974.

Knoxville Utilities Board, et al., and Tennessee Public Service Commission, Complainants. Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and East Tennessee Natural Gas Company, Defendants.

Take notice that on December 23, 1974, Knoxville Utilities Board, et al.,[1] and the Tennessee Public Service Commission[2] [hereinafter referred to as Complainants] filed a complaint against Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and East Tennessee Natural Gas Co. (East Tennessee), a subsidiary of Tennessee, alleging that, counter to previous representations made by officials of Tennessee in numerous filings before the Commission and without sufficient notice to its customers, Tennessee has invoked severe curtailment causing serious emergencies to all customers of Tennessee and, specifically, to the customers of East Tennessee. Complainants further allege that the far-reaching impact of the curtailment action is so detrimental and that the suddenness of the institution of the severe curtailment plan raises such critical suspicions that the Commission should issue a show cause order directing Tennessee to state its reasons for said curtailment.

Complainants state that Tennessee, on December 13, 1974, notified by telephone all of its customers, including East Tennessee, that commencing December 16, 1974, it was invoking a curtailment involving 97 percent of Priority 3 volumes[3] until December 31, 39 percent of Priority 2 volumes in January 1975, 20 percent of Priority 2 volumes in February 1975 and 35 percent of Priority 2 volumes in March 1975. Complainants further state that as of the date of this filing, the only notice of the reasons for this curtailment was a newspaper article[4] that indicated the instant curtailment is in addition to an earlier curtailment invoked by Tennessee in October 1974, both of which curtailments appear to be caused by losses in production sustained by hurricane Carmen.

Complainants argue that it is inconceivable that Tennessee operates its business in such a manner that it did not have advance notice of weeks and possibly months of this severe gas shortage, and that such hasty, ill-considered action by Tennessee has led to numerous assertions being made that this action is a "power play" to accomplish results of (a) increasing the chances of deregulation of natural gas by Congress, (b) preventing the passage of a depletion allowance restriction by Congress, and (c) aiding Tennessee, in its rate case now pending before the Commission, to prove that its depreciation allowance should be substantially increased. Complainants aver that Tennessee should at least unequivocally set the record straight so that these assertions will be laid to rest. Complainants further allege that a credibility gap has been created which is causing mass confusion among the customers of Tennessee and East Tennessee.

Complainants further state that Tennessee, in several named proceedings before the Commission, has consistently stated that it has sufficient gas supplies to meet its customers' presently authorized requirements until the winter of 1976.

Complainants also raise questions concerning the future of Tennessee's ability to deliver customers' needs and questions as to the real status of gas reserves alleged by Tennessee as not yet attached and as to the reasons for the delay in attachment.

Complainants allege the need for scrutiny of Tennessee's gas reserves and Tennessee's procedures in notifying its customers and for inquiry into the problems of whether the instant curtailment should be reduced or eliminated and whether volumes should be restored to Tennessee's customers. Complainants further allege that, if Tennessee's gas supply picture is as bleak as is represented, every customer needs to be advised as promptly as possible to avoid severe damages, or that, if Tennessee has arbitrarily invoked its curtailment, then immediate relief for all customers should be ordered to prevent irreparable injury. Complainants finally allege that Tennessee's plan may be unreasonable and unjust and that Tennessee's failure to give reasonable notice may be in contravention of the notice provisions of the Natural Gas Act.

Accordingly, Complainants request that this complaint be docketed and that the Commission issue an order to require Tennessee to show cause as to why its curtailment invoked on December 16, 1974, should not be modified and why the volumes of natural gas which may be found to be arbitrarily withheld should not be restored to Tennessee's customers.

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 filing should on or before January 8, 1975, 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 part to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-331 Filed 1-6-75;8:45 am]

[Docket No. CP75-169]

MONTANA-DAKOTA UTILITIES CO.

Application

DECEMBER 23, 1974.

Take notice that on December 9, 1974, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP75-169 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period commencing on April 1, 1975, of facilities for miscellaneous rearrangements not resulting in any

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[1] The names of all complainants are as follows: Athens Utilities Board; Citizens Utility District; Cookesville Gas Department; The Elk River Public Utility District; Etowah Utilities Department; Fayetteville Gas System; Gallatin Natural Gas System; Harriman Utility Board; Knoxville Utilities Board; Lenoir City Utilities Board; Lewisburg Gas Department; Loudon Utilities Board; Madisonville Gas System; First Utility District of Maury County; Middle Tennessee Utility District; Rockwood Natural Gas Co.; Marion Natural Gas System; Sweetwater Board of Public Utilities; Jefferson-Cocke County Utility District; Volunteer Natural Gas Co.; United Cities Gas Co.; Hawkins County Utility District; Tennessee Public Service Commission. Correspondence to James L. Bomar, Jr., Esquire, Bomar, Shofner, Bomar & Irion, 200 Peoples National Bank Building, Nashville, Tennessee 37160.

[2] Correspondence to Eugene Ward, General Counsel, Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tennessee 37219.

[3] Priorities set forth in § 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78).

[4] The Wall Street Journal, December 20, 1974.

change of service and operation of certain natural gas sales and transportation facilities to enable Applicant to make sales and deliveries to consumers located in proximity to its pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to enable Applicant to construct and operate gas sales and transportation facilities for making direct sales of natural gas to consumers, for transportation and sale of volumes of natural gas previously authorized under certificates to existing distributors' customers in the distributors' market areas, and for miscellaneous rearrangements. Applicant requests "specific authorization" to provide firm service to unspecified high priority residential and small commercial customers from its transmission facilities in areas where Applicant is also the franchised distributor of natural gas. Applicant states that the volumes involved would be de minimis and that at this time it is not experiencing a gas supply shortage and has capacity for additional firm sales by means of facilities proposed herein. In addition, Applicant requests "specific authorization" to provide new delivery points for new residential or small commercial customers of its resale customers. Applicant indicates that these new delivery points would be used to provide service to a maximum of five residential or small commercial customers.

The application indicates that the following gas-sales or transportation facilities are contemplated at the time of this application:

1. Up to 100 farm tap, meter and regulator settings to serve rural consumers of Applicant from transmission mains in the States of Montana, North Dakota, South Dakota and Wyoming at a unit cost of approximately $300 each and a total estimated cost of $30,000.

2. Up to 5 farm tap, meter and regulator settings to serve consumers of Wyoming Gas Company or Byron Gas Service from Applicant's transmission mains in the State of Wyoming at an estimated cost of $2,000.

3. Up to 10 transmission line taps, meters and lateral lines to serve small subdivisions constructed on the outskirts of presently served communities in the States of Montana, North Dakota, South Dakota or Wyoming at an estimated cost of $68,000.

The application states that the total estimated cost of Applicant's proposed facilities is not to exceed $300,000 and will be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1975, 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.75-325 Filed 1-6-75;8:45 am]

[Docket No. RP74-100]

NATIONAL FUEL GAS SUPPLY CORP.

Notice of Filing of Motion and Agreement and Undertaking

DECEMBER 27, 1974.

Take notice that on December 13, 1974, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a Motion to Make Rates and Charges Effective after Suspension (the rates in the instant docket having been suspended by order issued August 9, 1974) and an agreement and undertaking to comply with the terms and conditions of § 154.67 of the Commission's regulations. The rates to which the motion pertains are those suspended by the August 9, 1974 order to which have been added cumulative purchased gas cost adjustments totalling 7.65¢/Mcf. National Fuel states that copies of this filing have been served on all parties to this proceeding, on National Fuel's jurisdictional customers, and on the state regulatory commissions of New York, Ohio and Pennsylvania.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-333 Filed 1-6-75;8:45 am]

[Docket No. RP74-100, PGA75-6]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

DECEMBER 26, 1974.

Take notice that on December 16, 1974, National Fuel Gas Supply Corp. (National) tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, Second Interim Revised Sheet No. 4, proposed to be effective January 1, 1975.

National states that the sole purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provision in Section 17 of the General Terms and Conditions approved by the Commission's Order issued October 31, 1974, in Docket No. RP74-100. National further states that such tariff sheet reflects an adjustment in National's rates of 1.75¢ per Mcf on Second Interim Revised Sheet No. 4.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 6, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-327 Filed 1-6-75;8:45 am]

[Docket Nos. RP71-107 (Phase II) PGA75-1, RP72-127, RP74-9 and R&D75-1]

NORTHERN NATURAL GAS CO.

Order Accepting for Filing and Suspending Proposed PGA and R&D Rate Adjustment, Setting Limited Issue for Hearing, and Denying Request to Track Certain Costs Under R&D Clause

DECEMBER 26, 1974.

Northern Natural Gas Company (Northern) on October 25, 1974, and November 1, 1974, filed proposed revised tariff sheets[1] to track increased esti-

[1] Sixth Revised Sheet No. 4A to FPC Gas Tariff, Third Revised Volume No. 1; and Fifth Revised Sheet No. 1C and Second Revised Sheet No. 502 to Original Volume No. 2.

mated purchased gas and research and development (R&D) costs pursuant to its approved PGA and R&D cost adjustment clauses, respectively. The rate changes would be $28,072,000 annually under its Volume No. 1 tariff and $1,224,000 under its Volume No. 2 tariff and would reflect increased purchased gas and R&D costs for the twelve months ending September 30, 1975, as adjusted for both unrecovered purchased gas and R&D costs incurred during the twelve months ended September 30, 1974.

Northern also filed alternate sheets[2] which included an additional adjustment for purchased gas costs resulting from the inclusion of the estimated rate effect of the proposed nationwide rates for flowing gas at Docket No. R-478. Northern requests that these sheets become effective as of December 27, 1974, and if the Commission has not issued a final order in Docket No. R-478 approving new flowing gas rates, Northern requests that the sheets be placed into effect subject to refund after a one day suspension.

As a third alternative, Northern proposes to include a still further adjustment in its rates to reflect its proposal to track costs associated with its Dallas Center Underground Storage Project in Docket No. RP74-9, as on R&D expense pursuant to its R&D cost adjustment clause.[3] Northern proposes a December 27, 1974, effective date for its filing.

Comments or protests were due on November 25, 1974, for the October 25, 1974, filing and on December 12, 1974, for the November 1, 1974 filing. Four parties[4] filed petitions to intervene which did not request formal hearing. The Northern Municipal Defense Group and Minnesota Municipal Utilities Association also filed a petition to intervene and protest which requested that the alternate tariff sheets reflecting the proposed R-478 rates be rejected since no order has been issued, or will in the near future be issued, in that docket.

Northern's request to reflect, as an R&D expense, costs associated with the testing and development of the Dallas Center Storage Project was filed initially as a request for advance approval to track such costs under its R&D clause on August 6, 1973, in RP74-9.[5] Subsequently, such costs were included in a proposed R&D tracking filing made on October 25, 1973, to become effective on December 27, 1973. However, Northern had no effective R&D clause on file until the Commission issued its January 4, 1974, order in Docket Nos. RP71-107 (Phase II) and RP72-127 which approved a proposed settlement agreement subject to conditions. The order approved, inter alia, Northern's proposed R&D clause subject to the elimination of the section of the settlement which included the preliminary cost of locating new storage fields within the R&D clause's definition of R&D expenditure.

On January 22, 1974, Northern filed a compliance filing to reflect the approved settlement agreement rates as well as a revised rate filing pursuant to its now effective R&D clause. The filing reflected elimination of the costs associated with the Dallas Project. The costs were subsequently included in the instant filing and Northern requests approval or, in the alternative, a one day suspension and hearing on the proposed inclusion of the Dallas Storage as an R&D expense.

As noted previously, we found in our January 4, 1974, order in Docket Nos. RP71-107 (Phase II) and RP72-127 that the preliminary costs of locating new storage fields were not R&D expenses under the Commission's definition of R&D costs.[6] Moreover, we stated in the January 4, 1974, order that:

> [a]mounts for storage field development are, in general, not the types of innovative and novel projects contemplated by the Commission's definition of R&D expenditures promulgated in Order No. 483.

We find that the Dallas Storage proposal falls within the category of "storage field development" discussed above and thus not within the definition of R&D costs, as contemplated by Order No. 483. Accordingly, we shall deny Northern's request in this docket and in Docket No. RP74-9 to track costs associated with the development and testing of the Dallas Storage Project and shall not accept the sheets reflecting inclusion of such costs in Northern's rates.[7]

In light of the above finding, we shall also deny Northern's request for a one day suspension and hearing concerning such costs.[8]

In view of the fact that no order has been issued or, in all probability, will be issued on or before December 26, 1973, on the proposed new flowing gas rates in Docket No. R-478, we shall deny Northern's request to make effective the proposed tariff sheets which reflect such costs in its PGA rate adjustment.[9]

Our review of the R&D portion of Northern's October 25, 1974, filing reflected in the tariff sheets listed in Footnote 1 of this order indicates that the costs associated with the Vincent, Iowa Storage project, the Canadian Arctic Study, Northern Border Study, and the Conoco Methanation Project Study should be permitted since they have been approved as R&D items in our January 4, 1974, and March 22, 1974, orders in Docket No. RP71-107 (Phase II) et al.

However, the proposed R&D rate associated with the Coal Gasification Study and the Coal Slagging Gasifier Project have not been shown to be within the definition of R&D expenditures set forth in Order No. 483. Accordingly, we shall permit the costs associated with these projects to become effective, subject to refund, after a one day suspension and shall set the matter for hearing.

Our review of the purchased gas portion of Northern's October 25, 1974, filing reflected in the tariff sheets listed in Footnote 1 in this order, indicates that it is based in part upon small independent producer and emergency purchases at rates in excess of the rate levels established by Opinion No. 699-H.[10] Therefore, the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, we shall permit the PGA portion of the filing to become effective after a one day suspension. With regard to the question of small producer purchases, we note that the Supreme Court has recently remanded the small independent producer rulemaking in order for the Commission to enunciate the standards in determining the justness and reasonableness of the prices for small producer purchases.[11] Furthermore, as to emergency purchases, we note that the standards the Commission must use in determining the justness and reasonableness of the prices for emergency purchases is presently the subject of court review.[12] We believe, therefore, that it would be premature to establish a hearing schedule in this docket at this time.

Further review of Northern's PGA filing discussed above indicates that the claimed increased costs other than those increased costs associated with that portion of the small producer and emergency purchases in excess of the rate levels perscribed in Opinion No. 699-H are fully justified and comply with the standards set forth in Docket No. R-406.

In light of the above discussion, we shall accept for filing and suspend for one day, the proposed tariff sheets, listed in Footnote 1 in this order, until December 28, 1974, when they shall become effective subject to refund. Within 15 days of the date of issuance of this order, Northern may file substitute tariff sheets, to become effective December 27, 1974, without refund obligation, reflecting in-

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[2] First Substitute Sixth Revised Sheet No. 4A to Third Revised Volume No. 1 and First Substitute Fifth Revised Sheet No. 1C and Substitute Second Revised Sheet No. 502 to Original Volume No. 2.

[3] Second Substitute Sixth Revised Sheet No. 4A to Third Revised Volume No. 1 and Second Substitute Fifth Revised Sheet No. 1C to Original Volume No. 2.

[4] Metropolitan Utilities District of Omaha, Nebraska; Michigan Wisconsin Pipeline Company; Terra Chemicals International, Inc.; Farmland Industries, Inc.

[5] The August 6, 1973, filing was noticed on August 22, 1973. In response thereto, Iowa Public Service Company and Minnesota Natural Gas Company filed petition to intervene and the Iowa State Commerce Commission filed a Notice of Intervention. None of the parties requested a hearing or protested the filing.

[6] See: Order No. 483, issued April 30, 1973, in Docket No. R-462.

[7] See Footnote 2 above.

[8] See: *Michigan-Wisconsin Pipe Line Company*, PPC issued June 26, 1974, in Docket No. RP73-102.

[9] See Footnote 3 above.

[10] Opinion No. 699-H, Docket No. R-389-B, issued December 4, 1974.

[11] *Federal Power Commission* v. *Texaco, Inc., et al.*, Docket Nos. 72-1490 and 72-1491, Opinion issued June 10, 1974.

[12] *Consumer Federation of America* v. *F.P.C.*, CADC, Docket No. 73-2009, petition filed September 21, 1973.

creased R&D costs associated with those R&D projects not set for hearing and those increased PGA costs other than those increased PGA costs associated with that portion of small producer and emergency purchases in excess of the rate levels prescribed in Opinion 699–H.

The Commission finds. It is necessary and appropriate in the public interest and to aid in the enforcement of the Natural Gas Act that:

(1) The proposed filing submitted by Northern on October 25, 1974, as reflected in the proposed revised tariff sheets listed in Footnote 1 in this order, be accepted for filing, suspended, and permitted to become effective, subject to refund on December 28, 1974.

(2) The appropriateness of the costs associated with the Coal Gasification Study and Coal Slagging Gasifier Project as an R&D costs, as defined in Order No. 483, be set for hearing.

(3) The determination of the justness and reasonableness of the PGA costs associated with that portion of small producer and emergency purchases in excess of the rate levels prescribed in Opinion 699–H be deferred pending further order of the Commission.

(4) The claimed increased PGA costs other than those increased PGA costs associated with that portion of small producer and emergency purchases in excess of the rate levels prescribed in Opinion 699–H be approved as in being in compliance with the standards set forth in Docket No. R–406.

(5) The alternate tariff sheets listed in Footnote 2 reflecting estimated PGA costs related to the proposed new flowing gas rates in Docket No. R–478 and in Footnote 3 reflecting costs associated with the Dallas Storage Project, as proposed in Docket No. RP74–9, not be accepted or made effective and that Northern's request in Docket No. RP74–9 be denied.

(6) The aforementioned petitioners to intervene in Docket No. RP74–9 and in the instant docket be permitted to intervene as hereinafter ordered and conditioned.

The Commission orders. (A) Northern's October 25, 1974, filing, as reflected in the tariff sheets listed in Footnote 1 of this order, is accepted for filing, suspended for one day and permitted to become effective, subject to refund on December 28, 1974.

(B) Northern's alternate tariff sheets listed in Footnote 2 of this order reflecting estimated PGA costs related to the proposed new flowing gas rates in Docket No. R–478 and the tariff sheets listed in Footnote 3 of this order reflecting costs associated with the Dallas Storage Project, as proposed in Docket No. RP74–9, shall not be accepted nor made effective.

(C) Northern's request, in Docket No. RP74–9, to track the costs associated with the Dallas Storage Project as an R&D cost under Order No. 483, is denied.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, a public hearing shall be held for purposes of cross-examination concerning the justness and reasonableness of the proposed costs for the Coal Gasification Study and Coal Slagging Gasifier Project as R&D costs under Order No. 483. The hearing shall be held on April 29, 1975, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The proceeding shall be docketed as Docket Nos. RP72–127 and R&D 75–1.

(E) On or before February 4, 1975, Northern shall serve its direct case in Docket Nos. RP72–127 and R&D 75–1. On or before March 4, 1975, the Commission Staff shall serve its prepared testimony and exhibits. Any intervenor evidence will be filed on or before March 25, 1975. Any rebuttal evidence by Northern shall be served on or before April 15, 1975.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(G) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to § 1.18 of the Commission's rules of practice and procedure.

(H) No procedural dates shall be set regarding the determination of the justness and reasonableness of those increased PGA costs associated with that portion of small producer and emergency purchases which are in excess of the rate levels prescribed in Opinion No. 699–H pending further order of the Commission. That proceeding shall be docketed as Docket Nos. RP71–107 (Phase II) and PGA75–1.

(I) The above mentioned petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(J) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-320 Filed 1-6-75;8:45 am]

[Docket No. CP75–162]

NORTHERN STATES POWER CO. (WISCONSIN)

Notice of Motion for Declaratory Order Disclaiming Jurisdiction or in the Alternative for Declaration of Exemption

DECEMBER 26, 1974.

Take notice that on November 22, 1974, Northern States Power Company (Wisconsin) [NSP], 100 North Barstow Street, Eu Claire, Wisconsin 54701, filed in Docket No. CP75–162 a motion pursuant to § 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7 (c)) for a declaratory order that a certain transaction by NSP involving the sale of liquefied natural gas (LNG) to Wisconsin Gas Company (Wisconsin Gas) is not subject to the jurisdiction of the Commission or, in the alternative, for a declaration that NSP, with respect to said sale, is exempt from the provisions of the Natural Gas Act pursuant to section 1(c) thereof, all as more fully set forth in the motion, which on file with the Commission and open to public inspection.

NSP relates that on September 24, 1974, in Docket No. CP74–147 the Commission issued an order authorizing Michigan Wisconsin Pipe Line Company (Mich Wisc) and Midwestern Gas Transmission Company (Midwestern) to furnish transportation service so as to permit Wisconsin Gas to deliver volumes of natural gas to NSP in exchange for twice the equivalent volume of LNG which NSP is to deliver to Wisconsin Gas. The September 24, 1974, order authorizes Mich Wisc to deliver less than its contractual volumes to Wisconsin Gas in the Milwaukee, Wisconsin area, whereupon Mich Wisc is to reduce its volumes received from Midwestern near Marshfield, Wisconsin, and Midwestern is to deliver concurrently equivalent volumes to NSP near Fargo, North Dakota. The volumes of this vaporous gas will be determined by multipyling by two the equivalent volumes of LNG NSP will deliver to Wisconsin Gas, according to the instant motion, at the outlet of NSP's LNG tank at Eau Claire for transportation to municipalilites in western Wisconsin.

The September 24, 1974, order was further conditioned upon NSP's and Wisconsin Gas' filing for certificate authorization with the Commission and upon approval of such requests. NSP states that it understands that Wisconsin Gas is filing an application [1] pursuant to Section 7(c) of the Natural Gas Act in response to this conditioned order.

NSP, in response to the subject condition in the order of September 24, 1974, requests that the Commission modify or supplement said order by declaring that the activities of NSP under the subject vaporous gas-LNG exchange is not the transportation of natural gas in inter-

[1] Docket No. CP75–155. See 39 FR 43120, December 10, 1974.

state commerce or the sale in interstate commerce of natural gas for resale and is, therefore, not subject to the jurisdiction of the Commission and that NSP is not a natural gas company within the meaning of the Natural Gas Act as a result of this transaction. In support of this contention NSP states that the applicable contract only requires NSP to provide LNG to Wisconsin Gas, and that the LNG, which is transported by truck entirely within Wisconsin, is not commingled with any interstate gas. NSP further contends that the contract only provides for Wisconsin Gas to pay back double the LNG volume to NSP through Midwestern's lines, that Wisconsin Gas' arrangements to have the vaporous gas transported by Mich Wisc and Midwestern to Fargo are acceptable to, but not required by, NSP, and that Wisconsin Gas could have had the gas delivered to NSP at one of Midwestern's delivery points to NSP in Wisconsin or elsewhere. NSP asserts that it transports no gas in interstate commerce and that the sale of LNG from NSP's tank is made in the state of Wisconsin for use wholly in the state of Wisconsin.

Alternatively, NSP requests the Commission to issue an order that NSP is exempt under Section 1(c) of the Natural Gas Act in connection with the implementation of the subject sale and exchange of vaporous gas and LNG and is thereby relieved from the necessity of complying with the Commission's accounting and reporting requirements. In support of this request NSP states that it receives all its gas in or at the boundary of Wisconsin and that all of the natural gas so received is ultimately consumed within the state of Wisconsin.

NSP also provides certification from the Public Service Commission of Wisconsin (PCS) that the rates, service and facilities of NSP are subject to the jurisdiction of the PSC and that the PSC is exercising such jurisdiction.

Any person desiring to be heard or to make any protest with reference to said motion should on or before January 5, 1975, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-322 Filed 1-6-75;8:45 am]

[Docket No. RP74-95]

NORTHWEST PIPELINE CORP.

Notice of Filing of Revised Tariff Sheets

DECEMBER 27, 1974.

Take notice that on December 6, 1974, Northwest Pipeline Corporation (Northwest) tendered for filing Substitute Fourth Revised Sheet No. 10 which eliminates from Northwest's suspended rates in the above docket the impact of increased overriding royalty payments. By order issued November 29, 1974, the Commission accepted and permitted Northwest's filing made on October 31, 1974, to become effective, subject to refund, and subject to the condition that the overriding royalty payments be removed. Northwest states that a copy of the above filing was served upon all parties to the above proceeding, all of its jurisdictional customers, and appropriate state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before January 3, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this application are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-345 Filed 1-6-75;8:45 am]

[Docket Nos. RP72-154 and PGA75-3a]

NORTHWEST PIPELINE CORP.

Notice of Revised Tariff Sheet

DECEMBER 26, 1974.

Take notice that on December 16, 1974, Northwest Pipeline Corporation (Northwest) tendered for filing Substitute Fifth Revised Sheet No. 10 to replace Fifth Revised Sheet No. 10 as previously filed on November 15, 1974.

Northwest states that the tariff sheet reflects the deletion of costs attributable to increased overriding royalties pursuant to Commission order in Docket No. RP74-95, issued November 29, 1974.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 10, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-328 Filed 1-6-75;8:45 am]

[Docket No. E-9149]

PUBLIC SERVICE CO. OF NEW MEXICO

Notice of Cancellation and Petition for Waiver

DECEMBER 26, 1974.

Take notice that on December 4, 1974, the Public Service Company of New Mexico (PNM) tendered for filing a proposed cancellation of Service Schedule A-1 of its FPC Rate Schedule No. 8 by which it provided for interconnection service to Western Colorado Power Company (WCP). PNM states that no service has in fact been provided since the date of its Interconnection Agreement with WCP, November 13, 1962. The parties have agreed to a waiver of the two year notice of cancellation requirement contained in Section II of Schdule A-1, as is evidenced by certificate of concurrence from Utah Power and Light Company (Utah) and its wholly owned subsidiary, WCP. PNM requests that inasmuch as Service Schedule A-1 has never been active and no service has been furnished thereunder, a waiver of the thirty day notice requirements of the Commission's Regulations be granted to allow an effective cancellation date of November 30, 1974.

PNM states that notice of the proposed cancellation has been submitted to Utah, WCP, and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 8, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-317 Filed 1-6-75;8:45 am]

[Docket No. CI75-383]

SOHIO PETROLEUM CO.

Application

DECEMBER 26, 1974.

Take notice that on December 5, 1974, Sohio Petroleum Co. (Applicant), 1100 Penn Tower, Oklahoma City, Oklahoma 73118, filed in Docket No. CI-383, a petition pursuant to sections 7(b) and 7(c) for permission and approval to abandon a sale of natural gas in Lea County, New Mexico, to Skelly Oil Co. (Skelly) and for amendment of its certificate of public convenience and necessity in Docket No. G-11580 to authorize the sale for resale of such natural gas in interstate commerce to Northern Natural Gas Co. (Northern), all as more fully set forth

in the petition to amend which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the sale of casinghead gas to Skelly from the Hinton "12", Well #1-013, Drinkard Field, located in Lea County, because the well has been reclassified from an oil well to a gas well by the New Mexico Oil Conservation Commission. Applicant states that the sale has been made pursuant to a percentage-type contract[1] with Skelly. This application states that as an oil well, the casinghead gas therefrom is dedicated to Skelly, but the gas-well gas is not so dedicated. The application indicates that the sale of gas-well gas from properties located in Lea County is dedicated under a contract dated March 15, 1954, between Applicant and Northern for which sale Applicant was issued a certificate of public convenience and necessity in the instant docket. Applicant proposes upon grant of permission and approval to abandon the sale of gas to Skelly simultaneously to dedicate the sale of gas to Northern at the national rate as prescribed by Opinion No. 699 for wells drilled after January 1, 1973, and § 2.56(a) of the Commission's General Policy and Interpretations. Applicant requests amendment of its existing certificate to include this sale of gas to Northern under its 1954 contract with Northern which is on file as Applicant's FPC Gas Rate Schedule No. 63.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 1975, 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.

[1] 18 CFR 154.91(e).

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.75-318 Filed 1-6-75;8:45 am]

[Docket No. E-9164]

SOUTHERN CALIFORNIA EDISON CO.

Cancellation

DECEMBER 27, 1974.

Take notice that on November 18, 1974, Southern California Edison Co. (Edison) tendered for filing a proposed cancellation of its Rate Schedule FPC No. 49, Supplement No. 1, by which it had provided for resale service to Sierra Pacific Power Co. (Sierra). Edison states that pursuant to a telegram sent by Sierra dated October 18, 1974, stating that the electrical facilities at Silver Peak Substation had been disconnected, no service has been provided Sierra since October 18, 1974.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capital Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 7, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-338 Filed 1-6-75;8:45 am]

[Docket Nos. RP72-121 and PGA75-3(b)]

SOUTHWEST GAS CORP.

Filing of Substitute Tariff Sheets

DECEMBER 27, 1974.

Take notice that on December 4, 1974, Southwest Gas Corp. (Southwest) tendered for filing substitute tariff sheets. Southwest states that pursuant to the order of the Federal Power Commission in Docket Nos. RP74-95 and RP74-49 issued on November 29, 1974, the Northwest Pipeline Corp. was required to exclude certain increased Overriding Royalty Payments. Southwest states that Northwest is filing substitute tariff sheets reducing the increase of .272 cents per therm to .230 cents per therm. Southwest further states that the reason for this filing is to replace the Third Substitute Sixth Revised Sheet No. 3A to reflect the change made by Northwest.

Southwest states that this filing is to change the rates of Southwest under its Purchased Gas Adjustment Clause in Section 9 of its General Terms and Conditions contained in its FPC Volume No. 1.

Southwest states that their Purchased Gas Cost Adjustment of 2.913 cents per therm is reflected in the attached revised Sheet No. 3A as the current adjustment. Southwest states that it has a single supplier and believes that Exhibit A attached to the Commission Order No. 452 in Docket No. R-406 is not required and if waiver of Exhibit A is needed, they thereby request such a waiver.

Southwest additionally requests that the tariff sheet tendered for filing become effective December 1, 1974.

Southwest states that copies of this tariff sheet and the transmittal letter are being posted in accordance with § 154.16 of the Commission's rules and regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 6, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-346 Filed 1-6-75;8:45 am]

[Docket No. RI75-75]

TENNECO OIL CO.

Petition for Special Relief

DECEMBER 27, 1974.

Take notice that on December 9, 1974, Tenneco Oil Co. (Petitioner), Tenneco Building, P.O. Box 2511, Houston, Texas 77001, filed a petition for special relief in Docket No. RI75-75, seeking a rate above the applicable area ceiling under Opinion No. 586. Petitioner seeks a price of 34.5 cents per Mcf, pursuant to Order No. 481 and § 2.75 of the Commission's Statements of General Policy and Interpretations Under the Natural Gas Act, for the sale of gas to Cities Service Gas Company under its FPC Gas Rate Schedule No. 182 from the Medicine Lodge North Pool Field, Barber County, Kansas. Petitioner states that it is the owner of 12.5 percent Working Interest in the Forsyth "B" Well and cites as the basis of the petition its share in the costs of reworking operations designed to increase the recoverable reserves.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 9, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a peti-

tion 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 party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-344 Filed 1-6-75;8:45 am]

[Docket No. RP74-41, PGA75-4]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

DECEMBER 27, 1974.

Take notice that Texas Eastern Transmission Corp. (TETCO) on December 23, 1974 tendered for filing proposed changes in its FPC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Sixth Revised Sheet No. 14
Sixth Revised Sheet No. 14A
Sixth Revised Sheet No. 14B
Sixth Revised Sheet No. 14C
Sixth Revised Sheet No. 14D

TETCO states that these sheets are issued pursuant to the purchased gas cost adjustment provision contained in Section 23 of the General Terms and Conditions of TEtCO's FPC Gas Tariff, Fourth Revised Volume No. 1 and that the change in TETCO rates proposed by this filing reflects a change in the cost of gas purchased by one of TETCO's pipeline suppliers, Texas Gas Transmission Corporation. The proposed effective date of the above tariff sheets is February 1, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8, 1.10. All such petitions or protests should be filed on or before January 15, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-339 Filed 1-6-75;8:45 am]

[Docket No. RP72-133, PGA75-1]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheet

DECEMBER 27, 1974.

Take notice that on December 18, 1974, United Gas Pipe Line Co. (United) tendered for filing Substitute Twentieth Revised Sheet No. 4, which contains a Surcharge Adjustment of 4.69¢ per Mcf to its FPC Gas Tariff, First Revised Volumes No. 1. United states that the Proposed Substitute Tariff Sheet is being filed pursuant to Federal Power Commission Order issued November 29, 1974 in Docket No. RP75-22, which authorized United to include in its next PGA filing "a surcharge computed by using the actual amount of unrecovered purchased gas costs included in its deferred account plus an estimated amount computed to provide for the recovery of all Opinion No. 699 producer increases incurred up to the effective date of its PGA increase". According to United, the 4.69¢ Surcharge Adjustment shown on the Proposed Substitute Tariff Sheet has been computed from the sum of (1) the actual amount of unrecovered purchased gas costs applicable to jurisdictional customers charged to United's Unrecovered Purchased Gas Cost Account through September 30, 1974, (2) the actual amount of unrecovered purchased gas costs resulting from Opinion No. 699 applicable to jurisdictional customers and charged to United's Deferred Purchased Gas Cost Account for the months of October and November, 1974, and (3) an estimate of all increased gas costs resulting from Opinion No. 699, which United will incur during December, 1974.

United states that the Surcharge Adjustment submitted as a part of the Proposed Substitute Tariff Sheet does not include any additional costs which may be incurred during the period from June 21, 1974 through December 31, 1974 as a result of Opinion No. 699-H, which authorized producer rate increases filed by January 31, 1975 to become effective as of June 21, 1974. In that opinion, the Commission authorized pipeline companies to make a one-time special PGA filing on or before March 3, 1975 to track all increases in purchased gas costs attributable to filings made by natural gas producers under Opinion No. 699-H. Pursuant to this authorization, United states that it will make a special PGA filing on or before March 3, 1975, which will include a Current Adjustment reflecting the higher future purchased gas costs resulting from Opinion No. 699-H and a Surcharge Adjustment to recover increased purchased gas cost applicable to jurisdictional customers incurred as a result of Opinion No. 699-H for the period commencing June 21, 1974.

United further states that a copy of the Proposed Substitute Tariff Sheet and supporting data is being mailed to United's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 6, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-332 Filed 1-6-75;8:45 am]

[Docket Nos. RP71-29 and RP71-120 and RP74-37-14]

UNITED GAS PIPE LINE CO.

Order Consolidating Proceedings and Granting Interventions

DECEMBER 27, 1974.

United Gas Pipe Line Co. (City of Picayune, Mississippi on behalf of Crosby Chemicals, Inc.)

On November 4, 1974, the City of Picayune, Mississippi (Picayune) filed a petition for extraordinary relief seeking an emergency Commission order that Picayune's pipeline supplier, United Gas Pipe Line Company (United), "alter the base requirements of its customer, Crosby Chemicals, Inc. (CCI), to accurately reflect its normal Priority 2 usage."

The petition states that Picayune requires 52,444 Mcf for the five (5) month period (November-March) in order to supply CCI's Priority 2 requirements. The volume of gas used by CCI in its Picayune plant under Priority 2 for the winter period of 1972-1973 was 46,000 Mcf. This quantity of natural gas for the winter period is stated to be inadequate in that it does not reflect the correct minimum requirements of the Picayune plant. During the 1972-1973 period in which base requirements were established for United's direct city-gate customers, it is averred that the CCI plant was not operating in its normal capacity due to restricted production caused by a destructive plant fire.

CCI produces rosin, fatty acids, and a multiple of synthetic resins, all of which it is averred are critically short in this nation. CCI uses natural gas in reaction kettles where reaction temperatures of up to 525 degrees are required, and in an atmosphere generator to produce inert gas for the storage of fatty acids.

Co., a direct customer of United also filed a petition to intervene. Late petitions to intervene were filed by Texas Eastern Transmission Corp and General Motors Corp.

The instant petition was noticed on November 18, 1974, pursuant to which two petitions to intervene were timely filed. United, in its petition, recommended consolidation of the instant docket with the remanded United curtailment proceeding, or alternatively, if the petition were interpreted as a petition for extraordinary relief that it should be dismissed without prejudice for failure to meet the requirements of Order No. 467-C.[1] Mississippi Power and Light

[1] Order Defining Procedures for Filing Requests for Relief from Curtailment, issued April 4, 1974, Docket No. R-469.

Initially, we observe that Picayune's petition sets forth very little of the information required by Order No. 467-C in support of relief petitions. We believe that such information is essential to the proper evaluation of petitions for extraordinary relief. However, rather than dismiss without prejudice the instant petition for lack of specificity and failure to comply with Order No. 467-C as suggested by United, we believe the more reasoned approach is to consolidate the instant petition with the remanded curtailment proceedings in United Gas Pipe Line Co., Docket Nos. RP71-29 and RP71-RP71-120.[2] We attach significance to the fact that no immediate emergency is alleged by petitioner with respect to United's currently effective three category curtailment program. Furthermore, our approach here is consistent with that ordered on similar petitions for modification of base requirements.[3]

In this regard we affirm the rationale that "the issue of an amendment to base requirements should be addressed in the context of similar, earlier filed petitions in the curtailment proceedings."[4]

The Commission finds. (1) The petition for amendment of base volumes filed by Picayune on behalf of Crosby Chemicals, Inc. in Docket No. RP74-37-14, is an appropriate matter for resolution in the remanded curtailment proceedings in Docket Nos. RP71-29 and RP71-120.

(2) Participation of the above-named petitioners for intervention may be in the public interest.

(3) Good cause exists to grant the above-stated petitions to intervene filed out of time.

The Commission orders. (A) The Picayune petition for amendment of base volumes is consolidated with the remanded curtailment proceedings in Docket Nos. RP71-29 and RP71-120.

(B) The above-named petitioners are hereby permitted to become intervenors in these proceedings 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 the petitions 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 of the Commission entered in these proceedings.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-337 Filed 1-6-75;8:45 am]

[Docket No. RP71-41]

UNITED GAS PIPE LINE CO.

Order Setting Hearing Date and Establishing Procedure

DECEMBER 27, 1974.

On November 13, 1970, United Gas Pipe Line Company filed in the above referenced docket a general rate increase which included an increase in its depreciation rate from a composite rate of 2.88 percent to a uniform 5 percent rate on all depreciable properties for the years 1971-1976, to be reduced in succeeding 5 year periods with a resulting 20 year average of 3.88 percent. All issues involving the rate filing were settled by the parties with the exception of the proposed changes in the rate of depreciation. United requested the change in its depreciation rate because it felt that the practice of determining the useful service life of its depreciable properties did not adequately take into account the exhaustion rate of gas supplies. Hearings were held concerning the proposed change in the rate of depreciation and on January 11, 1973, the Commission, in Opinion No. 645, 49 FPC 141, found that United's old depreciation rates were inadequate and approved United's proposed changes.[1]

Memphis Light, Gas and Water Division (Memphis) appealed our orders to the United States Court of Appeals for the District of Columbia arguing that the Commission orders were not substantiated by the record. (Memphis Light Gas and Water Division v. F.P.C., D.C. Cir. No. 73-1506.) On September 3, 1974, the Court of Appeals issued its decision in the case. That Court held that although the Commission can take into account the exhaustion of natural resources in establishing depreciation rates for a natural gas company, there was no factual evidence to support the Commission's decision. The Court therefore remanded the matter to the Commission for further proceedings consistent with its opinion. The Court emphasized that before the Commission can permit a change in the rate of depreciation of property of a natural gas company because of exhaustion of natural resources, the Commission must find that such exhaustion has, in fact, caused the useful life of the property in question to be reduced to the extent that depreciation based solely on physical life is inadequate.

In view of the opinion of the Court, we believe that it would be appropriate to establish a formal evidentiary hearing to ensure that we have the benefit of a full development by the parties to this proceeding of the relevant facts and law. At such hearing the parties should adduce evidence as to: (1) Any properties that have been, will be or may be abandoned because of the declining reserve life index of United and the effects of such on the rate of depreciation for the property involved; (2) the method of computation for the service life of depreciable property relating to past and present capacity and projected future capacity and any effect between diminution in operating load and the useful life of the depreciable property; and (3) present and future sales and present and future reserves and their correlating effect on the rate of depreciation of the property in question. The parties may, of course, adduce any other evidence relevant to this proceeding.

The Commission finds. It is necessary that a formal public hearing in this matter be held.

The Commission orders. (A) Pursuant to the authority of the Natural Gas Act, the regulations thereunder, and the Commission's rules of practice and procedure, a hearing shall be held in this proceeding before a Presiding Administrative Law Judge, commencing on May 6, 1975, at 10 a.m. (EDT) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) On or before January 28, 1975, United shall serve its prepared testimony and exhibits relating to the issue of depreciation. On or before March 11, 1975, the Commission Staff shall serve its prepared testimony and exhibits. Prepared testimony and exhibits of intervenors shall be served on or before April 1, 1975. Any rebuttal evidence of United shall be served on or before April 22, 1975.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-342 Filed 1-6-75;8:45 am]

[Docket Nos. RP73-94, G-19618, CP63-270, CP65-123, and Docket Nos. CP63-247, CP65-93, CP75-53]

VALLEY GAS TRANSMISSION, INC. AND TENNESSEE GAS PIPELINE CO.

Order Remanding Settlement, Granting Interventions, Consolidating Proceedings, Prescribing Procedures, Setting Date for the Filing of Evidence, and Hearing Date

DECEMBER 27, 1974.

The six filings which are consolidated by this order with Docket No. RP73-94 have as their apparent single objective the transferring from Valley Gas Transmission, Inc. (Valley) to Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) the daily obligation to deliver 35,000 Mcf of natural gas to National Fuel Gas Distribution Corportion (National Fuel), formerly Iroquois Gas Corporation. In Docket Nos. CP63-270 and CP65-123, Valley seeks to abandon its sale to National Fuel; while

[2] It should be pointed out that we are not excusing the instant petition's deficiencies, but expect that the requirements of Order No. 467-C will be complied with through Picayune's evidentiary presentation in the consolidated proceedings.

[3] See "Order Denying Interim Extraordinary Relief, Consolidating Proceedings and Granting Interventions" in United Gas Pipe Line Co. (Norco Gas and Fuel Company, Inc.), Docket No. RP74-37-10 and "Order Consolidating Proceedings and Granting Interventions" in United Gas Pipe Line Co. (United Gas, Inc., on behalf of B. C. Rogers & Sons, Inc.), Docket No. RP74-37-10.

[4] "Order Denying Reconsideration" in United Gas Pipe Line Co. (Mississippi Chemical Corp.), Docket No. RP74-37-11, mimeo p. 2.

[1] The Commission denied rehearing of this order in Opinion No. 645-A, 49 FPC 643 (1973).

in Docket No. CP75-53 Tennessee proposes to make a sale of an equivalent volume to National Fuel. As consolation to Tennessee for this new undertaking, Valley proposes to amend the Commission's order in Docket No. G-19618 to dedicate certain additional portions of reserves to Tennessee. In Docket Nos. CP63-247 and CP65-93 Tennessee seeks to abandon the transportation obligations under which Tennessee had been transporting volumes to National Fuel on Valley's behalf. All of these filings appear to be prompted by a settlement in Valley Gas Transmission, Inc., in Docket No. RP73-94, which Valley on August 27, 1974 moved be consolidated with the six filings discussed above. In its motion, Valley alleges that the reserve dedication issue and the evidentiary support for the settlement of that issue are developed in Docket No. RP73-94, and that the reserve dedication issue was raised by our order of January 11, 1974, Docket No. RP73-94 ____ FPC ____. Valley Gas Transmission, Inc., Docket No. RP73-94, was predicated upon pleadings requesting a PGA increase sought by Valley. In our order of January 11, 1974, our reference to the possible improper transfer and inclusion of reserves and to section 7 of the Natural Gas Act was within the narrow context of whether the PGA should be permitted and should not have been construed as empowering the rate proceedings in Docket No. RP73-94, absent an appropriate section 7 filing to reach and resolve the certificate issue in the manner in which the settlement purports to do. Approval of the transfer of Valley's obligation to sell natural gas to National Fuel was not at issue in the proceedings in Docket No. RP73-94, except to the extent that approval of such a transfer was an a priori to the rate relief therein requested. The fundamental problem is one of notice: Tennessee's customers could not properly have been on notice that Valley's rate adjustment sought in Docket No. RP73-94 would be deciding certificate matters affecting Tennessee. The inescapable conclusion is that the settlement in Docket No. RP73-94 is broader than the issues which were properly to be settled, and that the settlement must accordingly be remanded for decision.

Results of our FEDERAL REGISTER notices [1] lend further support to the contention that the certificate aspects of the proposed settlement in Docket No. RP73-94 have taken Tennessee's customers somewhat by surprise. Twenty distributor [2] have filed a joint petition to intervene alleging that they are Tennessee customers which might be directly affected, and accordingly the joint petitioners request a formal hearing. Columbia Gas Transmission Corp. has also filed for leave to intervene and requested formal hearing. Additional petitions to intervene have been filed by Peoples Natural Gas., Consolidated Gas Supply Corp., Public Service Electric and Gas Co., Tennessee, Valley, and National Fuel. The Public Service Commission of the State of New York filed notice of intervention. All of the above interventions should be permitted.

This order remanding the settlement will have no impact on the PGA sought by Valley in Docket No. RP73-94, inasmuch as that PGA has gone into effect by operation of law. The result will be to empower the Presiding Judge on remand to decide whether the six subject filings are consistent with the public convenience and necessity and should therefore be granted. In so doing, we emphasize that the public interest requires a record on the certificate issues, and the positions of the parties, including staff, taken in settlement of issues that were not properly before Docket No. RP73-94 are not to be binding upon them or be construed as preventing a full airing of the issues in the record we herein order to be developed.

The Commission finds. (1) The filings in Docket No. CP63-247, CP65-93, CP75-53, G-19618, CP63-270, and CP65-123 are interrelated and should be consolidated for hearing and decision with the proceedings in Docket No. RP73-94.

(2) The settlement in Docket No. RP73-94 should be remanded for resolution of certificate issues above described.

(3) Participation by the above named interveners may be in the public interest.

The Commission orders. (A) The filings in Docket No. CP63-247, CP65-93, CP75-53, G-19618, CP63-270, and CP65-123 are hereby consolidated for hearing and decision with the proceedings in Docket No. RP73-94.

(B) The settlement in Docket No. RP73-94 is remanded to the Presiding Administrative Law Judge for resolution of the certificate issues presented by the filings in ordering paragraph A.

(C) The above named petitioners are hereby permitted to intervene in these consolidated proceedings subject to the rules and regulations of the Commission, *Provided, however,* That the participation of such interveners shall be limited to the matters affecting asserted rights and interests as specifically set forth in the petition for leave to intervene, and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders of the Commission entered in this proceeding.

(D) Tennessee Gas Pipeline Co., Valley Gas Transmission Inc., and all supporting interveners shall file testimony and exhibits comprising their cases in chief on or before January 23, 1975.

(E) 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, a hearing will be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D. C., 20426 on January 30, 1975, concerning the matters involved in and the issues presented by the filings in ordering paragraph A.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-341 Filed 1-6-75;8:45 am]

[Docket No. E-9163]

WESTERN MASSACHUSETTS ELECTRIC CO.

Rate Schedule Amendment

DECEMBER 26, 1974.

Take notice that Western Massachusetts Electric Co. (WMECO) on December 9, 1974, tendered for filing a proposed amendment to its rate schedule designated FPC No. 67. The proposed amendment is intended to recognize that, effective December 1, 1974, the City of Westfield, Massachusetts Gas and Electric Department, a wholesale customer of WMECO, was entitled to purchase a portion of its electric requirements out of Boston Edison Company's nuclear generating unit, known as Pilgrim No. 1. In order that WMECO's rate schedule may accommodate Westfield's purchase out of Pilgrim No. 1 on December 1, 1974, WMECO has requested waiver of the Commission's customary notice period to permit the amendments to take effect as of December 1, 1974.

Copies of the filing were served upon the City of Westfield, Massachusetts, Gas and Electric Department.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 3, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-316 Filed 1-6-75;8:45 am]

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[1] Valley's applications were noticed on September 3, 1974, with September 23, 1974, the due date for interventions. Tennessee's applications were noticed on September 10, 1974, with September 26, 1974, the due date for interventions.

[2] Bay State Gas Co., The Berkshire Gas Co., Blackstone Gas Co., Boston Gas Co., Commonwealth Gas Co., Concord Natural Gas Corp., The Connecticut Gas Co., Connecticut Natural Gas Corp., Fitchburg Gas & Electric Light Co., Gas Service, Inc., Granite State Gas Transmission, Inc., The Hartford Electric Light Co., Haverhill Gas Co., City of Holyoke, Massachusetts Gas & Electric Department, Lawrence Gas Co., Lowell Gas Co., Manchester Gas Co., The Southern Connecticut Gas Co., Valley Gas Co., City of Westfield Gas & Electric Light Department.

[Docket No. E-9175]

CENTRAL ILLINOIS LIGHT CO.

Notice of Rate Change

DECEMBER 31, 1974.

Take notice that Central Illinois Light Company, on December 13, 1974, tendered for filing pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations thereunder a change in rates for electric service rendered under the following rate schedules:

Rate Schedule FPC No. 4 applicable to the Village of Riverton, Ill.

Rate Schedule FPC No. 5 applicable to the Village of Chatham, Ill.

Rate Schedule FPC No. 12 applicable to the Corn Belt Electric Cooperative, Inc.

The proposed changes would increase revenues from jurisdictional sales and service by $158,361 based on the 12 month period ending June 30, 1974.

The Company states that it earned a rate of return of only 4.096% on sales to the municipalities and 2.821% on sales to Corn Belt during the twelve months ended June 30, 1974. Company states that the rate changes made by this filing are necessary to compensate for these increasing costs. The Company proposes an effective date of January 13, 1975.

The revised rates also contain modified fuel adjustment clauses which the company states are intended to conform to the Commission's Order No. 517 issued November 13, 1974 in Docket No. R-479.

Any person desiring to be heard or to protect said application should file a petition to intervene or protect with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protects should be filed on or before January 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-607 Filed 1-3-75;3:30 pm]

FEDERAL MARITIME COMMISSION

ASSOCIATED NORTH ATLANTIC FREIGHT CONFERENCES

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, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 27, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement on the matters upon which they desire to adduce evidence. An allegiation 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:

Howard A. Levy, Esquire
Suite 727
17 Battery Place
New York, New York 10004

Agreement No. 9978-3, among the members of the above-named agreement, is an agreement to extend the approval of the basic agreement for an additional three-year period.

Dated: December 30, 1974.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-380 Filed 1-6-75;8:45 am]

CANADIAN AMERICAN DISCUSSION AGREEMENT

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, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 27, 1975. 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.

Howard A. Levy, Esquire
Suite 727
17 Battery Place
New York, New York 10004

Agreement No. 10057-1, among the member lines of the above-named agreement, is an agreement to extend the approval of the basic agreement for an additional period of eighteen months.

Dated: December 30, 1974.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-381 Filed 1-6-75;8:45 am]

LASH/SEABEE AGREEMENT NO. 9980

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, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Lousiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 27, 1975. 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:

R. J. Finnan, Pricing
Lykes Bros. Steamship Co., Inc.
300 Poydras Street
New Orleans, Louisiana 70130

Agreement No. 9980-2, among Central Gulf Steamship Corporation, Combi Line (a joint service of Hapag-Lloyd, A.G. and Holland America Line), Lykes Bros. Steamship Co., Inc., Delta Steamship Lines, Inc. and Waterman Steamship Corp., amends the basic agreement (1) to reflect the recent admission of Delta and Waterman as members and (2) to enlarge its geographic scope to include Central America, the Caribbean, Red Sea, Gulf of Suez, Persian Gulf, Arabian Sea, India, Pakistan, Srilanka, Bangladesh, Burma and Far East, including ports and/or places or points on inland waterways, tributary to the ocean ports and ranges.

Dated: January 2, 1975.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-385 Filed 1-6-75;8:45 am]

MEDITERRANEAN ASSOCIATED CONFERENCES

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, 1100 L Street, NW., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 17, 1975. 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:

Stanley O. Sher, Esquire
Billig, Sher & Jones, P. C.
Suite 300
1126 Sixteenth Street, NW.
Washington, D.C. 20036

Agreement No. 9976-1, among the member conferences of the Mediterranean Associated Conferences, extends the effective period of the original agreement from March 2, 1975 through March 2, 1978.

Dated: December 31, 1974.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-379 Filed 1-6-75;8:45 am]

[No. 74-51]

PACIFIC COAST EUROPEAN CONFERENCE, ET AL.

Erratum To Notice of Filing of Complaint

DECEMBER 30, 1974.

In the notice of filing of complaint in this proceeding served December 3, 1974, it is stated that respondents activities are alleged "to cause diversion of cargo from complainants and other carriers vessels." The quoted phrase should read "to cause diversion of cargo from complainant's to other carriers' vessels."

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-382 Filed 1-6-75;8:45 am]

[Docket No. 74-47; Agreement No. 10116]

POOLING AGREEMENT IN THE EASTBOUND AND WESTBOUND TRADES BETWEEN JAPANESE PORTS AND PORTS IN CALIFORNIA, OREGON AND WASHINGTON

Order on Appeal of Ruling; Order Granting Reconsideration

On October 22, 1974, the Commission ordered an investigation and hearing to determine whether Agreement No. 10116 is unjustly discriminatory or unfair as between carriers, shippers, exporters, or ports, or operates to the detriment of the commerce of the United States or is contrary to the public interest or otherwise in violation of the Shipping Act, and to determine whether Agreement No. 10116 should be approved, modified or disapproved pursuant to section 15 of the Shipping Act, 1916. Agreement No. 10116 is between six respondent Japanese lines which will pool and divide revenue and cargo in the eastbound and westbound trade between Japan and the West Coast of the United States. The investigation and hearing was ordered because the Commission felt that the proposed revenue pool would be a new concept in the Japanese/U.S. West Coast trade. The Commission was also concerned about the potential for a pooled expansion by Japanese lines to the detriment of competitors in the trade and was skeptical of the need for such an agreement based upon overtonnaging in the trade. Furthermore, intervenor, Sea-Land Service, Inc. (Sea Land) urged that the approval of Agreement 10116 be limited to one year so that it could be reviewed to evaluate the results and impact of the agreement.

On November 20, 1974, the respondent Japanese lines petitioned the Commission to reconsider the issuance of its Order of Investigation and Hearing in Docket No. 74-47. Respondents asserted that (1) they are willing to accept approval limited to 18 months, (2) that Agreement No. 10116 does not represent a "new concept" in the transpacific trade, (3) approval would not lead to other concentrations not lawfully permitted, (4) the trades are in fact overtonnaged, and (5) that Agreement No. 10116 is a governmentally directed arrangement designed to secure important public benefits. Respondents also requested that the presiding Administrative Law Judge, Stanley M. Levy, postpone a prehearing conference scheduled for November 22, 1974, pending disposition by the Commission of the petition to reconsider.

The prehearing conference was held on November 22, 1974, with the Respondents and Hearing Counsel asserting that the petition for reconsideration was directed to the Commission and should be certified to the Commission for consideration. Relying on Rules 10(g) and 5(m) of the Commission's rules of practice and procedure (46 CFR 502.147 and 502.73), Judge Levy ruled that all motions were to be passed upon by the presiding officer. While he denied the petition to reconsider, he did grant leave to appeal his ruling to the Commission.

Respondents and Hearing Counsel have appealed from the ruling of Judge Levy citing a misapplication of the rules of practice and procedure and lack of power by the Administrative Law Judge to rule on a petition for reconsideration.

Seatrain Lines, Inc. (Seatrain), replied LIZZIO, Jim 56595 NITE LINO Jan. 3— to the appeals from the decision of the Administrative Law Judge. Seatrain asserts that the Administrative Law Judge had jurisdiction to hear and decide the Respondent's petition to discontinue this proceeding.

The respondents have submitted a petition for reconsideration of the order instituting the investigation and hearing on Agreement 10116. Such a petition should not be confused with a motion for dismissal which would properly be considered and ruled upon by the presiding Administrative Law Judge. Petitions for reconsideration of an order can only be ruled upon by the Commission. Section 25 of the Shipping Act, 1916, gives the Commission the power to reverse, suspend or modify any order made by it. Nowhere is this power delegated to the Administrative Law Judge assigned as the Presiding Officer to conduct an investigation and hearing with regard to an agreement submitted for Commission approval. Rule 10(g) (46 CFR 502.147) was cited by Judge Levy for the proposition that the Presiding Officer has the authority to dispose of procedural requests or similar matters, and to dispose of any other matter that normally and properly arises in the course of the proceeding. A petition for reconsideration is certainly not procedural nor is it a matter which normally or properly arises in the course of the proceeding over which the Administrative Law Judge

presides. The petition is addressed to the reconsideration of the issuance of the order and investigation, not to the proceedings contemplated in Rule 10(g) which carry out the order of investigation. A petition for reconsideration does not, therefore, fall under the provisions of Rule 10(g) (46 CFR 502.147).

A petition for reconsideration also is not controlled by Rule 5(m) (46 CFR 502.73). Rule 5(m) refers to motions and applications or requests "not otherwise specifically provided for in the rules of this part." Petitions for reconsideration are, however, specifically provided for in Rule 16(a) (46 CFR 502.261) and are petitions, not motions, as referred to in Rule 5(m).

The petition for reconsideration is addressed properly only to the Commission and seeks to invoke powers which only the Commission possesses. Therefore, it is the opinion of the Commission that Administrative Law Judge Levy improperly heard and ruled on the petition for reconsideration submitted by respondents. The denial of the petition to reconsider issued by Administrative Law Judge Levy in this case is therefore declared to be null and void as beyond his authority.

Furthermore, because the findings and concerns prompting the issuance of the Order may have been erroneously concluded as alleged in Respondents' petition for reconsideration, we shall reconsider the order of investigation and hearing to determine if the order should be vacated or modified and whether Agreement No. 10116 should be approved.

Therefore it is ordered, That Respondents' petition for reconsideration is granted for the purpose of determining whether the order of investigation and hearing in this case should be vacated or modified and whether Agreement No. 10116 should be approved.

It is further ordered, That pursuant to Rule 16(b) of the Commission's rules of practice and procedure (46 CFR § 502.-262) any interested person may file a reply to Respondent's Petition on or before January 22, 1975, such reply to be limited to the issues of (1) the length of approval, (2) whether the pooling in the transpacific trade creates a new concept, (3) the potential for unlawful concentration, (4) the existence of overtonnaging in the transpacific trade, and (5) whether Agreement No. 10116 is a governmentally directed arrangement.

It is further ordered, That a copy of this order be forthwith served on the parties to this proceeding, and be published in the FEDERAL REGISTER.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.75-373 Filed 1-2-75;11:56 am]

[Docket No. 74-46]

PUERTO RICO MARINE LINES, INC.

Proposed General Increase and Simultaneous Reduction of Bunker Surcharge Applying Between United States Gulf Ports and Puerto Rico; Order Vacating Suspension

By order served October 18, 1974 the Commission placed under investigation and suspended to and including February 20, 1975 Supplement Nos. 13 and 14 to Tariff No. 1 filed by Puerto Rico Marine Lines, Inc. (PRML). The reason for the suspension of the involved tariff matter was that the information submitted by PRML in support of its tariff changes was insufficient for the Commission to determine the justness and reasonableness of the proposed changes.

PRML subsequently submitted additional information which appears to overcome discrepancies and inadequacies of the data previously submitted and which satisfies the requirements of Amendment 1 to General Order 11 (46 CFR 512.3(d)(1)). Upon further consideration, the Commission has determined to vacate its order of suspension.

Therefore, it is ordered, That pursuant to the discretion vested in this Commission by section 3 of the Intercoastal Shipping Act, 1933, the suspension of Supplements Nos. 13 and 14 to PRML's Tariff FMC-F No. 1 is hereby vacated.

It is further ordered, That pursuant to the provisions of the Commission's Tariff Circular No. 3 (46 CFR 531.20(f)), PRML may file with the Commission the tariff matter necessary to vacate and set aside the suspension of said supplements, such tariff matter to become effective on not less than one day's notice.

It is further ordered, That, except as amended by the foregoing paragraphs, the Order of Investigation and Suspension herein shall remain in effect pending the outcome of the investigation instituted thereby unless otherwise ordered by the Commission.

It is further ordered, That a copy of this Order shall be filed with PRML's tariff FMC-F No. 1, shall be served upon all parties to this proceeding and published in the FEDERAL REGISTER.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.75-384 Filed 1-6-75;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 27, 1974. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public of such receipt.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC form are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed form, comments must be received on or before January 21, 1975, and should be addressed to Mr. Monte Canfield, Jr., Director, Office of Special Programs, United States General Accounting Office, 425 I Street NW., Washington, D.C. 20548.

Further information about the items on this list may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

FEDERAL TRADE COMMISSION

Request for review and clearance of a new one-time statistical survey or report entitled Special Report Form—Natural Gas Survey. The Federal Trade Commission plans to collect information concerning natural gas reserves, production, and producible shut-in leases. The questionnaire also requests data concerning natural gas contracts and the provisions contained therein. Responses are mandatory under the FTC Act, 15 U.S.C. 41. Potential respondents are sixty of the largest natural gas producers. The amount of time required to respond to the questionnaire will vary considerably according to the size of the reporting firm. Estimated average burden required per response is 700 man-hours.

Request for review and clearance of a new one-time statistical survey or report entitled Special Report Form—Coal Survey. The Federal Trade Commission plans to survey leading coal producers and coal reserve holders pursuant to Congressional mandate to undertake a study of the energy industry, including the effects of decisions by government departments and agencies on the price and supply of energy. Responses are mandatory under the Federal Trade Commission Act. Out of a universe of 3900 coal mining companies, potential respondents include 70 leading coal companies during the period 1964 through 1973 and 38 additional companies believed to be substantial coal reserve holders.

The total compliance burden is estimated at 97,416 man-hours. This figure was based on the estimation that for coal producing companies having only one coal division, and thereby only one set of coal books and records, the time needed to collect the data and complete

the forms would be approximately 944 hours, including administrative overhead time costs. It was estimated that 62 of the 70 coal producers to be surveyed would fall within the one coal division class, resulting in a total compliance burden for such companies of 58,528 hours. The eight largest coal producers were estimated to have, on the average, approximately four coal divisions thereby increasing each such company's response time to 3,776 hours (944 hours per division) or a total of 30,008 hours for the eight companies. The remaining 38 concerns which are, for the most part, not in the coal producing business would, in most if not all instances, only supply 25 percent of the total information called for by the full survey. Accordingly, it was estimated that the compliance burden on such concerns would be 236 hours (25 percent of 944) or a total of 8,968 hours for all thirty-eight non-coal mining concerns.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.75-433 Filed 1-6-75;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

[CIRCULAR NO. A-106]

ENVIRONMENTAL POLLUTION AT EXISTING FEDERAL FACILITIES

Reporting Requirements

DECEMBER 31, 1974.

In the matter of reporting requirements in connection with the prevention, control, and abatement of envrionmental pollution at existing Federal facilities.

1. *Purpose.* This circular provides procedures to be followed by Federal agencies in carrying out the provision of section 3(a)(3) of Executive Order No. 11752 of December 17, 1973, pertaining to the control of environmental pollution from existing Federal facilities.

2. *Rescission.* This circular, supercedes and rescinds Office of Management and Budget (OMB) Circulars No. A-78 and A-81 dated May 18, 1970.

3. *Definitions.* a. The term "Federal agencies" means the departments, agencies, establishments, and instrumentalities of the executive branch.

b. The term "facilities" means the buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal Government.

c. The term "project" means an action to achieve needed corrective measures relative to identified environmental pollution sources within a Federal facility.

d. The term "cost" means the amount of funds required for putting in place the necessary environmental protection measures. These costs include the capital costs of structure and equipment, irrespective of the appropriation chargeable, but not the annual maintenance and operating costs.

e. The term "lease-construction" means construction of a facility by a private entrepreneur to meet requirements of a Federal agency in consideration of a commitment by the agency to lease the facility at a specified price for a specified time period.

f. The term "Director" means the Director of the Office of Management and Budget.

g. The term "Administrator" means the Administrator of the Environmental Protection Agency.

4. *Standards.* All facilities are to conform to the requirements specified in section 4 of the order. Those requirements are as follows:

a. Federal, State, interstate, and local air quality standards and emission limitations adopted in accordance with or effective under the provisions of the Clean Air Act, as amended.

b. Federal, State, interstate, and local water quality standards and effluent limitations respecting the discharge or runoff of pollutants adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended.

c. Federal regulations and guidelines respecting dumping of material into ocean waters adopted in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972, and the Federal Water Pollution Control Act, as amended.

d. Guidelines for solid waste recovery, collection, storage, separation, and disposal systems issued by the Administrator pursuant to the Solid Waste Disposal Act, as amended.

e. Federal noise emission standards for products adopted in accordance with provisions of the Noise Control Act of 1972 and State, interstate, and local standards for control and abatement of environmental noise.

f. Federal guidance on radiation and generally applicable environmental radiation standards promulgated or recommended by the Administrator and adopted in accordance with the Atomic Energy Act, as amended (42 U.S.C. 2011), and rules, regulations, requirements, and guidelines on discharges of radioactivity as prescribed by the Atomic Energy Commission.

g. Federal regulations and guidelines respecting manufacture, transportation, purchase, use, storage, and disposal of pesticides promulgated pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972.

5. *Agency responsibilities.* Pursuant to their responsibilities under the order, Federal agencies:

a. Should cooperate with State, interstate, and local pollution control agencies and with other Federal agencies in the evaluation of their pollution control needs.

b. May seek the assistance of the Administrator to determine the standards and the appropriate implementation schedules applicable to particular facilities.

6. *Pollution control plans.* a. Federal agencies must develop plans to assure that their facilities meet the standards listed in paragraph 4 of this Circular.

b. Such plans are to cover existing facilities as defined in paragraph 3b of this circular. "Lease-construction" is an example of a type of facility covered under this provision, but facilities used under ordinary leases are not covered. Remedial measures required for buildings and equipment owned by non-Federal lessees on Federal land are not to be reported under this circular unless the responsible Federal agency attests that they are constructed and operated for a Federal purpose. In cases where lease agreements with non-Federal lessees obligate the Federal Government to provide pollution control measures, remedial measures are to be reported under this circular.

c. The agency plan should include all projects involving "costs," as defined in paragraph 3d of this circular, which are necessary to bring existing facilities into compliance with applicable standards. Funds required for studies, management and monitoring associated with the definition and development of corrective measures and necessary equipment to assure compliance with standards should also be included in the plan.

d. In determining the most cost-effective remedial measures necessary for a particular facility to meet the standards, agencies should take into account such factors as: the future use of the facility; the best practicable technology available; the need for control system reserve capacity; the various alternative methods of control including process change; and the use of joint or regional pollution control facilities.

e. Agency plans should include the milestones for the design, construction, and completion of projects which, when submitted to the Director, will represent an agency commitment to comply with applicable standards considering the Federal budgetary process and assuming that the requested funds will be appropriated by the Congress and allocated to the agency as planned.

f. Facilities may be exempted from applicable standards in the interest of national security or in extraordinary cases in which it is in the paramount interest of the United States. Such exemptions must be made in accordance with the provisions of section 5 of the order.

7. *Reports.* a. Agency plans are to be reported in accordance with procedures prescribed by the Administrator. Such procedures will provide for submission of pertinent details of each individual project and a summary status report of the overall plan.

b. The reports will be submitted semi-annually on December 31 and June 30 to the Director thru the Administrator. After review of the reports, the Administrator will forward the agency's reports to the Director.

c. By September 30 of each year the Administrator will also forward to the Director an evaluation of each agency's report.

8. *Communications with the Administrator.* Communications with the Administrator should be directed to the Environmental Protection Agency, attention: Office of Federal Activities, 401 M Street SW., Washington, D.C. 20460, phone 755-0790 (code 138).

9. *Communications with the Director.* Questions regarding the implementation of this Circular should be addressed to the Office of Management and Budget, Washington, D.C. 20503, phone 395-6827 (code 103).

ROY L. ASH,
Director.

[FR Doc.75-411 Filed 1-6-75;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 12/31/74 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (X) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Forest Service: Request for Nominations for Summer Student Employment Program—Forest Service, annually, educational institutions, Lowry, R. L., 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education: Assessment of School Supervised Work Education Programs, OE391, 1-8, single time, school coordinators, students, employers, Human Resources Division, 395-3532.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit Application for Assignment of Portion of Set-Aside to Specific Project—Section 8, HUD-52516, on occasion, housing finance agencies, Community and Veterans Affairs Division, 395-3532.

Application for Section 8 Housing Assistance Payments Program—Existing Housing, HUD-52515, on occasion, public housing agencies, Community and Veterans Affairs Division, 395-3532.

DEPARTMENT OF THE TREASURY

Departmental and Other Monthly Report of Assets, Liabilities, and Positions in Specified Foreign Currencies of Firms in the U.S., FC-3, monthly, nonbanking business concerns and nonprofit institutions, Hulett, D. T., 395-4730.

REVISIONS

DEPARTMENT OF LABOR

Occupational Safety and Health Administration: Quarterly Report of State Compliance/Standards Activity, OSHA120, quarterly, State designated agencies, Ellett, C. A., 395-6172.

EXTENSIONS

DEPARTMENT OF LABOR

Manpower Administration:

Center-Screener Enrollee Information Report, MA-6-59, on occasion, Evinger S. K., 395-3648.

Report of Activities Under Defense Manpower Policy #4 as Revised June 1, 1970, MA 7-38, monthly, Evinger, S. K., 395-3648.

Certification and Report Forms—Federal Procurement Preference Program, MA 6-12, on occasion, Evinger, S. K., 395-3648.

Application for Award of Exemplary Rehabilitation Certificate, MA 7-52, on occasion, Evinger, S. K., 395-3648.

Annual Report on State and Area Occupational Requirements for Vocational Education, MA 7-25A, annually, Evinger, S. K., 395-3648.

Request for readmission, MA 6-60, on occasion, Evinger, S. K., 395-3648.

Emergency Employment Act—Participant Information Record, Summary of Participant Characteristics, Project Status/Financial, MA 6-43, monthly, Evinger, S. K., 395-3648.

Reporting on the Operation of Apprenticeship Information Centers, ES-239, monthly, Evinger, S. K., 395-3648.

Employes Employment and Hiring Record, . . . Determination of Need for Placement Office . . . Claims Office . . . ES-640, on occasion, Evinger, S. K., 395-3648.

Job Specification Form, ES-541, on occasion, Evinger, S. K., 395-3648.

Worker Adjustment Assistance Handbook . . . Trade Adj. Allowance Activities, MA 5-63, monthly, Evinger, S. K., 395-3648.

Guide for the Conduct of Post-Exhaustion Studies (Employment Benefit Rights—Unemployed Workers), U-134, on occasion, Evinger, S. K., 395-3648.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-651 Filed 1-6-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Suspension of Trading

DECEMBER 31, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Continental Vending Machine Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from December 31, 1974 through January 9, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-390 Filed 1-6-75;8:45 am]

[812-3602]

METROPOLITAN LIFE INSURANCE CO., ET AL.

Filing of Application

DECEMBER 31, 1974.

Notice is hereby given that Metropolitan Life Insurance Company ("Metropolitan"), Metropolitan Life Variable Account C ("Account C") and Metropolitan Life Variable Account D ("Account D"), One Madison Avenue, New York, New York 10010 (Metropolitan, Account C and Account D referred to collectively herein as "Applicants"), filed an application on February 7, 1974, and an amendment thereto on November 22, 1974, for an order, pursuant to section 17(f)(3), and pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting Applicants from the provisions of sections 22(d), 27(a)(3) and 27(c)(2) of the Act. On February 5, 1974, pursuant to New York Insurance Law, Metropolitan established Accounts C and D which have been registered under the Act as open-end, diversified management investment companies. Metropolitan intends to allocate to Account C the purchase payments, after certain deductions, received under its Convertible Investment Contracts ("Investment Contracts"), which will be issued under Metropolitan's Investment Annuity Program ("Program"). Metropolitan intends to allocate to Account D amounts received under the variable annuity contracts included in the program from the conversion of "Investment Units" under Investment Contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus.

Applicants request an exemption from section 22(d) to permit them to do the following:

(1) Make a reduced sales charge with respect to any purchase payment under an investment Contract to the extent such payment consists of proceeds of certain Metropolitan life insurance and annuity contracts ("Proceeds");

(2) Make a reduced sales charge with respect to purchase payments computed on the basis of the total combined

amount of purchase payments that, since the issuance of an Investment Contract or Contracts, are being and have been made thereunder by the person or persons entitled under the Investment Contract to such reduced sales charge, even though the Investment Units purchased by past payments may no longer be owned because of redemptions, conversions or transfers to other owners; and

(3) Apply any monthly withdrawal plan payment under the Investment Contract or any distribution of net investment income and net realized capital gains of Account C declared and payable under the Investment Contracts, either of which is returned to the company by postal authorities as undeliverable, to the purchase of Investment Units (and an equal number of annuity rights) without making a sales charge therefor.

Applicants assert that no unfair discrimination or disruption of the orderly distribution of its securities would result from the elimination or reduction of the sales charge under the foregoing circumstances. Under the circumstances described in subparagraphs (1) and (3) above, a sales charge will have been previously deducted under the Investment Contract or another contract issued by Metropolitan. The reduction of the sales charge under the circumstances described in subparagraph (2) hereof will result in no unfair discrimination to other Investors and, Applicants state, will in no way obstruct effectuation of the purposes of the Act.

Section 17(f)(3) of the Act provides that a registered management investment company may maintain its securities and similar investments in its own custody, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Rule 17f-2(b) provides, with certain exceptions, that all securities and similar investments must be deposited in the safekeeping of a bank or other company whose functions and physical facilities are supervised by Federal or State authority. Rule 17f-2(d) provides that no more than five persons shall have access to such investments.

Applicants request an order, to the extent necessary, under the provisions of section 17(f)(3) to permit Metropolitan to maintain custody in its vault of the securities and similar investments held in Account C and Account D, respectively, clearly identified as applicable to the appropriate account, and to permit ten duly authorized officers or responsible employees of Metropolitan, as well as representatives of the New York Insurance Department and members of the National Association of Insurance Commissioners' duly designated zonal auditing committee to have access to such investments in each such Account. With the exception of access by more than the number of persons specified in Rule 17f-2(d), Applicants represent that all other provisions of Rule 17f-2 will be met as if such investments were in a vault maintained by a bank and that adequate protection will be afforded the investors in Accounts C and D.

Section 27(a)(3) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate if the amount of sales load deducted from any one of the first 12 monthly payments exceeds proportionately the amount deducted from any other such payment or if the amount of sales load deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment.

Under the table of percentage rates of deductions for sales expenses contained in the Investment Contracts, a lower percentage deduction for sales expenses is applicable to that portion of a purchase payment consisting of Proceeds than would be applicable to the same amount consisting of other than Proceeds. Thus, it is possible that the amount deducted for sales expenses from any one of the first 12 monthly purchase payments may exceed proportionately the amount deducted from any other such payment and that the amount deducted from any subsequent payment may proportionately exceed the amount deducted from any other subsequent payment. This situation might occur whenever a purchase payment consisting of Proceeds is followed by a purchase payment which does not consist of Proceeds.

Applicants request an exemption from section 27(a)(3) to permit the schedule of sales load deductions proposed by Applicants, provided that the percentage amount of sales load deducted from any payment under any such contract will not exceed 9 percent of such payment. Applicants represent that section 27(a)(3) was designed to lessen losses which might be incurred upon early termination of periodic payment plan certificates involving front-end load arrangements. Applicants further represent that their proposed sales deduction schedule does not involve a front-end load arrangement and that their schedule cannot lead to the abuses intended to be curbed by section 27(a)(3).

Section 27(c)(2) of the Act prohibits a registered investment company, or a depositor of or underwriter for such company, from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank as trustee or custodian and held under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2) and (3) of the Act for a unit investment trust. Section 26(a)(2) requires the trustee or custodian to segregate and hold in trust all securities and cash of the trust, places certain restrictions on charges which may be made against the trust income and corpus, and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter other than a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign. Applicants request an exemption from 27(c)(2) to permit the proceeds of all payments under the Investment Contracts and the variable annuity contracts to be held by Metropolitan on the ground that the obligations undertaken by Metropolitan, a regulated insurance company, to the holders of such contracts provide substantially the protection contemplated by the requirements of section 27(c)(2).

Applicants have consented that the order granting exemption from section 27(c)(2) may be made subject to the conditions that (1) the charges under the Investment Contracts and variable annuity contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose, and (2) the payment of sums and charges out of the assets of Account C and Account D shall not be deemed to be exempted from regulation by the Commission by reason of the order, provided the Applicants' consent to the conditions shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right to assert in any proceeding before the Commission, in any suit or action in any court or otherwise that the Commission has no authority to regulate the payment of such other sums or charges.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities, or transactions, from any provisions of the Act and rules promulgated thereunder if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 24, 1975, 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 that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said data unless the Commission thereafter orders a hearing upon request or upon the Com-

mission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-389 Filed 1-6-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 666]

ASSIGNMENT OF HEARINGS

JANUARY 2, 1975.

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. No amendments will be entertained after January 7, 1975.

MC 126714 Sub 3, Southwest Delivery Co., Inc., Extension-Seattle-Portland, Continued to March 11, 1975 (4 days) at Seattle, Wash., in a hearing room to be later designated.

MC 139841, Denver Trans-Corp., now assigned February 10, 1975, at Denver, Colo., will be held in Room 1430, Federal Office Building, 19th and Stout St.

MC 52709 Sub 324, Ringsby Truck Lines, Inc., MC 12411 Sub 244, Hilt Truck Line, Inc., now assigned February 5, 1975, at Denver, Colo., will be held in Room 595, Federal Courthouse, 1927 Stout St.

MC 74321 Sub 96, B. F. Walker, Inc., now assigned February 10, 1975, at Denver, Colo., will be held in Room 1430, Federal Office Building, 19th and Stout St.

MC 114273 Sub 182, Cedar Rapids Steel Transportation, 119774 Sub 77, Eagle Trucking Company, now assigned January 29, 1975, at Denver, Colo., will be held in Room 1430, Federal Office Building, 19th and Stout St.

MC 29120 Sub 177, All-American, Inc., now assigned January 20, 1975, at Denver, Colo., is cancelled and application dismissed.

MC 123407 Sub 174, Sawyer Transport, Inc., now assigned February 3, 1975, at Chicago, Ill., is cancelled and application dismissed.

MC 26739 Sub 82, Crouch Freight Systems, Inc., cancelled and application dismissed.

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

[FR Doc.75-431 Filed 1-6-75;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

JANUARY 2, 1975.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's gateway elimination rules (49 CFR 1065(a)), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before January 17, 1975. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 31462 (Sub-No. E373), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Carolina, on the one hand, and, on the other, points in that part of Texas on and west of a line beginning at the Oklahoma-Texas State line, thence along U.S. Highway 67 to junction U.S. Highway 377, thence along U.S. Highway 377 to the Texas-Mexico State line. The purpose of this filing is to eliminate the gateway of (1) Cairo, Illinois, or any point within 25 miles thereof; (2) points in Okmulgee County, Okla.; (3) points in Georgia; and (4) points in Tennessee.

No. MC 31462 (Sub-No. E378), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Dakota, on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateways of (1) Fort Wayne, Ind., or any point within 40 miles thereof; (2) Burlington, Iowa, or any point within 50 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E379), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Dakota, on the one hand, and, on the other, the District of Columbia. The purpose of this filing is to eliminate the gateways of (1) Fort Wayne, Ind., or any point within 40 miles thereof; (2) Burlington, Iowa, or any point within 50 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E380), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Dakota, on the one hand, and, on the other, points in Pennsylvania. The purpose of this filing is to eliminate the gateways of (1) Fort Wayne, Ind., or any point within 40 miles thereof; (2) Burlington, Iowa, or any point within 50 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E381), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Tennessee, on the one hand, and, on the other, points in North Dakota. The purpose of this filing is to eliminate the gateways of (1) Cairo, Ill., or any point within 25 miles thereof; (2) points in Iowa; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway

71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E382), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on and east of Interstate Highway 35, on the one hand, and, on the other, points in North Dakota on and north of U.S. Highway 2. The purpose of this filing is to eliminate the gateways of (1) Kansas City, Mo., or any point within 30 miles thereof; and (2) any point which is both within 35 miles of Alden, Minn., and in that part of Minnesota or Iowa, on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E383), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Dakota, on the one hand, and, on the other, points in Vermont. The purpose of this filing is to eliminate the gateways of (1) Hoosick Falls, N.Y.; (2) Fort Wayne, Ind., or any point within 40 miles thereof; (3) Burlington, Iowa, or any point within 50 miles thereof; and (4) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E384), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in North Dakota, on the one hand, and, on the other, points in South Carolina. The purpose of this filing is to eliminate the gateways of (1) Fort Wayne, Ind., or any point within 40 miles thereof; (2) Burlington, Iowa, or any point within 50 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E385), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateway of points in that part of Missouri which are within 25 miles of Cairo, Ill.

No. MC 31462 (Sub-No. E386), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Texas 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Ohio, on the one hand, and, on the other, points in that part of Texas on and west of a line beginning at the Texas-Oklahoma State line, thence along Texas Highway 37 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction U.S. Highway 75, thence along U.S. Highway 75 to Galveston. The purpose of this filing is to eliminate the gateway of (1) points in Okmulgee County, Okla., and (2) points in that part of Missouri that are within 25 miles of Cairo, Ill.

No. MC 31462 (Sub-No. E387), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in South Dakota, on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateways of (1) Burlington, Iowa, or any point within 50 miles thereof; (2) Fort Wayne, Ind., or any point within 40 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E388), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, the District of Columbia. The purpose of this filing is to eliminate the gateways of (1) Kansas City, Mo., or any point within 30 miles thereof, and (2) Fort Wayne, Ind., or any point within 40 miles thereof.

No. MC 31462 (Sub-No. E389), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Household goods, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, points in Pennsylvania. The purpose of this filing is to eliminate the gateways of (1) Kansas City, Mo., or any point within 30 miles thereof, and (2) Fort Wayne, Ind., or any point within 40 miles thereof.

No. MC 31462 (Sub-No. E390), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, points in Wisconsin. The purpose of this filing is to eliminate the gateways of points in that part of Missouri which are within 50 miles of Burlington, Iowa.

No. MC 31462 (Sub-No. E392), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, points in South Carolina. The purpose of this filing is to eliminate the gateways of (1) points in Georgia; (2) points in Tennessee; and (3) points in that part of Missouri within 25 miles of Cairo, Ill.

No. MC 31462 (Sub-No. E393), filed May 13, 1974. Applicant: PARAMOUNT MOVERS INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in that part of Oklahoma on, west, and north of a line beginning at the Arkansas-Oklahoma State line, thence along U.S. Highway 270 to junction Oklahoma Highway 1, thence along Oklahoma Highway 1 to junction Oklahoma Highway 7, thence along Oklahoma Highway 7 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Texas-Oklahoma State line, on the one hand, and, on the other, points in that part of Tennessee, on and east of a line beginning at the Mississippi River, thence along Tennessee Highway 79 to junction Tennessee Highway 78, thence along Tennessee Highway 78 to junction U.S. Highway 51, thence along U.S. Highway 51, to junction Tennessee Highway 20, thence along Tennessee Highway 20 to Jackson, Tenn., thence along U.S. Highway 45 to the Tennessee-Mississippi State line. The purpose of this filing is

to eliminate the gateways of points in that part of Missouri that are within 25 miles of Cairo, Ill.

No. MC 31462 (Sub-No. E396), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Oklahoma, on the one hand, and, on the other, points in Vermont. The purpose of this filing is to eliminate the gateways of (1) Hoosick Falls, N.Y., (2) Fort Wayne, Ind., or any point within 40 miles thereof; and (3) Kansas City, Mo., or any point within 30 miles thereof.

No. MC 31462 (Sub-No. E397), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in South Dakota, on the one hand, and, on the other, points in Pennsylvania. The purpose of this filing is to eliminate the gateways of (1) Fort Wayne, Ind., or any point within 40 miles thereof; (2) Burlington, Iowa, or any point within 50 miles thereof; and (3) any point which is both within 35 miles of Alden, Minn., and within that part of Minnesota or Iowa on and south of a line beginning at the Mississippi River, thence along U.S. Highway 16 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Mississippi River.

No. MC 31462 (Sub-No. E398), filed May 13, 1974. Applicant: PARAMOUNT MOVERS, INC., P.O. Box 309, Lancaster, Tex. 75146. Applicant's representative: R. L. Rork (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in South Carolina, on the one hand, and, on the other, points in that part of Wisconsin on and west of a line beginning at the Michigan-Wisconsin State line, thence along Wisconsin Highway 77 to junction Wisconsin Highway 13, thence along Wisconsin Highway 13 to junction Wisconsin Highway 80, thence along Wisconsin Highway 80 to junction U.S. Highway 14, thence along U.S. Highway 14 to junction Wisconsin Highway 60, thence along Wisconsin Highway 60 to junction U.S. Highway 61, thence along U.S. Highway 61 to the Wisconsin-Illinois State line. The purpose of this filing is to eliminate the gateways of (1) points in Georgia; (2) points in Tennessee; (3) points in that part of Missouri within 25 miles of Cairo, Ill., and (4) Burlington, Iowa, or any points within 50 miles thereof.

No. MC 49304 (Sub-No. E1), filed May 31, 1974. Applicant: BOWMAN TRUCKING CO., INC., P.O. Box 6, Stephens City, Va. 22655. Applicant's representative: Daniel B. Johnson, Munsey Bldg., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (I) *Agricultural lime*, (1) from points in Clarke, Frederick, and Warren Counties, Va., to points in North Carolina, West Virginia, Ohio, Pennsylvania, Maryland, Delaware, New Jersey, and Ohio, (2) from points in Loudoun County, Va., to points in North Carolina, West Virginia, Ohio, New Jersey, those points in Maryland on and west of Garrett and Allegany Counties, and those points in Pennsylvania in and west of Erie, Crawford, Vanango, Butler, Allegheny, and Fayette Counties (Stonewall Magisterial District, Frederick County, Va.)*; (II) *Agricultural lime and limestone*, from Washington, D.C. (except points in the Washington, D.C., commercial zone which are not in the Alexandria, Va., commercial zone), to points in North Carolina, West Virginia, Ohio, those points in Pennsylvania in and west of Erie, Crawford, Venango, Butler, Allegheny, and Fayette Counties, and those points in Maryland in and west of Garrett and Allegany Counties (Middletown, Va.)*; and (III) *Fertilizer*, from Baltimore, Md., to points in Grant, Berkeley, Hampshire, Hardy, Jefferson, Mineral, and Morgan Counties, W. Va. (Winchester, Va.)*. The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 95540 (Sub-No. E838), filed December 12, 1974. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Fresh meat*, from Tifton, Ga., to points in Connecticut, Delware, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, New York, and the District of Columbia. The purpose of this filing is to eliminate the gateway of Smithfield, Va.

No. MC 95540 (Sub-No. E839), filed December 12, 1974. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Frozen edible meats*, from Carrollton, Ga., to points in Washington, Oregon, California, Idaho, Nevada, Arizona, Utah, Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, and Minnesota. The purpose of this filing is to eliminate the gateway of Dyersburg, Tenn.

No. MC 95540 (Sub-No. E841), filed December 15, 1974. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregualr routes, transporting: *Frozen edible meats*, from Alma, Ga., to points in Arkansas, Indiana, Iowa, Kansas, Michigan, Missouri, Oklahoma, and those points in Kentucky on and west of a line beginning at the Kentucky-Indiana State line and extending along Kentucky Highway 31E to its junction with U.S. Highway 65, thence along U.S. Highway 65 to its junction with Kentucky Highway 61, thence along Kentucky Highway 61 to its junction with Kentucky Highway 31E, thence along Kentucky Highway 31E to the Kentucky-Tennessee State line. The purpose of this filing is to eliminate the gateway of Florence, Ala.

No. MC 107515 (Sub-No. E441) (Correction), filed May 29, 1974, published in the FEDERAL REGISTER December 23, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Rd. NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen meats and meat products* (except commodities in bulk, in tank vehicles), from the plant site of Farmland Foods, Inc., near Garden City, Kans., to the District of Columbia, and to points in Delaware, Rhode Island, Connecticut, New Hampshire, Maine, that part of Virginia on and east of a line beginning at the District of Columbia-Virginia Boundary line, thence along U.S. Highway 29 to Danville, thence along U.S. Highway 58 to South Boston, thence along U.S. Highway 360 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction Virginia Highway 45, thence along Virginia Highway 45 to junction U.S. Highway 460, thence along U.S. Highway 460 to junction U.S. Highway 15, thence along U.S. Highway 15 to Culpeper, thence along U.S. Highway 29/211 to the Virginia-District of Columbia Boundary line, that part of Maryland on and east of Interstate Highway 94, that part of Pennsylvania on and east of U.S. Highway 1, that part of New Jersey on and east of a line beginning at the Delaware River, thence along U.S. Highway 1 to junction New Jersey Highway 18, thence along New Jersey Highway 18 to junction Interstate Highway 287, thence along Interstate Highway 287 to junction Interstate Highway 80, thence along Interstate Highway 80 to junction New Jersey Highway 511, thence along New Jersey Highway 511 to the New Jersey-New York State line, that part of New York on and east of a line beginning at the New Jersey-New York State line, thence along Interstate Highway 87 to junction Interstate Highway 90, thence along Interstate Highway 90 to the New York-Massachusetts State line, and that part of Massachusetts on and east of U.S. Highway 70 and on and north of Interstate Highway 90, restricted to traffic originating at the main plant site. The purpose of this filing is to eliminate the gateway of Gatesville, N.C. The purpose of this correction is to correct the "E" number, previously published as E44.

No. MC 108207 (Sub-No. E45) (Correction), filed May 31, 1974, published in the FEDERAL REGISTER, December 5, 1974. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: Mike Smith (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Grape juice* (frozen and unfrozen), *jams, jellies, and preserves*, from the facilities of Welch Grape Juice Company, Inc., at Lawton, Mich., to points in Arizona, New Mexico, and California; and (2) foodstuffs, from the facilities of Welch Grape Juice Company, Inc., at Springdale, Ark., to points in Arizona, New Mexico, and California. The purpose of this filing is to eliminate the gateways of points in Texas. The purpose of this correction is to clarify the territorial destination points.

No. MC 112148 (Sub-No. E2), filed May 15, 1974. Applicant: WORSTER-IOWA, INC., Gay Road, North East, Pa. 16428. Applicant's representative: Joseph T. Mackrell, 23 West Tenth St., Erie, Pa. 16501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned goods and frozen foods*, from Brocton and Westfield, N.Y., and Erie and North East, Pa., to points in Iowa, Minnesota, Nebraska, North Dakota, and South Dakota, and Ashland, Eau Claire, LaCrosse, and Superior, Wis.; and (2) *Canned goods* (except commodities in bulk, in tank vehicles), from the plant sites of Duffy-Mott Co., Inc., at Hamlin, Holley, and Williamson, N.Y., to points in Iowa, Minnesota, North Dakota and South Dakota. The purpose of this filing is to eliminate the gateways of Benton Harbor, Decatur, and Lawton, Mich.

No. MC 113459 (Sub-No. E11) (Correction), filed May 6, 1974, published in the FEDERAL REGISTER July 18, 1974. Applicant: H. J. JEFFRIES, P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment, (B) *self propelled articles*, each weighing 15,000 pounds, or more, and *related machinrey, tools, parts and supplies* when moving in connection therewith, restricted to commodities which are transported on trailers; between points in that part of Michigan on and south of Michigan Highway 55, on the one hand, and, on the other, points in that part of Illinois on and west of a line beginning at the Illinois-Wisconsin State line, thence along U.S. Highway 90 to junction Illinois Highway 23, thence along Illinois Highway 23 to junction Illinois Highway 18, thence along Illinois Highway 18 to junction U.S. Highway 51, thence along U.S. Highway 51 to junction Illinois Highway 16 thence along Illinois Highway 161 to junction Illinois Highway 127, thence along Illinois Highway 127 to junction Illinois Highway 146, thence along Illinois Highway 146 to junction Illinois Highway 3, thence along Illinois Highway 3 to Gale. Restriction: The operations authorized herein are restricted against the transportation of agricultural machinery and agricultural trailers. The purpose of this filing is to eliminate the gateway of Sterling, Illinois. The purpose of this correction is to add additional commodities to description.

No. MC 113459 (Sub-No. E16) (Correction), filed May 6, 1974, published in the FEDERAL REGISTER July 18, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Okla. 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Commodities*, which, because of size or weight, require the use of special equipment, and *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts* and *supplies* when moving in connection therewith, restricted to commodities which are transported on trailers; (1) between points in that part of Illinois on and north of a line beginning at the Illinois-Iowa State line, thence along U.S. Highway 20 to junction U.S. Highway 90, thence along U.S. Highway 90 to the Illinois-Wisconsin State line, on the one hand, and, on the other, points in that part of Minnesota on and west of U.S. Highway 63; (2) between points in that part of Illinois on and west of a line beginning at the Illinois-Iowa State line, thence along U.S. Highway 67 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction Illinois Highway 107, thence along Illinois Highway 107 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction U.S. Highway 54, thence along U.S. Highway 54 to the Illinois-Missouri State line, on the one hand, and, on the other, points in that part of Minnesota north of U.S. Highway 12 (except Minneapolis-St. Paul); and (3) between points in that part of Illinois on and east of a line beginning at the Illinois-Missouri State line, thence along U.S. Highway 54 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction Illinois Highway 107, thence along Illinois Highway 107 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction U.S. Highway 67, thence along U.S. Highway 67 to the Illinois-Iowa State line, and south of a line beginning at the Illinois-Iowa State line, thence along U.S. Highway 20 to junction U.S. Highway 90, thence along U.S. Highway 90 to the Illinois-Wisconsin State line, on the one hand, and, on the other, points in Minnesota. Restriction: The operations authorized herein are restricted against the transportation of agricultural machinery and agricultural tractors. The purpose of this filing is to eliminate the gateway of Sterling, Ill. The purpose of this correction is to add the commodities descriptions.

No. MC 113459 (Sub-No. E29) (Correction), filed May 6, 1974, published in the FEDERAL REGISTER July 19, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies*, used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products (except the stringing and picking up of pipe in connection with main or trunk pipelines), (2) *Machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and by-products water or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way; (3) *Earth Drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with, (1) the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, (2) the completion of holes or wells drilled (3) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (4) the injection or removal of commodities into or from holes or wells, from points in Utah to points in Ohio. The purpose of this filing is to eliminate the gateway of Tulsa, Okla. The purpose of this correction is to add additional commodity descriptions.

No. MC 113459 (Sub-No. E81), filed August 12, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which by reason of size or weight, require the use of special equipment or handling (except *Machinery, equipment, materials* and *supplies* (a) used in or in connection with, the discovery development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, or (b) used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof); (2) *parts of commodities* authorized in (1) above, either when incidental to the transportation of such commodities, or when transported as separate and unrestricted shipments; and (3) *selfpropelled articles*, each weighing 15,000 pounds or more, and related *machinery, tools, parts* and *supplies*, moving in connection therewith, restricted to com-

modities which are transported on trailers; between points in Louisiana on the one hand, and, on the other, points in New Mexico. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 113459 (Sub-No. E82), filed July 11, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Okla. 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment, and (2) *Self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* when moving in connection therewith, restricted to commodities which are transported on trailers; (a) between points in that part of Illinois on and east of a line beginning at the Illinois-Wisconsin State line and extending along Illinois Highway 78 to its junction with U.S. Highway 52, thence along U.S. Highway 52 to its junction with Illinois Highway 84, thence along Illinois Highway 84 to its junction with U.S. Highway 30, thence along U.S. Highway 30 to its junction with Illinois Highway 78, thence along Illinois Highway 78 to its junction with Interstate Highway 74, thence along Interstate Highway 74 to its junction with Illinois Highway 29, thence along Illinois Highway 29 to its junction with Illinois Highway 16, thence along Illinois Highway 16 to its junction with Illinois Highway 128, thence along Illinois Highway 128 to its junction with Illinois Highway 33, thence along Illinois Highway 33 to its junction with U.S. Highway 45, thence along U.S. Highway 45 to its junction with U.S. Highway 50, thence along U.S. Highway 50 to the Illinois-Indiana State line, on the one hand, and, on the other, points in that part of Nebraska on and north of a line beginning at the Nebraska-Colorado State line and extending along Interstate Highway 80 to its junction with Nebraska Highway 61, thence along Nebraska Highway 61 to its junction with U.S. Highway 6, thence along U.S. Highway 6 to its junction with U.S. Highway 283, thence along U.S. Highway 283 to its junction with Nebraska Highway 21, thence along Nebraska Highway 21 to its junction with Nebraska Highway 2, thence along Nebraska Highway 2 to its junction with U.S. Highway 30, thence along U.S. Highway 30 to the Nebraska-Iowa State line.

(b) Between points in that part of Illinois on and west of a line beginning at the Illinois-Missouri State line and extending along Illinois Highway 140 to its junction with Illinois Highway 159, thence along Illinois Highway 159 to its junction with Illinois Highway 158, thence along Illinois Highway 158 to its junction with Illinois Highway 3, thence along Illinois Highway 3 to its junction with U.S. Highway 50 Bypass, thence along U.S. Highway 50 Bypass to the Illinois-Missouri State line, on the one hand, and, on the other, points in that part of Nebraska on and north of a line beginning at the Nebraska-Wyoming State line and extending along U.S. Highway 26 to its junction with U.S. Highway 385, thence along U.S. Highway 385 to its junction with Nebraska Highway 2, thence along Nebraska Highway 2 to its junction with Nebraska Highway 91, thence along Nebraska Highway 91 to its junction with Nebraska Highway 70, thence along Nebraska Highway 70 to its junction with U.S. Highway 275, thence along U.S. Highway 275 to its junction with Nebraska Highway 35, thence along Nebraska Highway 35 to its junction with U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Iowa State line; and (c) between points in that part of Illinois on and east of a line beginning at the Illinois-Wisconsin State line and extending along Illinois Highway 26 to its junction with U.S. Highway 52, thence along U.S. Highway 52 to its junction with U.S. Highway 51, thence along U.S. Highway 51 to its junction with Interstate Highway 74, thence along Interstate Highway 74 to its junction with Illinois Highway 49, thence along Illinois Highway 49 to its junction with Illinois Highway 33, thence along Illinois Highway 33 to its junction with Illinois Highway 1, thence along Illinois Highway 1 to its junction with Illinois Highway 15, thence along Illinois Highway 15 to the Illinois-Indiana State line, on the one hand, and, on the other, points in Nebraska on and east of a line beginning at the Nebraska-Iowa State line and extending along U.S. Highway 30 to its junction with U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Kansas State line. Restriction: The operations authorized above are restricted against the transportation of agricultural machinery and agricultural tractors. The purpose of this filing is to eliminate the gateway of Sterling, Ill.

No. MC 113459 (Sub-No. E83), filed July 11, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment; and (2) *Self propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies*, when moving in connection therewith, restricted to commodities which are transported on trailers; between points in that part of Illinois on and east of a line beginning at the Illinois-Iowa State line and extending along U.S. Highway 67 to its junction with U.S. Highway 36, thence along U.S. Highway 36 to the Illinois-Missouri State line, on the one hand, and, on the other, points in that part of Iowa on and north of a line beginning at the Iowa-Nebraska State line and extending along U.S. Highway 34 to its junction with U.S. Highway 218, thence along U.S. Highway 218 to its junction with Iowa Highway 22, thence along Iowa Highway 22 to the Iowa-Illinois State line. Restriction: The operations authorized above are restricted against the transportation of agricultural machinery and agricultural tractors. The purpose of this filing is to eliminate the gateway of Sterling, Illinois.

No. MC 113459 (Sub-No. 87), filed Sept. 9, 1974 Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment; and (2) *Self propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts* and *supplies*, when moving in connection therewith, restricted to commodities which are transported on trailers; between points in Wisconsin on the one hand, and, on the other, points in Arkansas, Louisiana, Texas, Oklahoma, New Mexico and Alaska. Restriction: The operations authorized above are restricted against the transportation of agricultural machinery and agricultural tractors. The purpose of this filing is to eliminate the gateway of points in Illinois.

No. MC 113459 (Sub-No. E88), filed July 10, 1974. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, Oklahoma 73109. Applicant's representative: Robert A. Fisher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment (except the transportation of agricultural machinery and agricultural tractors), and (2) *Self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* when moving in connection therewith, restricted to commodities which are transported on trailers; between points in that part of Oklahoma on and west of a line beginning at the Texas-Oklahoma State line and extending along U.S. Highway 77 to its junction with U.S. Highway 70, thence along U.S. Highway 70 to its junction with U.S. Highway 177, thence along U.S. Highway 177 to the Oklahoma-Kansas State line, on the one hand, and, on the other, points in that part of Ohio on and north of a line beginning at the Oklahoma-Indiana State line and extending along U.S. Highway 30 to its junction with U.S. Highway 250, thence along U.S. Highway 250 to the Ohio-West Virginia State line. The purpose of this filing is to eliminate the gateway of points in Illinois.

No. MC 113855 (Sub-No. E1), filed June 13, 1974. Applicant: INTERNA-

TIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery, attachments* for agricultural machinery and *parts* used in the manufacture, repair, and assembly of agricultural machinery, from the plants, warehouse sites and storage facilities of Sperry Rand Corp., New Holland Division, located at Belleville, Mountville, and New Holland, Pa., to points in Alaska. The purpose of this filing is to eliminate the gateway of Gwinner, N. Dak.

No. MC 113855 (Sub-No. E2), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* (except boats) the transportation of which, because of their size or weight, require the use of special equipment, and *related machinery parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier, of commodities which by reason of size or weight require special equipment, and (2) *Self propelled articles*, each weighing 150,000 pounds or more and *related machinery, tools, parts and supplies* moving in connection therewith (restricted to commodities transported on trailers), between points in Idaho, on the one hand, and, on the other, points in Michigan. The purpose of this filing is to eliminate the gateway of (1) points in Utah, (2) points in Montana and those points in South Dakota east of the Missouri River, and (3) points in Wyoming and those in South Dakota east of the Missouri River.

No. MC 113855 (Sub-No. E3), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. SE., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: (1) *Commodities* the transportation of which, because of their size or weight, require the use of special equipment, and *related machinery, parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require the use of special equipment, and (2) *Self-propelled articles*, each weighing 15,000 pounds or more and *related machinery, tools, parts and supplies* moving in connection therewith, restricted in (2) above to commodities transported on trailers, between points in the Lower Peninsula of Michigan, on the one hand, and, on the other, points in Minnesota on and west of U.S. Highway 59. The purpose of this filing is to eliminate the gateway of points in South Dakota or points in Minnesota within 50 miles of Sioux Falls.

No. MC 113855 (Sub-No. E4), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. SE., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: (1) *Commodities* the transportation of which, because of their size or weight, require the use of special equipment (except iron and steel articles), and *related machinery, parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require special equipment, and (2) *Self-propelled articles*, each weighing 15,000 pounds or more and *related machinery, tools, parts and supplies* moving in connection therewith (restricted to commodities transported on trailers), between points in Wisconsin, on the one hand, and, on the other, points in West Virginia. The purpose of this filing is to eliminate the gateway of Elgin, Ill.

No. MC 113855 (Sub-No. E5), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: (1) *Commodities* the transportation of which, because of their size or weight, require the use of special equipment (except iron and steel articles), and *related machinery, parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require special equipment, and (2) *self-propelled articles*, each weighing 15,000 pounds or more and *related machinery, tools, parts and supplies* moving in connection therewith (restricted to commodities transported on trailers), between points in Iowa on and north of a line beginning at the Iowa-Illinois State line and extending along U.S. Highway 6 to junction unnumbered Highway (formerly portion of U.S. Highway 6), thence along Unnumbered highway through Victor and Brooklyn, to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Iowa Highway 90 (formerly portion of U.S. Highway 6), thence along Iowa Highway 90 through Colfax, to Des Moines, and, on and east of U.S. Highway 65 from Des Moines, to the Iowa-Minnesota State line on the one hand, and, on the other, points in Rhode Island, Connecticut, and Massachusetts. The purpose of this filing is to eliminate the gateways of Elgin, Ill., and Scranton, Pa.

No. MC 113855 (Sub-No. E6), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe* (except oil field pipe as described in *Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459), from Tacoma, Wash., to points in the United States (except points in California, Oregon, Idaho, Utah, Nevada, Arizona, Washington, Montana, Wyoming, Colorado, North Dakota, Wisconsin, New Mexico, South Dakota, Nebraska, Alaska, and Hawaii). The purpose of this filing is to eliminate the gateway of points in Spokane County, Wash.

No. MC 113855 (Sub-No. E7), filed June 13, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, Minn. 55901. Applicant's representative: Herbert J. Hilken (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* (except boats), the transportation of which, because of their size or weight, require the use of special equipment, and *related machinery parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight, require special equipment, and (2) *Self-propelled articles*, each weighing 15,000 pounds or more and *related machinery, tools, parts, and supplies* moving in connection therewith (restricted to commodities transported on trailers), between points in Oregon, on the one hand, and, on the other, points in Indiana. The purpose of this filing is to eliminate the gateway of points in Utah.

No. MC 113855 (Sub-No. E8), filed June 30, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (except truck-tractors), *scrapers, motor graders, wagons, engines* (except aircraft and missile engines), *generators, engines and generators combined, welders, road rollers, and dump trucks, and part, attachments, and accessories* for the above-described commodities which because of their size or weight, require the use of special handling or special equipment, and (2) *Such commodities* described in (1) above not requiring the use of special handling or special equipment which are self-propelled each weighing 15,000 pounds or more, restricted in (2) above to commodities which are transported on trailers, (a) from Aurora, Joliet, Mossville, Morton, and Peoria, Ill., and points within 15 miles of Peoria, to points in Colorado, and (b) from Decatur, Ill., to points in Colorado (except points in Las Animas, Baca, Otero, Bent, Prowers, Crowley, Kiowa, Lincoln, Kit Carson, Washington and Yuma Counties), restricted to the transportation in (a) and (b) above of shipments originating at the above-named origins. The purpose of this filing is to eliminate the gateway of points in South Dakota.

No. MC 113855 (Sub-No. E21), filed May 30, 1974. Applicant: INTERNA-

TIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First Nat'l Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and aluminum pipe* (except oilfield pipe as described in *Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459), the transportation of which because of its size or weight requires the use of special equipment: (a) from points in Delaware to points in Arizona, New Mexico, and those in Oklahoma on and west of U.S. Highway 83 (points in eastern Pennsylvania, points in South Dakota, and points in Hall County, Nebr.)*; (b) from points in Maryland on and east of U.S. Highway 15 to points in Arizona [same as (a)]*; (c) from points in Maryland on, east, and south of Interstate Highway 83 from the Pennsylvania-Maryland State line to its junction with U.S. Highway 301, thence along U.S. Highway 301 to the Maryland-Virginia State line [same as (a)]*; (d) from points in West Virginia to points in Arizona and those in New Mexico on, north, and west of a line beginning at the New Mexico-Texas State line, thence along U.S. Highway 60 to junction U.S. Highway 85, thence along U.S. Highway 85 to the United States-Mexican International Boundary line (Elgin, Ill., points in South Dakota and Hall County, Nebr.)*; (e) from points in California in and north of Santa Cruz, Santa Clara, Stanislaus, Calaveras, and Alpine Counties to points in Louisiana and Arkansas (points in Hall County, Nebr.)*; (f) from points in California on, west, and north of a line beginning on the Pacific Ocean on the southern boundary of Orange County, thence easterly along the southern border of Orange County and Riverside County to U.S. Highway 395, thence northerly along U.S. Highway 395 to the western boundary of San Bernadino County, thence northerly along the western and northern boundaries of San Bernadino County to the California-Nevada State line, to points in Kansas on and east of U.S. Highway 281 and points in Florida on and east of U.S. Highway 231, Georgia, and South Carolina [same as (e)]*

(g) from points in California to points in Alabama (except points south and west of U.S. Highway 80 beginning at the Alabama-Mississippi State line extending in an easterly direction to the junction of U.S. Highway 231, thence along U.S. Highway 231 to the Alabama-Florida State line [same as (e)]*; (h) from points in Utah in and north of Tooele, Utah, Wasatch, Duchesne, and Uintah Counties to points in Louisiana, Arkansas, and those in Kansas on and east of U.S. Highway 281 [same as (e)]*; (i) from points in Utah to points in Mississippi, Tennessee, Alabama, Georgia, South Carolina, and Florida [same as (e)]; (j) from points in Washington, Oregon, and Idaho to points in Kansas east of U.S. Highway 83 (except from points in and east of Lemhi, Custer, Blaine, Camas, Gooding, and Twin Falls Counties, Idaho, to points in Kansas and east of U.S. Highway 83 and west of U.S. Highway 281), Oklahoma (except points west of U.S. Highway 83), Texas on and east of U.S. Highway 83, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, and South Carolina (points in Utah and Hall County, Nebr.)*; (k) from points in Nevada on and north of U.S. Highway 40, to points in Texas on and east of U.S. Highway 75 [same as (j)]*; (l) from points in Nevada on and north of U.S. Highway 50 to points in Oklahoma on and east of Interstate Highway 35 and Kansas on and east of U.S. Highway 183 [same as (j)]*; (m) from points in Nevada east of U.S. Highway 95 to points in Arkansas and Louisiana [same as (j)]*; (n) from points in Nevada (except points in Clarke County), to points in Mississippi, Alabama, and Florida [same as (j)]*; (o) from points in Nevada to points in Tennessee, Georgia, and South Carolina [same as (j)]*; (p) from points in Montana to points in Texas on and east of U.S. Highway 83, Oklahoma on and east of U.S. Highway 83, Kansas on and east of U.S. Highway 183, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, and Florida (points in South Dakota east of the Missouri River and Hall County, Nebr.)*; (q) from points in Wyoming (except those in Laramie, Goshen, Platte, Albany, Carbon, Sweetwater, Uinta, and Lincoln Counties), to points in Arkansas, Louisiana, and Mississippi [same as (p)]; (r) from points in Wyoming (except points in Goshen, Platte, Laramie, Albany, and Carbon Counties), to points in Tennessee [same as (p)]*; (s) from points in Wyoming (except points in Laramie and Albany Counties), to points in Alabama and Georgia [same as (p)]*; and (t) from points in Wyoming to points in Florida and South Carolina [same as (p)]. The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 113855 (Sub-No. E36), filed May 30, 1974. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First Nat'l Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* (except boats), the transportation of which, because of their size or weight, require the use of special equipment, and *related machinery, parts, and related contractors' materials and supplies* when their transportation is incidental to the transportation by said carrier or commodities which by reason of size or weight require special equipment, and (2) *Self-propelled articles*, each weighing 15,000 pounds or more and *related machinery, tools, parts, and supplies* moving in connection therewith (restricted to commodities transported on trailers), (a) from points in Washington, Oregon, Idaho, and Nevada to points in Vermont, New Hampshire, and Maine, and (b) between points in Washington, Oregon, Idaho, and Nevada, on the one hand, and, on the other, points in Maryland. The purpose of this filing is to eliminate the gateway of points in Utah.

No. MC 114211 (Sub-No. E45), filed May 24, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts thereof*, from points in North Dakota, Minnesota, and Iowa, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Delaware, New York, New Jersey, Maryland, District of Columbia, and that part of Pennsylvania on and east of a line beginning at Erie, Pa., thence along Interstate Highway 79 to junction U.S. Highway 422, to junction Pennsylvania 356, thence along Pennsylvania Highway 356 to junction Pennsylvania Highway 66, thence along Pennsylvania Highway 66 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Pennsylvania Highway 56, thence along Pennsylvania Highway 56 to junction U.S. Highway 219, thence along U.S. Highway 219 to the Pennsylvania-Maryland State line, and that part of Virginia on and east of a line beginning at the Virginia-West Virginia State line, thence along U.S. Highway 50 to junction Interstate Highway 81, thence along Interstate Highway 81 to junction Interstate Highway 64, thence along Interstate Highway 64 to junction U.S. Highway 60, thence along U.S. Highway 60 to Virginia Beach, Va., restricted to traffic originating at or destined to the plant sites, warehouse sites, and experimental farms of Deere and Company. The purpose of this filing is to eliminate the gateway of Dubuque, Iowa.

No. MC 114211 (Sub-No. E60), filed May 24, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts thereof*, from points in that part of Illinois on and north of a line beginning at the Iowa-Illinois State line, thence along Interstate Highway 80 to junction Illinois Highway 2, thence along Illinois Highway 2 to the Illinois-Wisconsin State line, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and points in that part of New Jersey, on and east of a line beginning at the New Jersey-Pennsylvania State line, thence along New Jersey Highway 73 to junction Atlantic City Expressway, thence along Atlantic City Expressway to Atlantic City, and points in that part of Pennsylvania on and east of a line beginning at the New York-Pennsylvania State line, thence along Interstate Highway 81 to junction Pennsylvania Turnpike, thence along Pennsylvania Turnpike to junction Pennsylvania Highway 309, thence along Pennsylvania Highway 309 to Philadelphia, and points in

that part of New York on and east of a line beginning at Oswego, N.Y., thence along New York Highway 48 to junction Interstate Highway 81, thence along Interstate Highway 81 to the New York-Pennsylvania State line, restricted to traffic originating at or destined to the plant sites, warehouse sites, and experimental farms of Deere and Company. The purpose of this filing is to eliminate the gateway of Dubuque, Iowa.

No. MC 114211 (Sub-No. E206), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and parts*, from points in that part of Colorado on and west of a line beginning at the Nebraska-Colorado State line, thence along Colorado Highway 113 to junction U.S. Highway 138, thence along U.S. Highway 138 to junction Interstate Highway 80S, thence along Interstate Highway 80S to junction Colorado Highway 71, thence along Colorado Highway 71 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction Interstate Highway 25, thence along Interstate Highway 25 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 285, thence along U.S. Highway 285 to junction Colorado Highway 17, thence along Colorado Highway 17 to junction U.S. Highway 285, thence along U.S. Highway 285 to the Colorado-New Mexico State line, to points in Michigan, New York, Pennsylvania, Delaware, Maine, Vermont, Maryland, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, and points in that part of West Virginia on and east of a line beginning at the Ohio-West Virginia State line, thence along Interstate Highway 64 to junction Interstate Highway 77, thence along Interstate Highway 77 to junction U.S. Highway 460, thence along U.S. Highway 460 to the West Virginia-Virginia State line, and to points in that part of Virginia on and east of a line beginning at the West Virginia-Virginia State line, thence along U.S. Highway 460 to junction Virginia Highway 8, thence along Virginia Highway 8 to junction Virginia Highway 57, thence along Virginia Highway 57 to junction U.S. Highway 220, thence along U.S. Highway 220 to the Virginia-North Carolina State line, and to points in that part of Indiana on and northeast of a line beginning at Gary, Ind., thence along Indiana Highway 53 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Indiana Highway 15, thence along Indiana Highway 15 to junction Indiana Highway 26, thence along Indiana Highway 26 to the Indiana-Ohio State line, and to points in that part of Ohio on and northeast of a line beginning at the Indiana-Ohio State line, thence along Ohio Highway 119 to junction Ohio Highway 65, thence along Ohio Highway 65 to junction Ohio Highway 47, thence along Ohio Highway 47 to junction Ohio Highway 235, thence along Ohio Highway 235 to junction Ohio Highway 41, thence along Ohio Highway 41 to junction Ohio Highway 73, thence along Ohio Highway 73 to junction U.S. Highway 52, thence along U.S. Highway 52 to the Ohio-West Virginia State line. The purpose of this filing is to eliminate the gateways of Beatrice, Nebr., and Horicon, Wis.

No. MC 114211 (Sub-No. E211), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and parts* (except commodities the transportation of which because of size or weight requires the use of special equipment), from points in that part of Nebraska on and south of a line beginning at the South Dakota-Nebraska State line, thence along U.S. Highway 385 to junction Nebraska Highway 2, thence along Nebraska Highway 2 to junction U.S. Highway 34, thence along U.S. Highway 34 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Kansas State line to points in Massachusetts, Delaware, Vermont, New Jersey, New Hampshire, Connecticut, Maine, Rhode Island, and to points in that part of New York on and east of a line beginning at Buffalo, N.Y., thence along U.S. Highway 219 to the New York-Pennsylvania State line, and to points in that part of Pennsylvania on and east of a line beginning at the New York-Pennsylvania State line, thence along U.S. Highway 219 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Pennsylvania Highway 66, thence along Pennsylvania Highway 66 to junction Pennsylvania Highway 948, thence along Pennsylvania Highway 948 to junction U.S. Highway 219, thence along U.S. Highway 219 to junction Pennsylvania Highway 160, thence along Pennsylvania Highway 160 to junction Pennsylvania Highway 869, thence along Pennsylvania Highway 869 to junction U.S. Highway 220, thence along U.S. Highway 220 to the Pennsylvania-Maryland State line and to points in that part of West Virginia on and east of a line beginning at the Maryland-West Virginia State line, thence along West Virginia Highway 51 to junction West Virginia Highway 29, thence along West Virginia Highway 29 to junction West Virginia Highway 45, thence along West Virginia Highway 45 to the West Virginia-Virginia State line, and to points in that part of Maryland on and east of a line beginning at the Pennsylvania-Maryland State line, thence along U.S. Highway 220 to junction Maryland Highway 51, thence along Maryland Highway 51 to the Maryland-West Virginia State line, and to points in that part of Virginia on and east of a line beginning at the West Virginia-Virginia State line, thence along Virginia Highway 127 to junction U.S. Highway 522, thence along U.S. Highway 522 to junction Virginia Highway 231, thence along Virginia Highway 231 to junction U.S. Highway 29, thence along U.S. Highway 29 to junction U.S. Highway 250, thence along U.S. Highway 250 to junction Virginia Highway 20, thence along Virginia Highway 20 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction U.S. Highway 460, thence along U.S. Highway 460 to junction Virginia Highway 46, thence along Virginia Highway 46 to junction Interstate Highway 85, thence along Interstate Highway 85 to the Virginia-North Carolina State line, restricted against movement to oil field locations, further restricted against the transportation of those commodities described in *Mercer Extension—Oil Field Commodities*, 74 M.C.C. 459, and further restricted to the transportation of traffic originating at the plant sites and warehouse facilities of Deere and Company. The purpose of this filing is to eliminate the gateways of Beatrice, Nebr., and Horicon, Wis.

No. MC 114211 (Sub-No. E218), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts*, from points in North Dakota to points in Indiana, Kentucky, Ohio, West Virginia, Virginia, Maryland, Delaware, District of Columbia, New Jersey, Pennsylvania, New York, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Maine, and points in that part of Michigan on and south of a line beginning at the Manister, Mich., State line, thence along Michigan Highway 55 to junction Michigan Highway 115, thence along Michigan Highway 115 to junction U.S. Highway 10, thence along U.S. Highway 10 to junction Michigan Highway 25, thence along Michigan Highway 25 to the Bay City, Mich., State line, restricted to traffic originating at plant sites, warehouse sites, and experimental farms of Deere and Company. The purpose of this filing is to eliminate the gateways of Horicon, Wis., and Minneapolis, Minn.

No. MC 114211 (Sub-No. E219), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors, stationary engines, and attachments and parts therefor*, when moving incidental to and in the same vehicle with tractors and stationary engines (not including tractors with vehicle beds, bed frames, or fifth wheels, nor any of the above-specified commodities which, because of their size or weight, require the use of special equipment), from points in that part of Iowa on and north of a line beginning at the Iowa-Wisconsin State line, thence along U.S. Highway 20 to the Iowa-South Dakota State line to points in Virginia, West Virginia, Pennsylvania, Maryland, New Jersey, Delaware, New

York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and points in that part of Kentucky on and east of a line beginning at the Kentucky-Ohio State line. The purpose of this filing is to eliminate the gateways of Dubuque, Iowa, and Horicon, Wis.

No. MC 114211 (Sub-No. E224), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors, road making machinery, and contractors equipment and supplies*, from points in Kansas to points in Vermont, Connecticut, Massachusetts, New Hampshire, Rhode Island, Maine, and points in that part of New York on and northeast of a line beginning at the New York-Lake Erie line, thence along U.S. Highway 20 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction New York Highway 415, thence along New York Highway 415 to junction New York Highway 352, thence along New York Highway 352 to junction New York Highway 17, thence along New York Highway 17 to the Pennsylvania-New York State line, and points in that part of New Jersey on and north of a line beginning at the Pennsylvania-New Jersey State line, thence along Interstate Highway 80 to junction U.S. Highway 46, thence along U.S. Highway 46 to junction Garden State Parkway, thence along Garden State Parkway to junction New Jersey Highway 508, thence along New Jersey Highway 508 to junction U.S. Highway 1, thence along U.S. Highway 1 to the New Jersey-New York State line, and to points in that part of Pennsylvania on and north of a line beginning at the New York-Pennsylvania State line, thence along U.S. Highway 220 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Pennsylvania Highway 435, thence along Pennsylvania Highway 435 to junction Interstate Highway 81E, thence along Interstate Highway 81E to junction Interstate Highway 80, thence along Interstate Highway 80 to the Pennsylvania-New Jersey State line. The purpose of this filing is to eliminate the gateway of Dubuque, Iowa.

No. MC 114211 (Sub-No. E303), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts* (except commodities, the transportation of which, because of size or weight, requires special equipment), from a point in that part of Wyoming on and north of a line beginning at the Idaho-Wyoming State line, thence along U.S. Highway 187 to junction Wyoming Highway 28, thence along Wyoming Highway 28 to junction U.S. Highway 287, thence along U.S. Highway 287 to junction Wyoming Highway 220, thence along Wyoming Highway 220 to junction U.S. Highway 87, thence along U.S. Highway 87 to junction Wyoming Highway 387, thence along Wyoming Highway 387 to junction Wyoming Highway 59, thence along Wyoming Highway 59 to junction U.S. Highway 16, thence along U.S. Highway 16 to the South Dakota-Wyoming State line to points in that part of Missouri on and west of a line beginning at the Iowa-Missouri State line, thence along U.S. Highway 63 to junction Business Route U.S. Highway 63, thence along Business Route U.S. Highway 63 through Moberly, Mo., to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Business Route U.S. Highway 63, thence along Business Route U.S. Highway 63 through Columbia, Mo., to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 137, thence along Missouri Highway 137 to junction Texas County Highway T, thence along Texas County Highway T to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Business Route U.S. Highway 63, thence along Business Route U.S. Highway 63 through West Plains, Mo., to junction U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Arkansas State line, restricted against the transportation of those commodities described in *Mercer Extension—Oil Field Commodities*, 74 M.C.C. 459. The purpose of this filing is to eliminate the gateways of Omaha, Nebr., Council Bluffs, Iowa, and Des Moines, Iowa.

No. MC 119988 (Sub-No. E40), filed June 3, 1974. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, Tex. 75902. Applicant's representative: Joe E. Kinard, 201 W. Commerce St., Dallas, Tex. 75208. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Printed advertising matter*, and (2) *Newspaper supplements* otherwise exempt from economic regulation under section 203(b)(7) of the Act when transported in mixed loads with printed advertising matter, from the facilities of the Oklahoma Publishing Co., Web Offset Division, at or near Oklahoma City, Okla., to points in Ohio. The purpose of this filing is to eliminate the gateway of Independence, Kans.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-430 Filed 1-6-75;8:45 am]

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PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

ENVIRONMENTAL REVIEW PROCEDURES FOR COMMUNITY DEVELOPMENT

Block Grant Program

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY

[Docket No. R-74-297]

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT

Block Grant Program

Notice was given on October 10, 1974, at 39 FR 36554 that the Department of Housing and Urban Development ("HUD" herein) was proposing to amend Title 24 of the Code of Federal Regulations by adding a new Part 58 to Subtitle A.

The purpose of Part 58 is to set forth the regulations governing environmental review procedures to be undertaken by applicants for funds under Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383 (the "Act" herein). The Act provides for a new program of community development block grants which begins January 1, 1975. Its implementing regulations are in 24 CFR Part 570. Section 104(h) of the Act authorizes the Secretary of Housing and Urban Development to provide under regulations for the release of funds for particular projects to applicants who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 ("NEPA" herein) that would apply to the Secretary were he to undertake such projects as Federal projects. Part 58 implements section 104(h) of the Act.

The Department has received more than 50 responses to the October 10, 1974 publication. All of these comments were seriously considered and many changes have been incorporated in these regulations as a result. A summary of the principal comments and their disposition is set forth below.

Several commentators asserted that it was not permissible for HUD to require applicants to assume NEPA responsibilities with respect to Title I projects and/or that HUD's NEPA responsibilities in connection with applications for Title I assistance would not be satisfied as a result of such assumption. A number of related comments also questioned the capacity of applicants to assume NEPA responsibilities. HUD believes its authority under § 104(h) is sufficient to permit it to require the assumption of NEPA responsibilities by applicants, and that the carrying out of NEPA responsibilities by such applicants with legal capacity to assume such responsibilities, and that the carrying out of NEPA responsibilities by such applicants and execution of the certification in accordance with this Part will satisfy HUD's responsibilities under NEPA. Appropriate changes have been made in Part 58 in accordance with this concept.

Changes in the regulations have also been made in response to a number of comments that Part 58 should incorporate applicable Council on Environmental Quality and Environmental Protection Agency ("CEQ" and "EPA", respectively) regulations.

Several comments questioned HUD's authority to require applicants to assume historic preservation and related reviews, and HUD's compliance with historic preservation statutory authority as a result. HUD's view is that its authority in this regard is sufficient, and that it will be satisfying applicable statutes through the approach which Part 58 takes. However, in response to these comments, the regulations have been amended to provide that noncompliance with procedures appearing in regulations of the Advisory Council on Historic Preservation issued pursuant to the Historic Preservation Act of 1966 would be a basis for objecting to the applicant's request for release of funds for a project which affects a historic property.

Several other comments were to the effect that provision should be made for HUD to consider objections to a request for a release of funds on the basis that an applicant had failed to carry out its NEPA responsibilities under Part 58.

In response to these comments, the procedures in Part 58 have been clarified, a requirement for publication of five days notice of an applicant's intent to request a release of funds has been added, and the bases on which objections to HUD acceptance of a certification accompanying such a request for release of funds have been expanded to include omission by the applicant of any step in the NEPA reviews required by Part 58.

There were comments to the effect that the notice periods related to HUD's approval of a request for release of funds, and to the decision by an applicant not to prepare an environmental impact statement ("EIS" herein), are too short. The additional five days referred to in the preceding paragraph would afford the public more time to prepare objections, if any, to an applicant's actions and would partially satisfy the former comment. In this regard, it should be noted that such five-day notice period would be a minimum for compliance with Part 58, and that applicants would have authority to adopt a longer notice period. With regard to the latter comment, which pertained to the time period for notice of an applicant's intention not to file an EIS, HUD believes that fifteen days would normally be adequate. However, an applicant would have authority to extend this time period if it determined that the circumstances in a particular situation made such an extension desirable.

One comment was that the forty five day period for comments on a draft EIS should be established with no provision for extensions. This comment was rejected, since HUD believes applicants should have flexibility in adjusting their environmental review processes as needed to fit particular situations, so long as such adjustments are consistent with Part 58, NEPA, and other applicable authority.

There were also comments to the effect that the time periods involved in processing an EIS were too long. The Part 58 requirements in this regard are consistent with CEQ Guidelines.

Several comments expressed the view that the thresholds for the required preparation of an EIS were too high, while others believed them to be too low. Other comments were to the effect that criteria should be added for the making of environmental assessments. The changes made in Part 58 reflect these comments by eliminating several of the thresholds, and clarifying the environmental review process. HUD's determination in this regard recognizes the difficulties in attempting to establish a single set of criteria for applicability to projects of varying size and scope in diverse settings.

There were comments to the effect that applicants should be required to conduct an environmental review process in connection with the application for block grants, and not just in connection with projects within such applications. HUD has rejected this view as inconsistent with § 104(h) and its legislative history and takes the position that compliance with § 104(h) and NEPA can be attained through the applicant's adherence to the requirements of Part 58.

A number of comments questioned the exemption of several activities from the requirements of Part 58. In response to these comments, the number of exempt activities listed in Part 58 has been reduced substantially, and now reflects only those which are exempt by virtue of authority in the Act.

There were a number of comments to the effect that public hearings should be made mandatory at various stages of the environmental review process. HUD has rejected these comments, since Part 58 does provide guidance to applicants to assist them in deciding whether such hearings should be held in connection with EIS's, and the question of whether to hold public hearings at that or another stage of the environmental review process is properly within an applicant's discretion.

Several comments concerned the funding of possible expenses to be incurred by applicants in the event there is litigation concerning environmental aspects of their community development programs. In response to these comments, a statement of the eligibility of such expenses for funding under the Act has been added to Part 58.

The ambit of the terms "applicant" and "chief executive officer" were questioned by some commentators. In response to these comments, definitions for these terms have been added to Part 58.

Some commentators stated their belief that an EIS should be prepared in connection with the issuance of this Part 58. In this connection, compliance by HUD with its own regulations concerning the environmental review of proposed or final regulations does not necessitate the preparation of an EIS. (Departmental Handbook 1390.1, 38 FR 19182). In connection with the issuance of this Part 58 as final regulations, a Finding of Inapplicability has been made under the Handbook cited above. A copy of the Finding of Inapplicability is available for public inspection at HUD, Room

10245, 451 Seventh Street, S.W., Washington, D.C. 20410.

The principle changes in the Regulations are set forth below.

Subpart A—General Policy and Responsibilities, has been amended to include in § 58.1 a statement of policies of the National Environmental Policy Act of 1969, and to add a § 58.2 which provides for the calculation of time periods. Section 58.3, Terminology, has had the following terms added to it: applicant chief executive officer (both of which are substantially similar to their definitions in 24 CFR 570.3), environmental review and environmental review process, and level of clearance finding. Terms which have been deleted are: environment, significant environmental impact, Federal action, environmental review, environmental clearance, environmental review record, comments, areas of jurisdiction by law or special expertise, and major amendatory. The General Policy section, § 58.5, has been amended to provide that HUD will consider the question of an applicant's legal capacity (but no other type of capacity) to assume or carry out NEPA responsibilities prior to submission of its Title I application only, to specify the responsibilities of the chief executive officer of the applicant, upon his assumption of the status of a "responsible Federal official" as that term is used in NEPA, and to include the substance of subparagraphs (b), (c), and (d) from § 58.13 of the October 10, 1974 publication ("proposed regulations" herein).

Subpart B—Environmental Reviews by Applicants under Title I, has had § 58.7 deleted, since the matters covered by that section are included in the Community Development Block Grant regulations, 24 CFR Part 570. Section 58.9 has been amended to clearly state that paragraph (a) deals with the ten percent advance under the Block Grant program rather than a separate source of funds, and that Title I funds from one program year may be used by applicants for environmental studies relating to any program year. The requirements concerning the environmental review record in § 58.11 have been made more specific, and have been expanded to cover more of the materials which the environmental review process will generate. Most of the substance of § 58.12 of the proposed regulations, which has been deleted, will be found in new form in new § 58.19, which will be discussed below. As noted above, the substance of § 58.13 of the proposed regulations has been included in § 85.5. The substance of § 58.14 of the proposed regulations has been deleted; its substance is found in § 58.15(d) with changes which characterize the required findings of the former section as "level of clearance findings". Section 58.15 has been further amended to make it clear that both positive and negative effects of possible modifications to projects should be considered, and that cost should be a factor in such considerations. Section 58.15(e)(1) and (e)(2) of the proposed regulations have been deleted and their substance now forms § 58.16 and § 58.17, respectively. The matters which were set forth in § 58.15(e)(3) second (d)(5) of the proposed regulations are now set forth in § 58.18. In the proposed regulations, § 58.16–18 had been reserved. A new § 58.19 has been added which, as noted above, includes most of the substance of § 58.12, which is now a reserved section number. This new section requires original or updated environmental reviews for ongoing undertakings which are to be funded for the first time under the Community Development Block Grant regulations, 24 CFR Part 570, if previous environmental reviews are insufficient due to changed circumstances. It also provides that with respect to such undertakings, if circumstances have not changed significantly and there are existing environmental clearances, a written decision to that effect must be made by the applicant, and no further environmental reviews would be required. The activities which are exempt from the requirements of Part 58, under § 58.21, have been reduced substantially to include only those exemptions clearly permitted by Title I of the Housing and Community Development Act of 1974. Section 58.23 of the proposed regulations has been deleted as a result of the modifications of § 58.21 discussed above. The coverage of § 58.24 has been changed to delete properties nominated to the National Register, and to include, instead, properties found to be eligible for listing on the register by the Secretary of Interior.

Section 58.25, dealing with projects requiring on EIS, has been modified to delete several imprecise and unworkable categories. Section 58.26 of the proposed regulations, which was merely advisory, has been deleted. Section 58.27, dealing with lead agency requirements and procedures, has been modified to eliminate the implication that an applicant required to prepare an EIS on a project pursuant to this Part could escape that responsibility through designation of a lead agency, other than itself, for the project, and to indicate that such destination is permissible only where the lead agency will prepare an EIS.

Subpart C—Releases of Funds for Particular Projects, had had § 58.30 amended to provide for five days notice to the public of an applicant's intention to request the release of funds for a particular project. Section 58.31 has been revised to expand the bases on which HUD will consider objections to an applicant's request for a release of funds. The bases for objection are now that the certification was not in fact executed by the chief executive officer; that applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process; or that applicant failed to provide an opportunity to the Advisory Council on Historic Preservation for review, if the project relates to a National Register property which is affected by the project. Three minor bases for objection have been eliminated.

Section 104(h) of the Housing and Community Development Act of 1974 requires that these regulations may be issued only after consultation with the Council on Environmental Quality. Such consultations have been accomplished.

The Assistant Secretary for Community Planning and Development has determined that the public interest would be best served by making these regulations effective immediately. This is consistent with the Housing and Community Development Act of 1974 which directs the financial assistance be provided to communities with minimum delay, and funds for projects subject to this part may not be released in the absence of completion of the procedures set forth in this part, and a certification to that effect. Therefore, deferral of the effective date under 5 U.S.C. 55-3(d) is waived and these regulations shall become effective on January 7, 1975.

Accordingly, Title 24 is amended by adding to Subtitle A a new Part 58 to read as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Subpart A—General Policy and Responsibilities

Sec.
58.1 Purpose and authority.
58.2 Time Periods.
58.3 Terminology.
58.4 [Reserved].
58.5 General policy.
58.6 [Reserved].

Subpart B—Environmental Reviews by Applicants Under Title I

58.7 [Reserved].
58.8 [Reserved].
58.9 Financial assistance for environmental review.
58.10 [Reserved].
58.11 Environmental review record.
58.12 [Reserved].
58.13 [Reserved].
58.14 [Reserved].
58.15 Steps to commence environmental review process.
58.16 Steps to complete environmental review process where level of clearance finding is that the request for release of funds for project is not an action which may significantly affect the environment (no EIS).
58.17 Steps to complete environmental review process where level of clearance finding is that the request for release of funds is an action which may significantly affect the environment (EIS required).
58.18 Limitation on action pending clearance.
58.19 Continuation of pevious activities.
58.20 [Reserved].
58.21 Exempt activities.
58.22 [Reserved].
58.23 [Reserved].
58.24 Historic preservation.
58.25 Projects requiring an EIS
58.26 [Reserved].
58.27 Interaction of applicant and Federal agencies—lead agency role.
58.28 [Reserved].
58.29 [Reserved].

Subpart C—Releases of Funds for Particular Projects

58.30 Release of funds upon certification.
58.31 Objections to release of funds.
58.32 Effect of approval of certification.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Policy and Responsibilities

§ 58.1 Purpose and authority.

(a) *Authority*—(1) *Basic law.* The National Environmental Policy Act of 1969 (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (hereinafter "NEPA") establishes national policy, goals and procedures for protecting and enhancing environmental quality. NEPA, as implemented by Executive Order 11514 and the Guidelines of the Council on Environmental Quality, 40 CFR Part 1500 (hereinafter "CEQ", as to the Council, and "CEQ Guidelines") requires in section 102(2)(c), in addition to other responsibilities, that all agencies of the Federal government prepare detailed environmental impact statements on proposals for major Federal actions significantly affecting the quality of the human environment.

(2) *Section 104(h) of Title I of the Housing and Community Development Act of 1974* (Pub. L. 93-383, 42 U.S.C. 5301 et seq.) (hereinafter "section 104(h)" and "Title I" respectively) authorizes a procedure under which applicants with approved applications for assistance under Title I assume for specific projects the environmental review and decision-making responsibilities that would apply to the HUD Secretary were he to undertake such projects as Federal projects. The procedure eliminates the necessity for Federal environmental impact statements at the time of the initial application. At the same time, however, the procedure is intended to assure that NEPA policies and protection of the environment continue undiminished. Under the procedure applicants are to certify prior to any commitment of Title I funds for particular projects (other than funds for general planning or environmental study purposes) that they have met all of their environmental responsibilities in accordance with regulations issued by HUD Secretary, after consultation with CEQ. Approval of such certification by the Secretary under section 104(h) discharges the responsibilities he may otherwise have had under NEPA with respect to the specific projects covered by the certification. The Secretary is to wait 15 days after receipt before acting upon such a certification, thus giving those who may wish to challenge a certification an opportunity to take appropriate action. That challenge can include suit against the certifying officer or applicant who for purposes of enforcing NEPA has consented to accept the jurisdiction of the Federal courts. Such challenge may also include a request that the Secretary reject the certification. The Secretary will consider a request for rejection of the certification only if such request is grounded on certain bases, as set forth in § 58.31 (b). Under section 104(h) cities, counties and other units of general local government assumeo nly those eral local government assume only those responsibilities which would apply if the HUD Secretary were to undertake the projects proposed for assistance as Federal projects. Thus, these regulations neither expand nor contract the categories of actions that would be subject to environmental identification and review procedures.

(3) *Other applicable authority.* The environmental review process must also consider, where applicable, the criteria, standards, policies and regulations under the following:

(i) *Historic properties.* The National Historic Preservation Act of 1966 (Pub. L. 89-665); Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291) and regulations which may hereafter be issued; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971; Procedures for Protection of Historic and Cultural Properties, Advisory Council on Historic Preservation, 36 CFR Part 800.

(ii) *Noise.* HUD Handbook 1390.2, Noise Abatement and Control, Department Policy, Responsibilities and Standards, 1971.

(iii) *Flood plain.* Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and implementing regulations; Title 24, Chapter X, Subchapter B, National Flood Insurance Program; and Executive Order 11296.

(iv) *Coastal zones and wetlands.* Coastal Zone Management Act of 1972 (Pub. L. 92-583) and applicable State legislation or regulations.

(v) *Air quality.* Clean Air Act (Pub. L. 90-148) and Clean Air Act Amendments of 1970 (Pub. L. 91-604); and applicable U.S. Environmental Protection Agency implementing regulations.

(vi) *Water quality.* Federal Water Pollution Control Act (Pub. L. 92-500) and applicable U.S. Environmental Protection Agency implementing regulations.

(vii) *Wildlife.* Fish and Wildlife Coordination Act (Pub. L. 85-624).

(b) *Purpose.* These regulations implement the requirements of section 104(h), which is intended to assure that the policies of NEPA are most effectively implemented in connection with the expenditure of funds under Title I, and to assure to the public undiminished protection of the environment. The policies of NEPA, in addition to other responsibilities set out in section 2 and Title I of NEDA, require the use of all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

§ 58.2 Time periods.

The days in each time period which must be observed in compliance with this Part shall be counted in accordance with the following:

(a) The first day of such time period shall commence at the first 12:01 a.m. (local time) which shall occur following the action which initiates the time period.

(b) Saturdays, Sundays, and legal holidays under State law occurring within the time period shall not be counted as a day in the time period.

§ 58.3 Terminology.

For the purposes of this part, the following terminology shall apply:

Actions which may significantly affect the quality of the human environment. Those actions for which section 102(2)(c) of NEPA would require the preparation of an Environmental Impact Statement (EIS). Applicants assuming NEPA responsibilities pursuant to Title I and these regulations shall review each project proposed for fund release under Title I in accordance with the environmental review process described in these regulations in order to determine whether the applicant's request to HUD for the release of Title I funds would constitute an action, were the applicant a Federal agency, which may significantly affect the quality of the human environment.

Applicant. The applicant is the State or unit of general local government which makes application pursuant to the provisions of Subpart D or Subpart E of 24 CFR Part 570. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake a Community Development Program in whole or in part, but only the State or unit of general local government may be the applicant under the subparts cited above, and under this Part 58. Upon execution of its grant agreement with HUD, an applicant becomes a "recipient" under 24 CFR Part 570. As used in this Part 58, the term "applicant" includes "recipient" under Part 570, where the context so requires.

Chief executive officer. The chief executive officer of a unit of local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of local government; or the chairman, governor, chief, or president

(as the case may be) of an Indian tribe or Alaskan native village.

Environmental impact. Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, adverse or beneficial, caused or induced in whole or in part, directly or indirectly, by a proposed project under Title I.

Environmental Impact Statement (EIS). A written statement, prepared in accordance with NEPA and CEQ Guidelines using such format as may be acceptable to HUD, describing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration, and the alternatives to such action or group of actions. The statement should include a quantitative measure of magnitude and a qualitative measure of importance of the environmental impacts.

Environmental review and environmental review process. The entire process for compliance by the applicant with NEPA under this Part with respect to a project funded under Title I.

Level of clearance finding. The applicant's determination pursuant to §58.15 (d) as to which of the two levels of environmental clearance applies.

Project. An activity, or a group of activities as determined by the applicant in its sole discretion, to be assisted under Title 1. A project is an "action" within the meaning of the CEQ Guidelines, 40 CFR 1500.5.

§ 58.4 [Reserved]

§ 58.5 General policy.

(a) *Applicants to assume NEPA responsibilities.* Except as provided at paragraph (b) of this section, all applicants for assistance under Title I shall be required to assume responsibility for carrying out all of the provisions of NEPA relating to particular projects for which the release of funds is sought. In assuming such responsibility, the applicant's chief executive officer shall carry out the responsibilities of the "responsible Federal official" as that term is used in NEPA and applicable regulations thereunder. Such responsibilities include, where applicable, the conduct of environmental reviews; decisionmaking and action as to environmental issues; preparation and circulation of draft and final EIS's; and assumption of lead agency responsibilities for preparation of such statements in behalf of Federal agencies other than HUD when such agencies consent to such assumption. The chief executive officer shall be subject to the jurisdiction of the Federal courts pursuant to section 104(h); such chief executive officer shall not be represented by the Department of Justice in court, but reasonable defense costs, including the fees of attorneys and experts, incurred in environmental litigation may be funded from the applicant's grant amounts.

The certification described at § 58.30 must be submitted to HUD by the applicant prior to the release of funds for any such project as evidence of such assumption of responsibility.

(b) *Exception.* HUD shall retain and carry out environmental review responsibilities for applicants found by HUD to lack the legal capacity to assume or carry out such responsibilities (see 24 CFR 570.603—*Environment*).

(1) An applicant wishing to claim such lack of legal capacity shall consult with the HUD official authorized to receive the application in order to obtain appropriate instructions. If an applicant claims lack of legal capacity, such claim shall be made prior to submitting its application, and if such claim is approved by HUD, the application when submitted shall be accompanied by a proposed draft EIS with accompanying comments, as required by 24 CFR 570.603. Submission of an application without the proposed draft EIS and accompanying comments may be deemed by HUD to constitute a waiver of such claim. If, following consultation with the applicant, HUD approves the claim, then the applicant will not be permitted to assume environmental review responsibility for any proposal by it and the approval shall be effective with respect to the Community Development Program (as defined at 24 CFR 570.3(f)) for the program year to which the application pertains, unless an exception is approved by HUD.

(2) Community associations (other than public entities which are also community associations), and private developers approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968, are considered by HUD to lack the legal capacity to assume or carry out environmental review responsibilities.

(c) *Environmental review process.* The environmental review process consists of a study by the applicant of each project to identify any environmental impacts of actions proposed to be taken by the applicant which are to be supported, in whole or in part, by Title I funds.

(d) *Determination of impact.* In the environmental review process, the applicant must arrive at a determination as to whether or not any proposed project will result in any environmental impact; the nature, magnitude and extent of any such impact; whether or not any changes could be made in the project as proposed, or alternatives to such project could be adopted, to eliminate or minimize adverse impacts; and the level of environmental clearance which is appropriate. Such determination is largely a matter of judgment on the part of the applicant, involving evaluation of available facts, pursuant to the procedures and guidelines contained in this part. on the system.

(e) *Conditions and safeguards.* If the applicant's environmental review process reveals conditions or safeguards which should be implemented when the project is undertaken, in order to protect or enhance environmental quality or minimize adverse environmental impacts, then such conditions or safeguards shall be set forth in the environmental review record and the applicant shall use all appropriate means to assure that those conditions and safeguards are implemented.

(f) *Decision not to implement.* If, through the environmental review process, the applicant concludes that the proposed project should not be implemented in whole or in part, then the applicant may reprogram to another eligible project, in accordance with the applicable provisions of 24 CFR 570.305.

(g) *Comprehensive and early evaluation.* Environmental review should be conducted on as comprehensive a scale as is feasible and should be commenced as early as practicable. The examination to determine the potential consequences of a proposed project should, if possible, cover the expected period of impact.

§ 58.6 [Reserved]

Subpart B—Environmental Reviews by Applicants Under Title I

§ 58.7 [Reserved]

§ 58.8 [Reserved]

§ 58.9 Financial assistance for environmental review.

Applicants may utilize Federal financial assistance to enable them to carry out environmental review pursuant to this Part, as follows:

(a) *Ten percent advance.* For the program period beginning January 1, 1975, each applicant eligible to receive Title I grants may request HUD to advance up to ten per centum (10%) of the Title I amount allocated to it, in order to plan and prepare for the implementation of activities to be assisted under Title I. The planning and conduct of environmental reviews relating to the preparation of Title I applications and projects thereunder may be so funded. (See 24 CFR 570.302).

(b) *Funding costs of environmental review.* After HUD approval of its Title I application, any applicant may utilize its Title I funds for environmental studies relating to the applicant's community development program for the program year, or subsequent program years.

(c) *Comprehensive planning assistance grants (701).* Applicants eligible to receive HUD 701 Comprehensive Planning Assistance grants may request 701 funds for the development of environmental review systems as part of their comprehensive planning activities.

§ 58.10 [Reserved]

§ 58.11 Environmental review record.

Applicants shall prepare and maintain a written record of the environmental review pertaining to each project, which shall be designated the "Environmental Review Record", and shall be available for review as part of the project proposal at the request of interested agencies, groups or individuals. The environmental review record, using

such format as may be acceptable to HUD, shall include as applicable:

(a) A description of the project to which it relates;

(b) Documentation showing that each step in the environmental review process set forth in § 58.15 has been performed, that the level of clearance finding required by § 58.15(d) has been made, and is supported in the environmental review record;

(c) Documentation showing that each step in the environmental review process under § 58.16 or § 58.17, as the case may be, has been performed, and that the requirements of applicable subsections have been satisfied;

(d) A description of the existing environmental conditions, the environmental impacts identified, modifications and changes made to compensate for environmental impacts;

(e) A copy of any Draft EIS, and the comments on it, and the Final EIS;

(f) Copies of historic preservation review analyses conducted under 36 CFR Part 800, showing satisfaction with each step of such process and support for any conclusion reached in connection therewith;

(g) The written decision required by § 58.19(c) with respect to projects to which § 58.19(c) is applicable;

(h) A copy of the notice required by § 58.30(a), the request required by § 58.30(b), and the certification and accompanying statement required by § 58.30(c);

(i) A copy of any environmental objection received which pertains to the project;

(j) A copy of any request for a waiver, and any waiver that may by issued under § 58.25(a);

(k) Evidence of any determination of the "lead agency" under § 58.27;

(l) Copies of environmental analyses or reports, conducted under State or local law; and

(m) Original counterparts or copies, as appropriate, of other documents appropriate in the judgment of the applicant for inclusion in the environmental review record.

§ 58.12 [Reserved]

§ 58.13 [Reserved]

§ 58.14 [Reserved]

§ 58.15 Steps to commence environmental review process.

The manner in which the applicant carries out the environmental review process, including the concurrent historic preservation review, and other reviews required by the authorities set forth in § 58.1(a), is largely within the discretion of the applicant. However, the process shall include the following steps:

(a) *Determine existing conditions.* Existing environmental conditions and trends which are likely to occur absent implementation of the proposed project should be identified. Such information is an essential data base from which to assess and evaluate any effects of the project.

(b) *Identify environmental impacts.* An identification of the nature, magnitude and extent of all environmental impacts of the project, whether beneficial or adverse, should be identified.

(c) *Examine identified impacts.* As to all environmental impacts of the proposed project which are identified:

(1) *Possible project modification.* Examine the project and consider ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize any adverse environmental impacts and enhance environmental quality. The examination should include consideration in light of the policies set forth in § 58.1(b) of both positive and negative effects of any such modification in relation to design, use, location, cost, and timing of the proposed project and its implementation.

(2) *Alternative projects.* Examine alternatives to the project itself which would eliminate or minimize environmental impacts or enhance environmental quality. The examination should include consideration of both positive and negative effects of any such alternatives in relation to design, use, location, cost, and timing, and consideration of the effect of no project.

(d) *Level of clearance finding.* Having completed each of the foregoing steps that may be applicable in the environmental review process, the applicant shall make one of the two level of clearance findings set forth below:

(1) *Finding that request for release of funds for project is not an action which may significantly affect the quality of human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is not an action which may significantly affect the quality of the human environment, then a document stating this finding and the facts and reasons supporting the finding shall be prepared by the applicant and included in the environmental review record. The document shall set forth sufficient information to assure that each step in the environmental review process has been complied with, and applicant's conclusion upon performance of each such step. (See §§ 58.15 and 58.16.) However, compliance with other applicable laws and regulations set forth in § 58.1(a)(3) is nevertheless required.

(2) *Finding that request for release of funds for project is an action which may significantly affect the quality of the human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is an action which may significantly affect the quality of the human environment, then a document stating this finding shall be prepared by the applicant and included in the environmental review record. An EIS is required for each action which may have such significant effect.

§ 58.16 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is not an action which may significantly affect the environment (no EIS).

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(1):

(a) *Notice of finding of no significant effect.* The applicant shall prepare a Notice of Finding of No Significant Effect on the Environment using such format as may be acceptable to HUD. Such notice may be brief, but shall: (1) identify the project to which the clearance relates; (2) state that the applicant has found that the project has no significant effect on the environment; (3) set forth the facts and reasons for such decision; (4) state that the applicant has made an Environmental Review Record respecting the project and indicate when and where the Environmental Review Record may be examined and copied; (5) state, if applicable, that no further environmental review of such project is proposed to be conducted and that the applicant intends to request HUD to release funds for such project; (6) indicate that comments may be submitted to the applicant until a certain date which shall not be less than 15 days following its first publication and dissemination; (7) state the name and address of the applicant and the chief executive officer of applicant; and (8) be dated as of the time it is first published and disseminated.

(b) *Publication and dissemindtion.* The Notice of Finding of No Significant Effect on the Environment shall be published and disseminated in the same manner as a Notice of Intent to File an EIS, as described as §58.17(b) and will provide at least 15 days from the date of initial publication for public comment.

(c) *Completion.* Following publication and dissemination of the Notice of Finding of No Significant Effect on the Environment and the expiration of any time fixed for comments, the environmental review process shall be complete, unless further proceedings are found by the applicant to be necessary, due to responses to such notice, or otherwise.

§ 58.17 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is an action which may significantly affect the environment (EIS required).

The following procedure shall be followed where the level of clearance finding is that specified in §58.15(d)(2):

(a) *Notice of intent to file an EIS.* As soon as practicable, the applicant shall prepare a Notice of Intent to File an EIS. Such notice may be brief, but shall: (1) Identify the project(s) to which the EIS will relate; (2) solicit the comments of all interested parties respecting the environmental impacts of such project(s) and indicate the time, manner and form in which such comments may be submitted to the applicant; (3) specify an

estimated date for completion and distribution of the Draft EIS, and (4) state the name and address of the applicant and the chief executive officer of the applicant.

(b) *Publication and dissemination.* Copies of the notice of intent to file an EIS shall be sent to the local news media, individuals and groups known to be interested in the applicant's activities, local, state, and Federal agencies, the a-95 clearinghouse and others believed appropriate by the applicant. Such notice shall be published at least once in a newspaper of general circulation in the affected community, and shall be filed with the HUD official authorized to receive the application.

(c) *Public hearings—procedure.* Prior to the preparation and distribution of a Draft EIS, the applicant shall determine whether it will conduct one or more public hearings at which the public may be heard respecting the preparation and contents of the Draft EIS. The applicant should also determine whether or not separate public hearings shall be held concerning the Draft EIS, or whether such public hearings shall be combined with other public hearings pertaining to the application of the applicant. All such public hearings concerning a Draft EIS shall be preceded by a Notice of Public Hearing, which shall be published and disseminated in the same manner as a Notice of Intent to File an EIS, as set forth in § 58.17(b), at least fifteen days prior to such hearing, and which shall: (1) State the date, time, place and purpose of the hearing; (2) describe the project, its estimated costs and the project area; (3) state that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard; (4) state the name and address of the applicant and chief executive officer of the applicant; and (5) state where the Draft EIS can be obtained, whether in person or by mail, and any charges that may apply.

(d) *Public hearings—factors to consider.* The determination of whether or not public hearings shall be held prior to distribution of a Draft EIS or after such distribution, or at any other time during the environmental review process, shall be within the reasonable discretion of the applicant. In determining whether or not to hold such public hearings on environmental issues, either separately, or in combination with other proceedings relating to the application of the applicant, the following factors should be considered: (1) The magnitude of the projects, in terms of economic costs, the geographic area involved, and the uniqueness of size of commitment of the resources involved; (2) the degree of interest in or controversy concerning the projects, as evidenced by requests from the public, or from Federal, State or local authorities, for information, or that a hearing be held; (3) the complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the applicant in carrying out its environmental responsibilities respecting the particular projects; (4) the extent to which public involvement has been achieved with respect to environmental concerns through other means, such as other public hearings, citizen participation in the development of the applicant's community development program and in formulation of its application, meeting with citizen representatives and written comments on the particular projects.

(e) *Draft EIS.* A Draft EIS shall be prepared in accordance with CEQ Guidelines (40 CFR Part 1500). Copies of the Draft EIS shall be sent by applicant to CEQ (5 copies), and simultaneously to Federal agencies (except HUD) whose areas of jurisdiction by law or special expertise are involved, to OMB-designated A-95 clearinghouses, to appropriate local agencies and entities, including local and area planning agencies, and groups or individuals known by the applicant to have an interest in the proposed action of the applicant. The CEQ Guidelines (Appendix II) set forth a listing of the Federal agency jurisdictions and special expertise. Copies shall also be made available to the public. Upon filing of the Draft EIS with CEQ, a notice that the applicant has prepared a Draft EIS will be published by CEQ in the FEDERAL REGISTER. Commencing on the date of such publication, there shall be a minimum review period of 45 days for the Draft EIS, plus any extensions thereof initiated or granted by the applicant. A Draft EIS must be on file with CEQ at least 90 days prior to submission to HUD of a certification and request for release of funds for the particular projects pursuant to § 58.30.

(f) *Final EIS.* A Final EIS shall be prepared in accordance with CEQ Guidelines (40 CFR Part 1500). The Final EIS must take into account and must respond to the comments received as the result of circulation of the Draft EIS. The Final EIS, including all comments received and the applicant's responses thereto, shall be filed with CEQ (5 copies), and simultaneously sent to all agencies and individuals who commented on the Draft EIS, to the Environmental Protection Agency, A-95 clearinghouses, appropriate Federal, state, regional and local agencies, and shall be made available to the public. A final EIS must be on file with CEQ not less than 30 days prior to submission to HUD of a certification and request for release of funds for the particular project pursuant to § 58.30. If the Final EIS is filed within 90 days after publication by CEQ in the FEDERAL REGISTER of Notice of Receipt of the Draft EIS, then the minimum 30 day period for review of the Final EIS, and the 90 day period provided for in § 58.17(e) will run concurrently, to the extent that they overlap.

§ 58.18 Limitation on action pending clearance.

During the environmental review process and pending completion of the appropriate environmental clearance procedures, the applicant may not use any funds to take any action with respect to the project under review where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such fashion that the validity of the conclusions to be reached would be affected. Except as to exempt activities under § 58.21, no Title I funds will be released for a project until the Secretary shall approve said release of funds and the related certification. (See §§ 58.30, 58.31 and 58.32).

§ 58.19 Continuation of previous activities.

(a) *Original or updated environmental review.* A project which is a continuation of a previously commended activity or activities for which no environmental review or clearance has been completed or for which previously conducted environmental reviews are insufficient due to changed circumstances, including the availability of additional data or advances in technology, must be subjected to an original or updated environmental review under this part. Such review shall be carried out with respect to the entire project to the extent that the entire project or portions of it could still be altered in light of environmental considerations.

(b) *Procedures governing updated reviews.* The following procedures shall govern the updating of environmental reviews:

(1) A new level of clearance finding shall be made which shall take into account the information theretofore developed and the new factors.

(2) If information relating to such factors arises after a Draft EIS has been transmitted for circulation, but prior to the expiration date for receipt of comments, then a copy of any revision, amendment, addendum to the Draft EIS, or other issuance, shall be transmitted to all parties to whom the Draft EIS was transmitted, and to all parties who have commented thereon, and, where appropriate, the applicant shall extend the time for comment on the Draft EIS.

(3) If the time for comments on the Draft EIS has expired, but the Final EIS has not been circulated, then any revision, amendment or addendum to the Draft EIS shall be transmitted to all parties to whom the Draft EIS was transmitted and to all parties who commented thereon, and a reasonable time for receipt of comments shall be fixed and allowed. The Final EIS shall then reflect the additional factors and contain the comments and responses respecting them.

(4) If the Final EIS has been circulated, then it shall be revised and reissued or an addendum thereto shall be prepared and distributed, as appropriate, to all parties to whom the Final EIS was distributed and to others who have commented thereon. Such revision or addendum shall be subject to the same review and comment procedures, including those respecting time, as the Final EIS which is being updated.

(c) *No new environmental review.* A project which is a continuation of a previously commenced activity or activi-

ties for which environmental review or clearance has been completed and for which circumstances, including the availability of additional data or advances in technology, have not changed significantly, requires no new environmental review or clearance by virtue of such project's funding under Title I. The applicant shall prepare a written decision to that effect, which shall set forth the reasons therefor.

§ 58.20 [Reserved]

§ 58.21 Exempt Activities.

(a) Certain planning activities eligible for assistance under Title I are exempt from the requirements of this part, set forth below:

(1) Environmental studies;

(2) Purposes authorized by Section 105(a)(12) of Title I, including activities necessary:

(i) To develop a comprehensive community development plan; and

(ii) To develop a policy-planning-management capacity; and

(3) For the first program year beginning on or after January 1, 1975, and only if the sole source of Federal funds is an advance pursuant to 24 CFR 570.302, activities necessary:

(i) To plan and prepare for the implementation of activities to be assisted under Title I; and

(ii) To continue previously approved urban renewal (including Neighborhood Development Program) activities being carried out under Title I of the Housing Act of 1949 or previously approved model cities activities being carried out under Title I of the Demonstration Cities and Metropolitan Development Act of 1966. The phrase "previously approved" in the preceding sentence shall mean those urban renewal and model cities activities that were approved and funded by HUD on or before June 30, 1974.

(b) The exemption from review pursuant to this part does not exempt applicants from other reviews which may be required pursuant to the authorities set forth in § 58.1(a).

§ 58.22 and § 58.23 [Reserved]

§ 58.24 Historic preservation.

Applicants must comply with the following requirements relating to the Preservation of Historic and Archeological Data Act of 1974, Section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593 whenever any property or district included in, or found by the Secretary of the Interior pursuant to 36 CFR Part 800 to be eligible for inclusion in, the National Register provided for by such Act, is in the boundaries, or within the vicinity of, a project which is to be funded, in whole or in part, by Title I funds.

(a) As part of the environmental review process each project shall be examined in accordance with the Procedures for Protection of Historic and Cultural Properties (36 CFR Part 800) for the purpose of identifying any National Register and National Register-eligible properties and determining whether or not the project may affect the property. If the property is not affected by the project, the applicant shall so state, in the environmental review record.

(b) If the project will affect the property, the applicant, as part of the environmental review process, shall carry out the procedures set forth at 36 CFR Part 800.

§ 58.25 Projects requiring an EIS.

The following types of projects require the preparation and dissemination of an EIS:

(a) Projects which would remove, demolish, convert or emplace a total of 500 or more dwelling units, unless the project is otherwise assisted by HUD and HUD waives the requirement for an EIS pursuant to HUD's general environment review regulations (HUD Circular 1390.1 (38 FR 19182, July 18, 1973) as amended (39 FR 38922, November 4, 1974)).

(b) Water and sewer facilities projects which will serve undeveloped areas of 100 acres or more.

§ 58.26 [Reserved]

§ 58.27 Interaction of applicant and Federal agencies—lead agency role.

(a) *Interaction with agencies other than HUD.* Where a project is to be jointly funded by one or more Federal agencies other than HUD and by HUD under Title I, and the preparation of an EIS is required by this part, a single agency, either the applicant or the other Federal agency, should assume responsibility as the "lead agency" for the preparation and clearance of an EIS, with the other agencies providing assistance. In the event that the regulations of none of the Federal agencies other than HUD require an EIS for such project, but the applicant determines under this part that an EIS is required then the applicant shall assume the "lead agency" role, or shall otherwise prepare an EIS, which shall comprehend the actions of the other Federal agency or agencies related to the project, as provided in the CEQ Guidelines, 40 CFR 1500.7(b).

(b) *Joint reviews—designation of lead agency.* All determinations respecting joint environmental review or designation of a "lead agency" to perform an environmental review shall be made and agreed upon between the applicant and any Federal agency involved, where practicable. In the event an applicant and a Federal agency are unable to reach such agreement, the applicant shall notify HUD, and HUD, with the advice and assistance of CEQ, will seek to obtain such agreement.

§ 58.28–58.29 [Reserved]

Subpart C—Releases of Funds for Particular Projects

§ 58.30 Release of funds upon certification.

An applicant which has completed all applicable environmental review and clearance requirements as provided in this part with respect to a proposed project and which desires to submit a request to HUD for the release of Title I funds for the project, shall comply with the following:

(a) *Publication of notice.* An applicant shall, at least five (5) days prior to submitting its request for release of funds and certification, publish in a newspaper of general circulation in the community affected, a notice to the public, which shall:

(1) Specify the date upon which the request and certification will be submitted to HUD by the applicant;

(2) Specify that such request and certification relate to the application of the applicant for a grant of funds under Title I;

(3) Briefly describe the project;

(4) State that the applicant has prepared an environmental review record respecting the projects for which release of funds is sought, and specify when and where the same may be examined by the public and copies thereof obtained;

(5) State the name and address of the applicant and of the chief executive officer of applicant.

(6) Include the following text, completed as indicated:

(Name of applicant) will undertake the project described above with Block Grant funds from the U.S. Department of Housing and Urban Development (HUD), under Title I of the Housing and Community Development Act of 1974. *(name of applicant)* is certifying to HUD that *(name of applicant)* and *(chief executive officer)*, in his/her official capacity as *(office)*, consent to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decisionmaking, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, *(name of applicant)* may use the Block Grant funds, and HUD will have satisfied its responsibilities under the National Environmental Policy Act of 1969. HUD will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases: (a) That the certification was not in fact executed by the chief executive officer of the applicant; or (b) that applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process. Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58), and may be addressed to HUD at *(complete area office address; or the Denver Regional Office address in Region VIII)*. Objections to the release of funds on bases other than those stated above will not be considered by HUD. No objection received after *(date of last day in the 15-day period)* will be considered by HUD.

(b) *Request for release of funds—Form.* A request for release of funds pursuant to this part shall be addressed to the HUD officer authorized to receive the application of applicant, shall be executed by the chief executive officer of applicant, and may be submitted with or as part of an application, or at any time after submittal of an application. Such request shall in all cases by accompanied by the certification of the applicant as stated at § 58.30(c) and shall:

(1) State the name and address of the applicant;

(2) State that the applicant requests the release of funds for particular projects, identify such projects and state the amount of funds requested to be released as to each;

(3) Be accompanied by the certification described in paragraph (c).

(c) *Certification-Form.* A certification pursuant to this Part shall be addressed to the HUD officer authorized to receive the application of applicant, and shall:

(1) State the name and address of the applicant and be executed by the chief executive officer of the applicant;

(2) Specify that the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the projects named in the request for release of funds;

(3) Specify the levels of all environmental clearances carried out by the applicant in connection with each project pertaining to the certification;

(4) Specify the dates upon which any statutory or regulatory time period for review, comment, or other response or action in regard to each such environmental clearance commenced and has expired, or will expire, and that with the expiration of each statutory or regulatory time period the applicant is in compliance with the requirements of this part;

(5) Specify that the chief executive officer of the applicant is authorized to consent to assume the status of a responsible Federal official, under NEPA, insofar as the provisions of NEPA apply to the HUD responsibilities for environmental review, decision-making and action assumed and carried out by the applicant, and that the chief executive officer so consents: by so consenting, the chief executive officer of the applicant assumes the responsibilities, where applicable, for the conduct of environmental reviews, decision-making, and action as to environmental issues; preparation and circulation of draft and final EIS's; and assumption of lead agency responsibilities for preparation of such statements on behalf of Federal agencies other than HUD when such agencies consent to such assumption;

(6) Specify that the chief executive officer of the applicant is authorized to consent, personally, and on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all responsibilities referred to in § 58.30(c)(5); and that the chief executive officer so consents on behalf of the applicant and himself in his official capacity only;

(7) Be accompanied by a statement, over the signature of the attorney for the applicant, that the chief executive officer so consents on behalf of the applicant and himself in his official capacity only; that the applicant and the stating chief executive officer of the applicant, are authorized and empowered by law to make the certification, and that the same was duly made by the applicant and that the chief executive officer of the applicant in accordance with such authority and power; and if applicant made a claim of lack of legal capacity pursuant to S58.5(b) and such claim was denied, that there has been no final decision by a court of competent jurisdiction or legislation which has become effective since the denial of such claim which may affect such denial.

(8) Be accompanied by a statement, over the signature and seal of the clerk or other authenticating officer of the applicant, stating that the chief executive officer of applicant is duly authorized to execute this certification, and that he did execute the same.

§ 58.31 Objections to release of funds.

HUD shall not approve the release of funds for any project until fifteen (15) days (as calculated pursuant to §58.2) have elapsed from the time HUD shall have received the applicant's request for the release of such funds and the certification pertaining thereto. Applicants shall not commit any funds which are the subject of any request for the release of funds to any project prior HUD's approval of such request. Any person or agency may object to an applicant's request for the release of funds and the certification pertaining thereto, but HUD will consider such objections only if the conditions set forth in paragraphs (a) and (b) of this section are satisfied, and the procedures in paragraph (d) of this section are followed. HUD can refuse the request and certification on the grounds set forth in paragraph (b) of this section. Any decision by HUD approving or disapproving the request for the release of funds and the certification pertaining thereto shall be final.

(a) *Time for objecting.* HUD must receive objections within fifteen (15) days from the time HUD shall have received the applicant's request for the release of funds and the certification pertaining thereto.

(b) *Permissible Bases:* (1) That the certification was not, in fact, executed by the chief executive officer of the applicant;

(2) That the applicant's environmental review record indicates that applicant has omitted to make one of the two level of clearance findings pursuant to § 58.15 (d), or to make the decision required by § 58.19(c), for the project, as applicable;

(3) That the applicant's environmental review record, with regard to a project for which the level of clearance finding in § 58.15(d)(1) was made, indicates that the applicant has omitted one or more of the steps set forth at: § 58.15(a); § 58.15(b); § 58.15(c)(1); § 58.15(c)(2); § 58.16(a); or, § 58.16(b);

(4) That the applicant's environmental review record, with regard to a project for which the level of clearance finding § 58.15(d)(2) was made, indicates that the applicant has omitted one or more of the steps set forth at: § 58.17 (a); § 58.17(b); § 58.17(c) only if applicant has decided to conduct a public hearing as a part of its environmental review of the project; § 58.17(e); or § 58.17(f);

(5) That the applicant's environmental review record indicates that, with respect to a property listed on the National Register of Historic Places, or found to be eligible by the Secretary of Interior pursuant to 36 CFR Part 800 for inclusion in such Register, and which is affected by the project, no opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on the property in accordance with the procedures set forth at 36 CFR Part 800; or,

(6) That with respect to a project for which the applicant has decided that § 58.19(c) applies, the applicant has failed to include in the environmental review record the written decision required pursuant to § 58.19(c).

(c) *Public and agency objections.* The only bases upon which HUD will consider the objection of any person or agency to the certification of an applicant, or to the approval by HUD of such certification, are set forth at § 58.31(b). Other objections will not be considered by HUD; but may be addressed to the applicant, and the chief executive officer of the applicant.

(d) *Procedure.* A person or agency objecting to an applicant's request for the release of funds and the certification pertaining thereto shall:

(1) Submit such objection in writing, to the HUD officer authorized to receive the application of the applicant;

(2) Specify the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of the agency;

(3) Be dated when signed;

(4) Specify the bases for objection, and the facts or legal authority relied upon in support of the objection;

(5) Indicate that a copy of the objections has been mailed or delivered to the chief executive officer of the applicant.

§ 58.32 Effect of approval of certification.

(a) *NEPA responsibilities of HUD.* The approval by HUD of the certification of an applicant is deemed to satisfy the responsibilities of the Secretary under NEPA insofar as those responsibilities relate to the application and releases of funds under Title I for projects which are covered by such certification.

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental assessments covered by an approved certification shall deal with the applicant and not with HUD. It shall be the policy of HUD, following the approval of a certification, not to respond to inquires and complaints seeking such redress, and only to refer such inquiries and complaints to the applicant and the certifying officer of the applicant. Other remedies for noncompliance, in addition to those stated in this Part, are set forth at 24 CFR 570.913.

Effective date. These regulations are effective on January 7, 1975.

JAMES L. MITCHELL,
Under Secretary for Housing and Urban Development.

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PART III

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE NAVY

■

NAVY PROCUREMENT DIRECTIVES

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

[NAVMAT-P-4202]

PART 737—NAVY PROCUREMENT DIRECTIVES

The Navy Procurement Directives, 1974 Edition, (NAVMAT P-4202) is published by the Chief of Naval Material in accordance with the policies and directions of the Assistant Secretary of the Navy (Installations and Logistics) pursuant to the authority contained in Secretary of the Navy Instruction 4200.29 of August 3, 1973.

The Navy Procurement Directives supplements, within the Department of the Navy, the provisions of the Armed Service Procurement Regulations (32 CFR, Subchapter A).

The Navy Procurement Directives, 1974 Edition, which superseded the 1966 Edition as revised through Revision No. 13 of October 1973, was issued on April 30, 1974, and became effective at all applicable echelons upon receipt. This Part 737 of Title 32, Code of Federal Regulations, contains the Navy Procurement Directives, 1974 Edition, as revised through Revision No. 2 of September 30, 1974.

Navy procuring activities should direct inquiries concerning comments as to additions, deletions, or corrections, to the Chief of Naval Material (MAT 021), Navy Department, Washington, D.C. 20360. Under the provisions of Section 553(a)(1) of Title 5, United States Code, the Navy Procurement Directives are exempt from public rule-making procedures.

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AUTHORITY: The provisions of this part 737 are issued by the Chief of Naval Material under R.S. 161, §§ 2202, 2301-2314, 70A Stat. 120, 127-133; 5 U.S.C. § 301, 10 U.S.C. §§ 2202, 2301-2314; Armed Services Procurement Regulation 1-108, 32 C.F.R. § 1.108; Secretary of the Navy Instruction 4200.29 of August 2, 1973.

Subpart A—General Provisions

§ 737.1-100 Introduction.

§ 737.1-101 Purpose of NPD.

The NPD (Navy Procurement Directives) serves, in accordance with 32 C.F.R. § 1.103, (i) to supplement the ASPR (Armed Services Procurement Regulations) (Subchapter A [Parts 1 through 33] of this Title 32) and other Department of Defense publications concerned with procurement, and (ii) to promulgate at the Departmental level policies and procedures concerned primarily with procurement which are not covered by ASPR or other DOD publications.

§ 737.1-102 Applicability of RPD.

The NPD shall apply to all purchases and contracts within and outside the United States made by Navy purchasing and contracting activities with appropriated funds (including available contract authorizations), except as otherwise specified in the NPD or in other directives.

§ 737.1-103 Arrangement of NPD.

§ 737.1-103-1 Arrangement.

As a supplementary directive to the ASPR, the NPD is basically constructed in the same format as ASPR. However, where there are no corresponding ASPR numbers, NPD subjects are generally confined within the same ASPR Section or Part, as appropriate. It will be noted that gaps exist in the NPD numbering system. These gaps represent ASPR paragraphs which are not implemented in the NPD.

§ 737.1-105 Amendment of Regulations.

§ 737.1-105-1 Recommended Changes to NPD and ASPR.

Procurement personnel at all levels, particularly the contracting level, are invited and encouraged to submit proposed changes based on operating experience, for reducing administrative burden, simplifying and standardizing contract forms, and improving contracting procedures in general. Such suggestions shall be submitted via the cognizant Head of the Procuring Activity to the Chief of Naval Material (MAT 021) for consideration for inclusion in the NPD or ASPR. Recommendations for changes should be accompanied by a proposed draft of the revision or addition. Those suggestions which are applicable to the other Departments will be forwarded by the Chief of Naval Material to the ASPR Committee for action, via the Assistant Secretary of the Navy (I&L).

§ 737.1-105-2 Amendment of NPD.

The NPD will be revised, as necessary, by issuance of printed loose-leaf revisions published periodically. The Chief of Naval Material will coordinate with the Chief of Naval Operations and the Commandant of the Marine Corps all proposed NPD changes that involve matters of policy or significant actions affecting their respective areas of responsibility.

§ 737.1-105-3 USEUCOM Supplement to ASPR.

(a) In the consideration of proposed additions and changes to the USEUCOM Supplement to the ASPR, the representative of the Department of the Navy on the Offshore Procurement Policy Coordinating Committee (OSP-PCC) represents all purchasing activities of the Department of the Navy located in the area to which the USEUCOM Supplement is applicable. Accordingly, such Navy representative shall inform the Navy purchasing activities concerned of significant proposed additions and changes to the Supplement and afford them an opportunity to express their views thereon. When the Navy representative on the OSP-PCC considers that the ASPR Committee should consider any dissenting Navy views with respect to proposed additions or changes to the USEUCOM Supplement that are concurred in by the OSP-PCC, he shall submit such views in writing to the Chairman of the OSP-PCC with the request that they be forwarded to the ASPR Committee with the proposed additions and changes.

(b) Legal advice and assistance in connection with the USEUCOM Supplement and other OSP-PCC matters will be provided by the Office of the General Counsel, European Branch, London.

§ 737.1-107 Distribution of ASPR and NPD Materials.

(a) [Reserved]

(b) The ASPR, NPD and Revisions thereto may be purchased by the public on a subscription basis from the Superintendent of Documents, Attn: Mail List Section, Government Printing Office, Washington, D.C. 20402. In addition, the ASPR Supplements (ASPS) and ASPR Manual (ASPM) are also available from the Government Printing Office at a separate cost.

(c) NPD Revisions are effective within the Department of the Navy upon receipt unless otherwise specified in individual NPD Revision.

§ 737.1-108 Publications of the Military Departments.

(a) *The Navy Directives Issuance System.* Although the NPD is the basic procurement publication issued at the Departmental level for the Department of the Navy, policies and procedures pertaining to various aspects of procurement and related matters are also contained in the Navy Directives Issuance System and in other Departments of the Navy publications. Additional information supplementing the NPD and ASPR are promulgated by instructions and notices in accordance with the Navy Directives Issuance System.

(b) *Other Navy Publications.* In addition to the NPD and the Navy Directives Issuance System, other Navy publications, as listed below, provide additional guidelines to procurement personnel in the administration of Navy procurement:

(1) *NAVCOMPT MANUAL* (NAVSO P-1000). A manual of accounting and disbursing procedures.

(2) *Field Purchasing* (NAVSUP Publication 467). Publication provides purchasing information and instructions applicable to all activities of the Navy Field Purchase System. It also contains detailed policies and procedures for small purchasing.

(3) *Incentive Contracting Guide* (NAVMAT P-4283). A guide to improve incentive contract structuring and administration techniques. It provides guidelines for pricing arrangement and the proper selection and application of various contract types.

(4) *Navy Contract Law* (NAVEXOS P-1055). A volume, originally prepared as part of the Navy Contract Law Course, containing a series of articles affording background information on Navy procurement practices and organization and covering various legal aspects of procurement.

(5) *Navy Property Redistribution and Disposal Regulations.* (i) Navy Personal Property Disposal Regulation (NAVSUP Publication 433).

(ii) Navy Facilities Engineering Command Publication No. 73—Real Estate Administration.

(6) Department of the Navy Publications and Printing Regulations (NAVSO P-35). This publication, issued on approval by the Navy Publications and Printing Policy Committee, interprets, implements, and supplements the laws pertaining to publications and printing. Regulations of the Congressional Joint Committee on Printing, Bureau of the Budget circular letters, and decisions of the Comptroller General, and provides mandatory regulations on the content, format, preparation, production, procurement, and distribution of Department of the Navy publications and printing and related equipment and supplies. (See § 737.1-201(c) (iv), and (vi), Definitions; § 737.1-454, Responsibilities of the NPPS; § 737.5-601, Procurement of Printing and Related Supplies.)

(c) *Publications by Procuring Activities.* (1) Subject to the provisions of § 1.108, procuring activities of the Department of the Navy may issue procurement directives, instructions and other publications to supplement ASPR, the NPD and other Departmental publications.

(2) Implementation by procuring activities shall consist of providing for such delegations of authority and assignments of responsibilities and only such other implementing actions as are essential to the procurement operations of the respective procuring activity. In areas which are not fully covered by ASPR and the NPD, each procuring activity may, consistent with the provisions of ASPR, the NPD and other Department of Defense and Departmental publications, maintain and issue such policies and procedures as are necessary for the efficient performance of procurement operations.

(3) Procuring activities shall include the Chief of Naval Material (MAT 021) in the distribution list for two copies (in addition to normal distribution) of all procurement directives. These directives shall include instructions and notices in the Navy Directives Issuance System, as well as other publications of a directive nature which pertain to procurement.

(4) To reduce the volume of regulatory material issued at the procuring activity level, suggestions should be made to the Chief of Naval Material (MAT 021) as to areas where policy and procedures are now lacking and which would be beneficial for promulgation at the Departmental level.

(d) *Defense Contract Administration Services Publications.* Selected publications issued by the Defense Contract Administration Services (DC-AS), Defense Supply Agency, governing the operations of its contract administration offices are distributed to major purchasing activities, contract administration offices, and other activities involved in the acquisition of supplies and services from private industry. These publications are listed in the Navy Stock List of Publications and Forms, Section 12, and copies are available from the Naval Publications and Forms Center, Philadelphia, Pa. Recommendations for additions or deletions to the list or inquiries concerning their distribution should be addressed to the Chief of Naval Material (MAT 024).

§ 737.1-109 Deviations From This Regulation and Department of Defense Publications Governing Procurement.

§ 737.1-109-1 Applicability.

The provisions of § 1.109-1 defining deviations from ASPR and other Department of Defense publications governing procurement shall apply also to the NPD and other Departmental procurement regulations and forms.

§ 737.1-109-2 Deviations From ASPR and Other DOD (Publications Affecting One Contract or Transaction).

The Chief of Naval Material is authorized to grant or deny requests for deviation from the mandatory provisions of ASPR or other DOD directives when the deviation affects only one contract or a single transaction in connection with one contract. Such requests may be included in the "Request for Authority to Negotiate (RAN)" when a Determination and Findings by the Secretary is required by § 3.302. The approval of the RAN in such cases will constitute approval of the deviation. The RAN shall contain all the data required by § 1.109-5. Requests for deviations involving technical data provisions of Part 9, subpart B, shall be processed in accordance with § 9.202-3 (a); see also § 737.1-109-52.

§ 737.1-109-3 Deviations From ASPR and Other DOD Publications Affecting More Than One Contract or Contractor.

Requests for deviations from ASPR and DOD directives affecting more than one contract or contractor will be forwarded by the Chief of Naval Material for approval of the Assistant Secretary of Defense (I&L), via the Assistant Secretary of the Navy (I&L), or the Chief of Naval Material may deny such requests without forwarding the same. Approval by the Assistant Secretary of Defense (I&L) will generally be sought through the unanimous approval of the ASPR Committee. The deviations shall not be effective until receipt by the requesting activity of notification of approval of the Assistant Secretary of Defense (I&L). For purposes of this § 737.1-109, requests for deviations involving basic agreements or mastertype contracts are considered to involve more than one contract.

§ 737.1-109-4 Deviations Required by Government-to-Government Agreements.

The provisions of § 1.109-4 pertaining to deviations from ASPR required by Government-to-Government Agreements shall also apply to deviations from NPD required by Government-to-Government Agreements.

§ 737.1-109-5 Requests for Approval of Proposed Deviations.

In originating or forwarding a request for deviation, the request shall be signed by the Head of the Procuring Activity, by the Director of Contracts or by the Deputy Director of Contracts. A request for deviation originating from a field activity shall be signed by the Commanding Officer, the Supply Officer, or the Director of Procurement of the field activity concerned and forwarded to the Head of the Procuring Activity for further action.

§ 737.1-109-50 Deviations From the NPD and Other Departmental Publications.

The Chief of Naval Material is authorized to grant or deny any request for deviation from the mandatory provisions of the NPD or other Departmental publications governing procurement.

§ 737.1-109-51 Deviations From Maximum Fee Limitations.

Requests for deviations from the maximum fee limitations set forth in § 3.405-4(c) and § 3.405-5(d) shall be submitted to the Chief of Naval Material (MAT 022) for approval (i) as part of the prenegotiation business clearance, when clearance submission to NAVMAT is required, or (ii) in letter form, if business clearance submission to NAVMAT is not required, and (iii) shall contain the data prescribed by § 1.109-5.

§ 737.1-109-52 Deviations Involving Patents, Copyrights and Technical Data.

Requests for deviations involving patents, copyrights, technical data, and related matters shall be forwarded to the Chief of Naval Material via the Chief of Naval Research (Code 300). Requests by the U.S. Navy Aviation Supply Office for such deviations shall be forwarded via (i) the Naval Air Systems Command (Patent Counsel) and (ii) the Chief of Naval Research (with a copy, including all endorsements, to the Naval Supply Systems Command (Code 022)). In the case of any proposed deviations from the Patent Rights clause for research and development contracts relating to atomic energy (§ 9.107-7), the Chief of Naval Research shall obtain the necessary consent of the Atomic Energy Commission before forwarding such requests to the Chief of Naval Material. As to proposed deviations from technical data provisions of Part 9, subpart B, see § 737.1-109-2.

§ 737.1-109-53 Other Deviations From the Mandatory Provisions of ASPR, DOD Directives, NPD and Other Departmental Publications.

All other requests for deviations from the mandatory provisions of ASPR or other DOD Directives, NPD and other departmental publications shall, except as provided in § 737.1-109-2, be forwarded for approval to the Chief of Naval Material (MAT 021), as far in advance as possible. Field purchasing activities shall forward all such requests via the Head of the Procuring Activity exercising technical control over the purchase function.

§ 737.1-109-54 Contents of Proposed Deviations.

The provisions of § 1.109-5 pertaining to the contents of a request for approval of a proposed deviation from ASPR shall

also apply to a request for approval of a proposed deviation from NPD.

§ 737.1–109–55 Control of Deviations.

A record of all approved deviations will be maintained by the Chief of Naval Material (MAT 021). Each approved deviation shall be assigned a control number consisting of fiscal year and serial number, e.g., Deviation Control No. 68–1. This control number shall be included in the document authorizing the deviation and will be cited in all future references to this deviation.

§ 737.1–111 Reports of Suspected Criminal Conduct and Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

§ 737.1–111–50 Fraud in Connection With Procurement and Property Disposal.

See SECNAVINST 4385.1 series.

§ 737.1–111–51 Reports Under the Gratuities Clause.

(a) In implementation of the Gratuities clause in § 7.104–16 where a Navy procuring activity has reason to believe that a gratuity (in the form of entertainment, gifts or otherwise) was offered or given by a contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Navy contract (other than a contract for personal services) or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract, the procuring activity having cognizance of the contract shall forward a full report of the alleged infraction, properly documented, to the Chief of Naval Material (MAT09G). After review of the information in such report, the Chief of Naval Material, when in his opinion the facts of the case warrant, is authorized to schedule the matter for hearing in accordance with the provisions of "Rules for Notice and Hearing under the Gratuities Clause" (ASPR Appendix D) and this NPD.

(b) The Chief of Naval Material may establish, at such time as he deems proper, a board to give notice of hearings, to conduct hearings, and to make the findings of fact and recommendations provided for in ASPR Appendix D. The Board shall consist of a chairman and two other members, one of whom shall be a person trained in the law, and will be given an appropriate designation by the Chief of Naval Material. In the performance of its functions, the board shall have all the authority conferred on the Secretary of the Navy by statute or by the prescribed contract clause and all actions of the board in this respect shall be in accordance with the provisions of ASPR Appendix D.

(c) Paragraph 14 of ASPR Appendix D reserves to the Secretary of the Navy the final decision as to what remedies the Government may pursue in the event an infraction of the Gratuities clause is found to have occurred.

§ 737.1–113 Standards of Conduct.

§ 737.1–113–2 Organization Conflicts of Interest.

A copy of the solicitation notice and of each clause incorporated in a contract implementing the policy set forth in § 1.113–2 shall be forwarded to the Chief of Naval Material (Mat 021).

§ 737.1–200 Definition of terms.

§ 737.1–201 Definitions.

(a) As used throughout the NPD, the words and terms defined in § 1.201 have the same meanings as set forth in § 1.201, unless (i) the context in which they are used requires a different meaning, or (ii) a different definition is prescribed for a particular NPD Section, paragraph, or portion thereof: *Provided*, That when authority is delegated to, or action is required of, a "procuring activity" or "The Head of a Procuring Activity" those terms shall refer only to Navy procuring activities and to Heads of Navy Procuring activities as identified in §§ 1.201–14 and 1.201–7, respectively.

(b) Definitions in ASPR which apply only to a particular portion of the NPD.

(c) As used in the NPD:

(1) "Navy" refers to the Department of the Navy, including the Marine Corps;

(2) [Reserved]

(3) "Contracts division" and "contract division" (whether or not the initial letters are capitalized), when used in connection with a procuring activity or field purchasing activity not having a division so named, means the division, branch or other organizational entity, equivalent to the contract division of a system command, in which contracting officers operate to place contracts for the activity.

(4) *Publications* include, but are not limited to, end items of printing as defined herein, and any book, pamphlet, directive, form, manual, folder, brochure, periodical magazine, newspaper, microcard or other microform, technical report, chart, poster, map, drawing, tag, placard, or blankbook, printed by or for the Department of the Navy, regardless of content, format, quantity, distribution, or intended end use. (*Exception:* Publications produced by suppliers and regularly carried as stock items for commercial sale or use are not included in this definition.

(5) *Printing* includes and applies to the processes of composition, platemaking, presswork, and binding; the equipment used in such processes as cited in Navy Publications and Printing Service directives; and the end items, with exceptions as noted above, produced by such processes and equipment. "*Composition*" includes the production of text, display, tabular matter, and similar graphical/lexical information or data on film, paper, tape, or other materials by manual or tape-operated cold type composing equipment, photographic / electronic character generating equipment, phototypesetting equipment, tape-operated keyboards, typecasting machines, and typesetting machines. "*Platemaking*" includes the photographic or other production of negatives, positives, and other materials required to transfer graphic information or data to presswork printing plates. "*Presswork*" includes the mass production of copies by lithographic, letterpress, flexographic, gravure, rotogravure, silk screen, engraving and counterpart embossing equipment, and similar mass production equipment and operations necessary to complete production, such as collating, gathering, folding, cutting, trimming, perforating, padding, stitching, punching, drilling, and sewing.

(6) *Duplicating* includes and applies to the limited production of end items by use of certain types of equipment as cited in Navy Publications and Printing Service directives. No more than 5,000 8 x 10½ in. production units may be duplicated of any one page (one side of one sheet). Duplicating of end items consisting of two or more pages may not exceed 25,000 8 x 10½ in. production units in the aggregate. The content, editorial and physical format, and distribution of duplicated items shall be in accordance with public law and regulations governing printed items. (See also § 737.1–108–51(c)(v), NAVSO P–35; § 737.1–454, Responsibilities of the NPPS; § 737.5–601, only to paragraphs (4), (5) and (6) of this section.)

(7) "Field contract administration office" as used in this NPD means one of the Army, Navy, Air Force or DCAS contract administration Services Components (DOD 4105.59H). Such an office is also referred to as a contract administration service (CAS) component.

(8) "Administrative Contracting Officer (ACO)," insofar as Navy field contract administration offices are concerned, is the Officer-in-Charge who is currently a contracting officer (§ 1.201–3). The term also includes any authorized representative of the Officer-in-Charge acting within the limits of his contracting officer authority.

§ 737.1–300 General policies.

§ 737.1–302 Sources of Supplies and Services.

§ 737.1–302–2 Proposal Evaluation and Source Selection.

SECNAV Instruction 5000.1 (Subj: System Acquisition in the Department of the Navy) of 13 March 1972, establishes Department of the Navy procedures and policies on evaluation of competitive proposals and source selection. Activities and contractors may obtain a copy of the Instruction by submitting a letter request to the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120.

§ 737.1–320 Industrial Security.

(a) General. Security cognizance for contractor facilities participating in the Defense Industrial Security Program (DISP) is assigned to the Defense Supply Agency. Security assignments are made on a geographic basis and security cognizance is exercised by the various Defense Contract Administration Services Regions (DCASRS). The geographical areas of responsibility are listed in

Appendix VII to the DOD Industrial Security Manual, DOD 5220.22–M. Procuring activities shall be familiar with the DOD Information Security Program Regulation (DOD 5200.1R) with Department of the Navy Supplement (OPNAVINST 5510.1 Series), the DOD Industrial Security Regulation, DOD 5220.22–R (promulgated by OPNAVINST 5540.8 Series), as well as the DOD Industrial Security Manual and when appropriate, the Cryptographic Supplement to the Industrial Security Manual, DOD 5220.22–S when transmitting classified information to contractors.

(b) Contract Administration Services Components Industrial Security Responsibilities. Although DSA administers the DISP for the Department of Defense, under the DOD Plant Cognizance Program, Navy Contract Administration Services (CAS) components (see DOD 4105.54–H for list of activities) perform those ACO industrial security functions normally performed by the DCASRS where the Navy has cognizance. These ACO industrial security functions are contained in the Industrial Security Manual and the Regulation. An abbreviated listing of responsibilities may be found in Appendix C of the Industrial Security Regulation.

§ 737.1–321 Warning Notation on Classified Matter Distributed to Industry.

(a) Article 4–603, DOD Directive 5200.1–R, July 1972 (Information Security Program Regulation), Article N4–603, OPNAVINST 5510.1D Sep 1972 (Navy Supplement to DOD 5200.1–R and paragraph 11.b(1) of the Department of Defense Industrial Security Manual for Safeguarding Classified Information (Attachment to DD Form 44) require the following notation to be affixed to classified matter when disseminated outside the Executive Branch of the Government.

"NATIONAL SECURITY

INFORMATION"

"Unauthorized Disclosure Subject to Criminal Sanction"

(b) The proper marking of classified matter is the responsibility of the originator and the activity making the distribution. Under the provisions of Article N18–204 of OPNAV Instruction 5510.1D, it is permissive to transmit matter classified Confidential or Secret direct to the contractor; therefore, if subject notation is not made by the originator or the activity making the distribution, it is received by the contractor without the notation being affixed. However, field offices having Industrial Security responsibility as "via" addressees, shall review classified matter received from other activities for correctness of markings and to insert those markings which have been omitted.

(c) Procuring activities and distribution activities of the Department of the Navy that originate and/or distribute classified information to Department of Defense contractors are requested to take necessary action to effect compliance with Article 4–603, DOD Directive 5200.1–R, Article N4–603, OPNAVINST 5510.1D and paragraph 11.b(1) of the Industrial Security Manual for Safeguarding Classified Information.

§ 737.1–322 Disposal of Classified Data Furnished to Contractors.

When it is determined by the contracting officer that classified data furnished to contractors in connection with classified procurements is obsolete or in excess of contractual and/or legal requirements, such classified data may be destroyed by the contractor upon written authorization of the contracting officer and pursuant to the Department of Defense Industrial Security Manual for Safeguarding Classified Information (attachment to DD Form 441).

§ 737.1–323 Publication by Contractors of Financial Data Invoicing Security Information.

(a) In order that contractors may disclose a maximum of public information relating to their financial status, consistent with the requirements of security, the Secretary of the Navy prescribes the policies set forth below to govern such disclosure.

(b) Suppliers performing work under contracts which include the Military Security Requirements clause specified in § 7.104–12 shall not publish operating statements or other financial reports which include rates of production, total production, designation of articles, or production processes under such contracts.

(c) Such suppliers may, unless their entire production is comprised of 75 percent or more of the same article, publish their total earning and total production by dollar value only, provided that approximate production by quantity or dollar value of a particular article shall not thereby be disclosed; and provided further, that special restrictions on such publication have not been imposed by the responsible contracting officer because of the extreme secrecy of particular contracts. Publication, where permitted as provided herein, may include the following:

(1) Quarterly statements showing by total dollar value the following:

(i) Orders unfilled or due at the beginning of the period;

(ii) New orders booked during the period;

(iii) Cancellations, adjustments, and cut-backs during the period;

(iv) Orders filled during the period;

(v) Unfilled orders at the close of the period;

(vi) Finished goods on hand;

(vii) Work in progress; and

(viii) Raw materials and supplies (one item);

(2) Quarterly statements of total earnings; and

(3) Annual reports and prospectuses showing by percentage how much of the total dollar sales was derived from goods manufactured through the use of facilities which will not require substantial reconversion for peacetime or civilian use, provided the percentage is not within 25 points of the percentage relationship of any particular classified article's dollar value to the total dollar value of all goods sold by the company.

(d) Notwithstanding the foregoing, the Secretary of the Navy, or the Chief of Information as his authorized representative may, upon request in particular cases, permit the disclosure of financial information in addition to that provided for in (c) above. Any inquiries concerning the application of the policies herein set forth, or requests for additional disclosure, should be referred to the Office of Public Information of the Department.

§ 737.1–350 Scheduling of Procurement.

§ 737.1–350–1 Minimum obligation of Funds.

(a) To assure flexibility for changing programs, it is the general policy of the Navy to hold to a minimum the amount of funds under contract obligation, at any one time, for the supplies and services the Navy must buy.

(b) Quantities of supplies or services being procured should meet requirements for a reasonable period of time. To this end, and consistent with the obtaining of reasonable prices, use should be made of indefinite quantity contracts or such other contractual methods for the obtaining of supplies or services when the total requirements are not firm but requirements for a lesser known quantity have been definitely established.

(c) It is not desired that purchases be made in quantities so small that prices are thereby increased or that this policy be applied to purchases which are so small as to render administrative cost disproportionate to results to be achieved.

(d) Procuring activities are permitted wide discretion in the implementation of § 737.1–350–1.

§ 737.1–350–2 Adequate Procurement Lead Time.

(a) The period allowed for the solicitation of bids or offers is an important segment of necessary contract lead time. An adequate solicitation period is essential to obtain effective competition, provide for an orderly procurement process, and assure that resulting contracts are placed at reasonable prices. Accordingly, contracting activities shall ascertain what contract lead time is necessary in advance of deadline dates for final obligation purposes to permit a normal solicitation period. At least once, early in each fiscal year, contracting activities shall formally advise the activities they regularly serve in a contracting capacity of deadline dates for submission of purchase requests.

(b) It is the policy of the Department of the Navy that the procurement lead time essential to obtaining adequate available competition shall not be curtailed for the purpose of obligating annual appropriations. (See also § 2.202–1.)

§ 737.1–351 Preparation and Distribution of Contractual Documents.

§ 737.1–351–2 Referencing Publications in Contractual Documents.

In the preparation of contractual documents, instructions to the contrac-

tor shall not be incorporated by reference to publications except in cases where the referenced publication is readily available to the contractor. Otherwise such instructions shall be set forth in the contractual document itself or shall be made available by attaching thereto a copy of the publication or the applicable portion thereof.

§ 737.1–351–5 Copies of Contracts Requested in Navy MIPR's.

See § 737.5–1106—1.

§ 737.1–351–7 Notification to field contract administrator of the identification of the organizational unit or code within the contracting activity responsible for contract administration functions.

In the interest of improving channels of communications, where a contracting officer anticipates a repetitive need for correspondence or contact between the contracting office and an activity designated to perform field contract administration, the organizational unit or code and its specific area of responsibility within the contracting office responsible for the administration of the contract should be furnished to the field contract administrator by any appropriate means.

§ 737.1–351–9 Delivery Status Information on Procurements for the ILP (International Logistics Program).

(a) Contracts and purchase orders awarded in support of requisitions for the ILP shall:

(1) Identify the requirement as a separate contract line item or subline item in accordance with § 20.304–2. The applicable requisition number *plus:*

(i) The country and case identifier (MILSTRIP CC 31–32 and 48–50) for FMS (Foreign Military Sales);

(ii) The Record Control/Program/Directive number identifier (MILSTRIP CC 46–50) shall be entered immediately under the line or subline item for GA (Grant Aid). (Navy/Marine Corps ILP requisitions are identified by the letter P or K preceding the requisition number. Army is B, Air Force is D, Defense is T (MILSTRIP CC 30).)

(2) Provide for the designated contract administration services component to distribute to the Navy International Logistics Control Office, Bayonne, New Jersey, a copy of any report or document which indicates an anticipated or actual delay in delivery of line or subline items for the ILP. Copies of such reports distributed to Navy International Logistics Control Office, shall include the requisition number applicable to the line or subline item involved and shall be in addition to any other distribution required by the contract or directives applicable to the contract administration services component.

§ 737.1–352 Limitation on Contract Amendments for New Procurement.

It is the policy of the Department of the Navy to avoid the use of contract amendments for additional quantities as a means of purchasing new requirements of supplies, when such a procedure would result in prolonging the life of the contract beyond the time when final settlement would normally be made. The practice of extending contracts for this purpose has the following undesirable results:

(a) Possible use of obsolete or outmoded forms of contracts;

(b) Possible loss of the rights of the parties in a confusion of paperwork; and

(c) Imposition of unnecessary burdens upon the officer charged with administration of the contract.

§ 737.1–361 Commercial Advertising by Navy Contractors.

(a) Contractors frequently include in some of their commercial advertisements reference to their participation in Navy programs. Prior to placement of these advertisements the contractor may seek approval thereof from some Departmental office, generally the cognizant field contract administrator. It is the general policy of the Department of the Navy not to object to such advertisements provided they do not:

(1) Directly or indirectly constitute an endorsement by the Department or any member thereof of the contractor's product or service;

(2) Indicate or imply in any manner Departmental preference of the contractor;

(3) Contain reference to contract numbers or other contractual details; or

(4) Disclose classified military information.

(b) Contractors are not required to obtain prior clearance for advertisements. However, any Departmental office that becomes aware of any advertisement which appears to conflict with the conditions of paragraph (a) of this section shall immediately bring it to the attention of the cognizant field contract administration office. The cognizant field office shall take necessary action with the contractor to resolve the matter in consonnance with the aforesaid policy. In the event this matter cannot be resolved to the satisfaction of the cognizant field office, the matter shall be referred by letter report to the Chief of Naval Material (MAT 021). The letter report shall include a statement of all facts and circumstances in sufficient detail to enable the Chief of Naval Material to take appropriate action.

§ 737.1–362 Purchase of Liquid Carbon Dioxide.

(a) As a result of an antitrust judgment certain companies are not permitted to sell or lease liquid carbon dioxide storage tanks and related equipment if the sale or lease is conditioned on an agreement or understanding that the purchaser (lessor) of the storage tanks will purchase carbon dioxide from either the storage tank supplier or any source designated by the storage tank supplier.

(b) Accordingly, requirements for the furnishing of carbon dioxide storage tanks and the liquid carbon dioxide to fill such tanks shall be solicited, evaluated and awarded independently of one another. The two may be solicited and awarded in the same transaction provided they are identified and evaluated separately.

(c) The solicitation document for these requirements shall stipulate that "all-or-none" bids will be rejected as nonresponsive. Further, the solicitation shall not require that the bidder quote on both items.

(d) Attention is invited to § 5.102–3, which makes mandatory with certain exceptions the purchase of FSC 6830 (which includes carbon dioxide) from Federal Supply Schedules.

§ 737.1–363 Participation by Naval Plant Representative Offices (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs) in RFP Preparation, Evaluation of Proposals and Source Selection.

(a) When feasible, NAVPROs or SUPSHIPS shall be requested to review, prior to completion of drafting, the RFP (Request for Proposal), Schedule, General Provisions, Specifications, or other provisions of proposed major weapon systems contracts for the purpose of planning for contract administration and for determining the adequacy of such contractual requirements for contract administration purposes. In addition, NAVPROs or SUPSHIPs may be requested to participate in the technical evaluation of proposals and in source selection, in order to provide guidance to the purchasing activity on contract administration matters and on the ability of the contractor to perform the type of work contemplated. Such participation is in addition to field pricing support provided the PCO (Procuring Contracting Officer) as required by § 3.801.

(b) The selection of one or more NAVPROs or SUPSHIPs to participate in procurement document preparation, evaluation of proposals and source selection, should be based on the familiarity of their personnel with the kind of weapon system to be procured and/or the likelihood of award to a contractor under their cognizance. NAVPROs or SUPSHIPS may be requested to participate similarly in procurements for items other than weapon systems when considered necessary by the procuring activity, purchasing office, project manager or requiring activity.

§ 737.1–400 Procurement responsibility and authority.

§ 737.1–401 Responsibility of Procuring Activities.

§ 737.1–401–51 Responsibility of the Naval Supply Systems Command.

(a) *General.* Only The Naval Supply Systems Command has cognizance of the procurement of materials and services throughout the Department of the Navy for which no other procuring activity, office, or command is otherwise delegated procurement authority.

(b) *Consolidated Bid Room Facilities.* (1) Under the direction of the Naval Supply Systems Command, a common bid room shall be established and operated

by the Naval Regional Procurement Office, Washington, for all formally advertised procurements of the Systems Command Headquarters. Bid rooms will no longer be operated by Systems Commanders, except that the Commander, Naval Facilities Engineering Command may operate a separate bid room for formally advertised construction contracts.

(2) Common bid room functions shall be as follows:

(i) Naval Regional Procurement Office Washington:

(A) Issue invitations for bids, complete with applicable specifications, drawings and other descriptive data (unless the required specifications, drawings, or descriptive data is to be mailed directly from the Systems Command to the bidders included on the mailing list for the invitation for bids);

(B) Receive, open and abstract bids; make any determination concerning late bids; annotate retained Abstract of Bids to show award of contract(s) or other disposition;

(C) Supplement the list of bidders supplied by the Systems Command as appropriate; and,

(D) Furnish, or arrange to have furnished, upon request from prospective bidders, bid forms and applicable specifications, drawings, and descriptive data.

(ii) Systems Commands:

(A) Prepare invitations for bids (including assignment of the Systems Commands Procurement Instrument Identification Number and opening date) and submit in a form ready for reproduction;

(B) Furnish NRPO Washington a list of bidders to be solicited and address labels;

(C) Provide in a mailable condition sufficient copies of applicable specifications, drawings, and other descriptive data required for distribution to the initial list of bidders plus copies to satisfy expected additional requests. If desired, specifications, drawings, and descriptive data may be mailed directly by the Systems Commanders concurrently with the issuance of the invitation for bid;

(D) Synopsize proposed procurement and award;

(E) Prepare and furnish to NRPO Washington in a form ready for reproduction any required modification to an invitation for bid;

(F) Evaluate bids, make affirmative determinations of responsibility, and award contracts; and,

(G) Advise Naval Regional Procurement Office Washington for awards made (or other actions if no award is made under an IFB).

§ 737.1–401–52 Responsibility of Office of Naval Research for Research Contracts With Educational and Nonprofit Institutions.

Paragraph 5a(12) of SECNAV Instruction 5430.20B of 18 November 1969 is set forth below:

1. The Chief of Naval Research shall be responsible for negotiation, preparation, execution, administration and scientific and technical cognizance of all research contracts with educational and nonprofit institutions. The Chief of Naval Research may authorize other naval activities to assume responsibility for any or all of the aforementioned functions as circumstances warrant. The Chief of Naval Research may assume the responsibilities listed above for development contracts with educational and non-profit institutions at the request of each systems command, bureau or office.

§ 737.1–401–53 Naval Facilities Engineering Command (NAVFACENGCOM) Cognizance of Public Works and Civil Works.

(a) *Responsibility for Construction.* (1) *Civil Works.* SECNAV Instruction 4860.41A and NAVMAT Instruction 4860.13A make NAVFACENGCOM responsible for construction, including related design, at Navy-owned-contractor operated facilities which would be considered public works or public utilities at a shore activity of the Naval Establishment. Such construction shall hereinafter be called Civil Works.

(2) *Summary of Responsibilities.* NAVFACENGCOM is responsible for the administration of all contracts for Public and Civil Works and for the Civil Works portions of facilities and other contracts, for all construction work otherwise accomplished, and particularly for ensuring that applicable legal requirements have been satisfied and that the work will meet the requirements of the Navy.

(b) *Delegation of Responsibility for Administration of Construction.* Current legislation provides that delegation to another Government agency or bureau of the responsibility outlined in subparagraph (a) above for public works, as authorized by annual authorization acts, within the United States or its possessions, must be approved by the Secretary of Defense. Where it is considered to be in the best interests of the Navy that such a public works project be administered by a systems command or office other than NAVFACENGCOM, a request shall be forwarded to the Assistant Secretary of the Navy (I&L) via NAVFAC ENGCOM. Before forwarding a request for delegation of responsibility for administration of a public works contract, NAVFACENGCOM shall ensure that all arrangements for administering the contract and inspecting the work satisfy the needs of the Government.

(c) *Approval for Use of Cost-Reimbursement Type Construction Contracts.* Current appropriation legislation requires the specific approval in writing of the Secretary of Defense for any cost-reimbursement type contract over $25,000 using funds appropriated for military construction for work to be performed within the continental United States. NAVFACENGCOM shall be responsible for obtaining such clearance. As a rule, such contracts will be executed and administered by NAVFACENGCOM. However, in those unusual circumstances where such a cost-reimbursement type contract is to be executed by a systems command or office other than NAVFAC ENGCOM the contracting systems command or office shall furnish NAVFAC ENGCOM with a justification for the use of this method of contracting and shall not execute the contract until notified by NAVFACENGCOM that clearance has been obtained from the Secretary of Defense.

(d) *Other Matters.* Where, pursuant to subparagraph (b) above, a contract involving construction is being executed or administered by a systems command or office other than NAVFACENGCOM, that other systems command or office shall normally be responsible for the handling of all other matters that arise concerning that contract. However, for construction contracts over $2,000, or other contracts requiring Civil Works over $2,000, NAVFACENGCOM will, on behalf of the other systems command or office, obtain from the Department of Labor, the determination of prevailing wages which must be specified in the contract. NAVFAC ENGCOM will further furnish such advice and assistance as may be requested and is appropriate. As to the technical and engineering details of the construction, repair and maintenance, other systems commands and offices shall consult with, and comply with the standards of NAVFACENGCOM in accordance with existing directives.

(e) *Administration of Construction Portions of Contracts.* (1) When a contract for construction of Civil Works is made directly between the Department of the Navy and a builder (as distinguished from the contractor who is to operate the facilities) NAVFACENGCOM will be the contracting agency, the work to be financed by transfer of funds from the sponsoring procuring activity to NAV FACENGCOM. However, where the contract is made between the sponsoring procuring activity and the producer, the contract shall specify, by inclusion of the clause in § 737.7–602, the Commander, Naval Facilities Engineering Command as the authorized representative of the sponsoring procuring activity with respect to all functions in relationship to Civil Works.

(2) The functions to be performed by NAVFACENGCOM under this directive shall include approving the selection and compensation of an architect or engineer; approving the selection and fee of a general building contractor; consenting to the placement of any subcontract for Civil Works; approving any plans or specifications; approving of major alterations or increased costs; inspection, supervision, administration of the terms of the contract/subcontract and acceptance of performance. The NAVFACENG COM may delegate the administration of any aspect of the Civil Works where determined feasible, such as the monitoring of compliance with labor standards requirements. The NAVFACENGCOM has cognizance of all matters relating to the acquisition of real property involved.

(3) Where the same contract includes Civil Works as well as other facilities, such as machine tools, production equipment, actual operation and production, etc., NAVFACENGCOM will have jurisdiction only over the Civil Works construction and installation, acting as the authorized representative of the spon-

soring procuring activity. However, in certain instances, it may be determined by mutual agreement between the sponsoring procuring activity and NAVFACENGCOM to be advantageous for NAVFACENGCOM to have jurisdiction over the installation of the complete project including machine tools and production equipment as well as Civil Works. In such instances, upon the specific request of the sponsoring procuring activity, NAVFACENGCOM also has jurisdiction over the installation of the machine tools and production equipment to the extent defined for Civil Works under (2) above.

(4) This directive does not limit the authority of the sponsoring procuring activity to define the scope of the Civil Works project, including the size, capacity, and operating features and characteristics, in the same manner as is exercised with respect to Public Works and Public Utilities by a primary support agency.

§ 737.1–401–54 Responsibilities Under Coordinated Procurement.

See § 737.5–1102 and § 737.5–2000.

§ 737.1–401–55 Contractor Claims; Policies and Procedures.

(a) *General.* The effective development and production of major weapons systems within the policies established by DOD Directive 5000.1 of 13 July 1971 require the teamwork and singleness of purpose that characterizes successful acquisitions. Delay in resolution of contract impact upon the business relationship between the Navy and certain of its major contractors. The following policies and (as applicable) procedures shall apply to major weapon systems procurements and also to contracts for other than major weapon systems.

(b) *Definition.* The term "claim" for the purposes of this § 737.1–401–55 and § 737.1–403–51(b)(2)a(iii) and (b)(2)b(iv) means a request for adjustment of a single contract involving to a significant extent a "constructive change" i.e., a change based on Government conduct, including actions or inactions, which is not a formal written change order but which has the effect of requiring the contractor to perform work different from or in addition to that prescribed by the original terms of the contract—or late or defective Government-furnished property or information. "Claim" does not mean a request for equitable adjustment solely for formal written change orders or price adjustments pursuant to escalation or price redetermination, provisions of Public Law 85–804, or other contract assertions or adjustments not enumerated in the preceeding sentence. When claims under two or more contracts arise from the same or essentially similar operative facts and are based on the same theory of recovery, such claims shall be treated as a "claim" within the definition provided above.

(c) *Policies Regarding Submission, Entertainment and Documentation of Claims.* (1) *Prompt, Fair and Open Dealings with Claimants.* Acquisition programs must be conducted in a manner calculated to minimize the occurrence of claims. Further, those claims which arise despite appropriate precautions must be resolved as promptly as prudence permits by those most directly involved. The causes of claims must be minimized through realistic planning and contracting, careful attention to the action required to meet the Navy's obligations and tight control over the changes process. Occurrences which may lead to claims must be recognized as they happen and appropriate action initiated promptly. Elements of Naval activities at all levels are expected to face claim situations squarely, report them to the appropriate levels of management, take prompt action to get the facts, make an objective analysis, and seek prompt resolution. Dealings will be fair and open with the expectation of equal consideration from contractors.

(2) *Composite Formal and Informal Changes.* (i) A procuring activity normally can distinguish which formal written change orders issued under a contract have a factual interrelationship to a claim and which changes are independent of the claim. Activities shall normally dissociate the latter class of changes from the claim and process and equitably adjust such changes in the normal fashion—i.e., in accordance with § 1.406(c)(ix).

(ii) With respect to those formal written changes as to which the contractor alleges a factual or other inter-relationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be appropriate by the procuring activity. In the event such disruption, delay or other claimed impacts cannot be currently resolved, the procuring activity may proceed with equitable adjustments covering the inter-related formal changes coupled with usage of a qualified release. The qualified release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrate support for a separate equitable adjustment therefor under the contract.

(3) *Rejection of "Total Cost" and "Total Time" Based Claims.* (i) Contractors have occasionally submitted claims based on "total cost" or "total time" approaches, i.e., they have asserted that the government was wholly responsible for all costs incurred in excess of the contract price, or for all delay, without proof that such excess costs or delays were caused by government conduct—not by contractor conduct or by concurrent causes. Yet in changes claims there is a well-established requirement to demonstrate casuality between the change and resulting quantum. This derives from the terms of the Changes clause itself: "* * * if any such change causes an increase or decrease in the cost of, or the time * * * for * * * performance of any part of the work * * *" The total cost approach is suspect because it assumes that the contractor's initial contract price was reasonable; that the government alone caused his increased costs; and that the contractor's performance costs were reasonable. Only in few rare cases has the total cost approach been accepted, and then only as a "last resort"—when the contracting officer did not make the sort of equitable adjustment required by the Changes clause and the circumstances allowed the contracting officer, board, or court to *accept* the three fore-going assumptions.

(ii) A claimant filing a total cost or total time based claim has the burden of establishing that there is no other feasible, acceptable basis for computing his increased costs or delays. He must prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonably substantiated cost estimates. If the contractor fails to sustain this burden, then as a policy matter the Navy should reject any contractor claim premised on a "total cost" or "total time" approach.

(4) *Criteria for Submitting, Documenting and Entertaining Claims.* (i) Some contractors have submitted claims, portions or which, upon review, are found to be exaggerated, inflated, or unsupportable. Claims sometimes fail to differentiate between factual and judgmental assertions and to support all assertions with specifically identified evidence. Such submission can delay and frustrate the Navy's claim review, analysis and evaluation. Accordingly, it is necessary to take steps to promote more readily reviewable claim submissions by establishing requirements for the evidentiary documentary documentation of claims and by requiring responsible contractor officials to endorse the claims submitted.

(ii) The general criteria for information required to support claim settlement include the existence of a legal basis for entitlement, facts meeting the elements of proof required to support the basis of entitlement, and adequate factual support for the amounts claimed. The Navy should require a proper claim submission on the basis provided in the changes clause, namely, a basis factually demonstrating documented scopes of work correlated to provable instances or categories of government liability. The Navy should, in all cases, require demonstration of casual support and documentation of quantum, in as much specificity as the facts will permit.

(iii) Claimants should be advised that all claim assertions must be supported by specifically identified evidence (including applicable historical and planned cost and production data from the contractor's books and records), and that opinions, conclusions or judgmental assertions not supported by such evidence, or by a sound and reasonable rationale, which is fully discussed, are without probative value and unacceptable.

(iv) An individual DD Form 633–5 shall be submitted for each element of a contractor's claim at the time of the initial claim submission, for any material revision of the claim, and prior to the

execution of a settlement agreement on the claim.

(v) The Navy should require, at the time of initial submission of a claim an affidavit, as follows:

I, ------*, the responsible senior company official authorized to commit the ------** with respect to its claim dated -------, under contract(s) -------, being duly sworn, do hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Navy is allegedly liable.

(Signature)

*Name and title of company official signing affidavit. In a large company, signature by the head of a plant or division is acceptable, if such individual is authorized to commit the corporate entity which is a party to the contract under which the claim is asserted.

**Name of corporate or other business entity submitting claim.

Unless otherwise authorized in writing by NAVMAT, claim evaluations should not commence until an appropriate affidavit has been received.

(vi) Since the burden of proof of a claim rest with the claimant, the Navy should reject any claims which fail to meet *any* of the requirements set forth in this subparagraph (c)(3) of this section. The rejection should be accompanied by an indication to the claimant of the areas or types of deficiencies which form the basis for the rejection. Claimants may be given an opportunity to resubmit such claims in the proper manner, unless it is apparent from the contractor's submission that the claim is without foundation.

(vii) If, after resubmission of an initially rejected claim, and thorough review and evaluation thereof by the Navy, the parties are unable to agree upon a settlement of the claim, the Navy should not normally entertain another claim resubmission. Instead, the contracting officer should issue a final decision determining to what extent, if any, the claim is acceptable to and what extent it should be denied. This decision is subject to the notice, review and approval requirements provided in (e) of this section.

(viii) Where contractor actions or inactions are likely to result in a claim or to delay timely and equitable resolution of claim issues, or contract performances may be impaired, higher level assistance will be promptly sought. (See also § 737.1–950(e)(5) and (f).)

(d) *Documentation of Significant Contract Events.* (1) *General.* Proper resolution of contractor claims is dependent upon the adequacy of both the available contractor and Government information concerning the relevant facts. Effective presentation and analysis of a claim requires the contractor to reconstruct events, actions, circumstances and conditions that may have taken place long since. This reconstruction process is complicated by the impact of other past transactions and events that are not germane to the issues involved and must be separated therefrom. Adequate documentation is the key to the Government's ability to verify, qualify or refute matters which a contractor presents in support of, or as the basis of, his claim.

(2) *Applicability.* A record of significant events, in accordance with paragraphs (d)(3), (4) and (5) of this section, shall be maintained by the Contract Administration Office with respect to:

(i) All contracts in excess of $5,000,000; and

(ii) All contracts, regardless of dollar amount, concerning which the officer in charge of the contract administration office has determined a reasonable possibility exists that a claim may be asserted thereunder.

(3) *Record of Significant Events.* Field Contract administration offices shall maintain, on a continuing basis (daily when necessary), a record narrative summarizing significant events as they occur during the performance of each contract specific in paragraph (d)(2) of this section. The record shall document events as prescribed in paragraph (d)(4) of this section with the type of information described in paragraph (d)(5) of this section. The record shall be supplemented by photographs, references to key documents, or other information as necessary and appropriate, to assure a complete and independent record of contractor performance in the event of subsequent claims.

(4) *Events to be Documented.* The significant events documented shall include, but shall not be limited to, those matters which have a bearing upon the following areas:

(i) Delivery schedule changes or problems;

(ii) Drawings, designs and specification which are ambiguous, defective or impossible of performance;

(iii) Differences in interpretation of contract provisions;

(iv) Delay and disruption of contractor effort;

(v) Changes in method or sequence of work;

(vi) Late or defective Government furnished property or information;

(vii) Rejections, rework, waivers and deviations;

(viii) Planned vs. actual performance milestones;

(ix) Delays in Government actions such as processing engineering change proposals, consent to subcontracts and review of technical data;

(x) Contractor error and non-compliance with contract terms; and

(xi) Any other Government actions or inactions (excluding formal written change orders) which have the effect or requiring the contractor to perform work different from that prescribed by the original terms of the contract.

(5) *Type of Information.* To the extent applicable, the following information concerning each event recorded shall be provided:

(i) The nature and pertinent circumstances of the event;

(ii) The date of the event and the identification of Government and contractor personnel involved, including name and function of the respective individuals;

(iii) Identification of any relevant document involved;

(iv) The substance of any oral communications; and

(v) A statement concerning the possible consequences or effects of the event described upon the contract cost, schedule, or technical performance, including manner or sequence of performance.

(6) *File Maintenance.* The records concerning significant events shall be kept in a separate folder or folders for each contract and identified as the "Significant Events File." Those records which are already maintained separately as part of the contract file in accordance with ASPR S2–102.2 need not be included in the Significant Events File. Where pertinent documents needed to complete the record are located elsewhere than in the contract file, copies of such documents or cross-references thereto, shall be included in the Significant Events File. All non-factual information (i.e., opinions and conclusions expressed by any representative of the Contract Administration Office, and privileged, legal advice of counsel) contained in the Significant Events File shall be marked "FOR OFFICIAL USE ONLY."

(e) *Claim Reporting Review and Approval Requirements and Procedures.* (1) *Initial Claim Reports.* Cognizant procuring activities shall report to the Chairman, NMC Claims Board (MAT 02B) all contractor claims which exceed a procuring activity's clearance dollar threshold set forth in § 737.1–403–51(b)(1) no later than one (1) week following receipt of the written claim from the contractor. All field procuring installations reports shall be forwarded via the cognizant Command to the Chief of Naval Material (MAT 02B). Claim reports shall be in the following format:

(i) Contractor's name.

(ii) Contract number; supplies or services procured; contract price, target price or estimated total cost.

(iii) Amount of claim, and date written claim received.

(iv) Alleged basis of claim (e.g., species of constructive changes, etc.).

(v) Participating activities or agencies (e.g., USAF, by MIRP).

(vi) Assessment of validity of claim, where possible.

(vii) Planned handling and disposition of claim. Reports shall not be delayed to obtain information elements (f) or (g). Further, procuring activities shall maintain similar records for claims below their reporting threshold.

(2) *Follow-Up Claim Reports.* At the end of each fiscal quarter, procuring activities which submitted initial Claim Reports shall submit to the Chairman, NMC Claims Board (MAT 02B) summary Follow-Up Claim Reports including the foregoing seven elements of information for each reported claim and shall supplement information element (g) with a milestone plan of action to dispose of the claim and comments on progress in such disposition. In addition, explain all changes of dollar amounts of claims un-

der review, or before the ASBCA or Court of Claims from the prior quarterly report. After each such claim is resolved, as provided in paragraph (e)(3) of this section, the procuring activity shall submit a final report containing the amount and factual conclusions supporting settlement or contracting officer's decision, as applicable. Comments should be included with respect to lessons learned and corrective actions taken or to be taken to preclude or to minimize the recurrence of the circumstances leading to the claim.

(3) *Claim Review.*

Amount of claim	Reporting	Review	Approval
Less than clearance dollar value	Within procuring activity.	Procuring activity	Procuring activity.
Clearance dollar value or higher, but not more than $10 million.	MAT 02B	NMC Claims Board	MAT 02B.
More than $10 million	MAT 02B	NMC Claims Board then NMC General Board Briefing.	CNM (with ASN (I. & L.) concurrence).

(i) *NMC Claims Board.* NMC Claims Board members shall consist of procurement executives designated by the Commanders, Naval Air, Sea, Supply, Facilities and Electronic Systems Commands, and shall be chaired by the Deputy Chief of Naval Material (Procurement and Production) or his designated representative. A Deputy General Counsel and a representative of the Navy Comptroller shall be Claims Board advisors.

(A) The NMC Claims Board is an Advisory Board to the Chief of Naval Material. In general, the NMC Claims Board will review contractor claims which exceed a procuring activity's clearance dollar threshold set forth in § 737.1–403–51(b)(1). The NMC Claims Board review will not be required in (*1*) cases involving out-of-court settlement of appeals pending before the ASBCA, (2) cases where the ASBCA or Court of Claims has decided entitlement issues but has referred the case back to the Navy for quantum determination, or (3) cases on which such review has been waived by the Chief of Naval Material, or by the Deputy Chief of Naval Material (Procurement and Production) (see § 737.1–401–56).

(B) For each final decision of the contracting officer denying in whole or in part any claim requiring review by the NMC Claims Board as prescribed in the preceding paragraph, the proposed decision shall be subject to approval by the Chairman, NMC Claims Board. At the option of a procuring activity, any claim or proposed claim settlement or final decision of the contracting officer below an activity's clearance dollar threshold may be submited to the NMC Claims Board for review or advice. If a proposed settlement is below the foregoing clearance dollar threshold, the Head of the Procuring Activity is authorized to approve such settlement. If a proposed decision is below the foregoing clearance dollar threshold but the amount of the contractor's claim exceeds such threshold, the Head of the Procuring Activity must first obtain clearance from the Chairman, NMC Claims Board before issuance of the decision. This HPA authority may not be delegated to any official below the level of Deputy or Assistant Commander for Contracts or Director of Contracts Office or Directorate.

(ii) *Requirement for Legal Memorandum.* The supporting documentation with respect to claim actions submitted to the Claims Board will include a legal memorandum. At a minimum, the required legal memorandum should:

(A) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability.

(B) Analyze and evaluate the presence and adequacy of evidentiary facts satisfying the elements of proof required by such legal theory or theories.

(iii) *NMC General Board.* When designated by the CNM, the NMC General Board shall be briefed on proposed contractor claim settlements or contracting officer's decisions which are over $10 million. Prior to such briefing, the NMC Claims Board shall review the proposed action to assure that it is factually and contractually supported. In the event such review cannot be completed within ten (10) working days, the NMC Claims Board shall notify the NMC General Board of the reasons for the delay and the anticipated date of completion of review. The NMC Claims Board Chairman or his designated representative shall conduct the briefing of the NMC General Board, outlining all pertinent technical, cost and legal information, and presenting the Claims Board's and affected procuring activity's recommendations, and minority or opposing viewpoints, if any. The Chairman, NMC Claims Board shall prepare a decision paper on proposed claim settlements or final decision of the contracting officer for approval or disapproval by the Chief of Naval Material. Each Claims Board SYSCOM executive shall fully brief his SYSCOM Commander on each proposed claim settlement or final decision prior to NMC General Board action. To facilitate the above-mentioned brifings, the SYSCOM Claims Board member shall prepare and submit an executive summary of the claim settlement or decision to the Chairman, NMC Claims Board (MAT 02B) on all claims in excess of $5 million. Such executive summary shall be furnished promptly after claims settlement or decision is reached by the Command.

(iv) *Commitment and Clearance.* No settlement commitment or final decision shall be made prior to receipt of approval by the NAVMAT official specified above. When a proposed settlement exceeds the procuring activity's clearance dollar threshold, approval of the settlement as provided above shall constitute NAVMAT business clearance prescribed by § 737.1–403.

(v) *Assistant Secretary of the Navy (Installations and Logistics).* At the end of each fiscal quarter, the Chief of Naval Material shall submit a summary of all Naval procuring activity Initial and Follow-Up Claim Reports prepared pursuant to paragraphs (e)(1) and (2) of this section to the Assistant Secretary of the Navy (Installations and Logistics). In addition, the Chief of Naval Material or his authorized representative shall orally brief and secure the concurrence of the Assistant Secretary on each CNM claim settlement action taken if the approved settlement exceeds $10,000,000.

(vi) *Provisional Increases in Contract Prices.* Provisional price increases or provisional payments against claims will be made only in unusual circumstances where essential to continued performance. Primary emphasis should continue to be given to achieving prompt settlement of claims thereby obviating the need for provisional price increases or payments. When provisional increases in contract prices are deemed necessary, they will be submitted to the NMC Claims Board for approval prior to contract modification. The justification will include:

(A) Necessity for provisional price increase or provisional payment in relation to overall corporate financial requirements;

(B) Legal memorandum of contractor's entitlement to some compensation;

(C) Contracting officer's determination that the amount of ultimate entitlement to compensation will equal or exceed the amount of the proposed provisional price increase or provisional payment;

(D) The extent and results of technical, administrative, and audit review performed;

(E) Projected date of settlement of claim; and

(F) Other pertinent information (e.g., comment as to whether the contractor has reasonably satisfied all requests for documentary and analytical support of the claimed amount).

(f) *Implementation.* (1) Procuring activities shall give wide dissemination to, and implement, the policies and procedures set forth herein, including establishment of the appropriate delineation of authorities within each activity.

(2) The policies stated herein shall apply to all pending and future contractor claims.

(3) Persons and Boards required to review the proposed dispositions of contractor claims in accordance herewith shall assure that the policies established herein were followed in the entertainment and evaluation of the claim under review.

§ 737.1–401–56 Contractor Appeals to the Armed Services Board of Contract Appeals (ASBCA); Policies and Procedures.

(a) *General.* The Office of the General Counsel (OGC) has sole litigation authority for all appeals under Navy con-

tracts to the ASBCA. Because of the frequent complexity of these cases, the Office of the General Counsel and the Command or other procuring activity involved should maintain the continuity of any Navy claim team which might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the OGC Trial Attorney assigned to handle the appeal.

(b) *Contracting Officer Decisions.* Copies of all executed contracting officer decisions shall be forwarded, at time of issuance, for appropriate action, to the Contract Appeals Division (CAD) of the Office of General Counsel.

(c) *Contractor Notices of Appeal.* When a notice of appeal in any form is received by the Command or other procuring activity, the Contracting Officer is required by Rule 3 of ASBCA Rules (§ 30.1) to forward it to the ASBCA. This should be done by Command or other procuring activity Counsel on behalf of the Contracting Officer, with a copy to the Contract Appeals Division.

(d) *Documentation Requirements.* The Contract Appeals Division shall be furnished four (4) sets of the documents pertinent to the appeal required by Rule 4 of the ASBCA Rules. The Contracting Officer shall compile these documents promptly with the advice and assistance of Command or other procuring activity Counsel. These Rule 4 documents, which at a minimum should include all of the documents relied upon by the Contracting Officer in reaching a final decision, should be arranged in an orderly fashion (preferably in chronological order), indexed, numbered and tabbed. All pages should be clear and legible. If additional documentation is deemed to be necessary, the Contract Appeals Division shall make the request for such documentation and if it is available, the Contracting Officer shall furnish said documentation with the assistance of Command or procuring activity Counsel. Rule 4 requires that the documents be filed within 30 days after receipt of the notice of appeal. If more time is needed, the Contract Appeals Division shall be advised so that it may request an extension of time from the ASBCA. Such extensions shall be requested only when necessary and not as a matter of course. In field purchasing offices not having assigned Counsel, the Contract Appeals Division will work directly with the Contracting Officer in obtaining the Rule 4 documents. Upon receipt of the Rule 4 documents, the Contract Appeals Division will assume the responsibility for transmitting a copy to the Board and for meeting the additional requirements of Rule 4 with reference to the appellant.

(e) *Litigation Report Requirement.* With the compilation of Rule 4 documents, a comprehensive litigation report shall be forwarded to the Contract Appeals Division. At a minimum, the report should include:

(1) A detailed narrative statement of facts preferably in chronological sequence, and with a topical segregation when appropriate, with references to attached supporting documents or expected testimony. If such a statement was previously submitted pursuant to paragraph (d) of this section, it need not be submitted a second time, but should be supplemented or revised if additional information becomes available in the interim.

(2) An analysis and evaluation (classified as attorney-client privileged information) of the factual and legal positions of both sides, the available evidence, and the expertise and effectiveness of prospective witnesses.

(3) The Advisory report, if any, of any Review Board or Panel.

(f) *Team Cooperation.* Commands or other procuring activities shall cooperate with the Contract Appeals Division in connection with the conduct of an appeal. Arrangements for staff assistance and support in the development of the appeals case shall be effected by agreement among Trial Attorney, Command Counsel and the Contracting Officer.

(g) *Matters for Clearance with the Contracting Officer.* The Contract Appeals Division is charged with the responsibility for defending the Navy's case before the ASBCA as contained in the Contracting Officer's final decision. If, during the processing of an appeal, the Contract Appeals Division Trial Attorney considers that any aspect of the Navy's case, as set forth in the final decision, should be abandoned or substantially modified, he shall obtain the concurrence of the Contracting Officer before entering into any stipulation, consent, or other action or disposition with respect to such issue in the Appeals deliberations.

(h) *Settlement Negotiations While Appeal is Pending Before the ASBCA.* The conduct of settlement negotiations in connection with any pending appeal should generally be accomplished by selected team consisting of the Trial Attorney and representatives of the Contracting Office (including Command or procuring activity technical personnel, counsel, negotiator, and auditor if necessary). Other arrangements may be made in specific cases as appropriate. However, no final settlement agreement will be made without the written approval of the Contracting Officer. When a settlement is made, a memorandum shall be prepared by the negotiating team (and signed by all team members) stating the basis and reasons therefor. The settlement agreement shall be drafted by the Command and Trial Attorney. The Trial Attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(i) *Appeals Case Remanded to Navy for Quantum Determination.* In some instances, the ASBCA will determine that the contractor is entitled to compensation with respect to one or more issues addressed in the Contracting Officer's decision. The ASBCA may then direct that the Navy re-assume responsibility of the claims case for purposes of quantum determination. In all such cases, the Contracting Officer shall arrange for a negotiating team to be established to reach mutual agreement with the contractor with respect to such issue(s). Since the case no longer is considered a pending appeal, the attorney for the negotiating team shall be appointed by the appropriate Command or Bureau Counsel. No final settlement agreement shall be made without the approval of the Contracting Officer.

(j) *NMC Claims Board Reviews.* Negotiated settlements of appeals, pending before the ASBCA, as well as negotiated settlements of Appeal issues which have been remanded to the Navy for quantum determination, will be subject to approval by the Chairman and Legal Advisor of the NMC Claims Board, if the amount of any such settlements exceeds the Command's or other procuring activity's clearance dollar threshold. Proposed settlements in excess of $10,000,000 require concurrence of the Assistant Secretary of the Navy (Installations and Logistics).

(k) *Contract Modification.* Whenever contract modification and other contract documents are required to implement a settlement or ASBCA or appellate court decision, they should reference the ASBCA proceedings by title and docket number.

§ 737.1–401–57 Navy Claims Against the Contractor.

(a) *General.* In certain instances, a basis may exist for a Navy claim against a contractor. Such claims usually take the form of a demand for an equitable reduction in a contract price or for the repayment of an overpayment. The Navy claims might arise from numerous causes such as identification of contractor failures to perform in accordance with specifications or from defective pricing. Often, these claims arise incident to the factual investigation of a contractor's claim against the Navy, in which case, they are referred to as "counter claims." Regardless of how a claim arises, it is essential that Navy personnel take prompt action to document the bases and reasons for the claim and, when possible, to settle claims by negotiation with the contractor.

(b) *Claim Reporting.* Cognizant procuring activities shall report to the Chairman, NMC Claims Board (MAT 02B) all Government claims which exceed $500,000 no later than one (1) week following assertion of the claim. Claim reports shall include information similar to that required under § 737.1–401–55(e)(1). Follow-up reports shall be submitted quarterly in accordance with § 737.1–401–55(e)(2).

(c) *Claim Documentation.* Government claims shall be thoroughly documented. The same standards of claim documentation required for contractor claims (see § 737.1–401–55(c)) shall also be applicable to Government claims.

(d) *Contractor Appeals.* In the event settlement by negotiation cannot be achieved, a Contracting Officer's decision shall be promptly issued in accordance with the "Disputes" procedure of the per-

tinent contract. This decision shall set forth the basic facts of the dispute and the details of the Navy's claim against the contractor. In preparing the decision and processing the dispute, when an appeal is taken by the contractor, the appeal procedures outlined in § 737.1–401–56 shall be followed.

§ 737.1–403 Requirements To Be Met Before Entering Into Contracts.

§ 737.1–403–50 Business Clearance.

Business clearance is the required approval by the Chief of Naval Material of the business aspects of proposed contractual actions. Such clearance is required pursuant to authority derived from the Secretary of the Navy and § 1.403. Although there is a regulatory basis for business clearance, the Chief of Naval Material uses also the business clearance procedure as a means of monitoring procurement operations with emphasis on how well those operations are being managed. Request for business clearance is submitted on a business clearance memorandum and consists of two parts as follows:

(a) *Pre-Negotiation Business Clearance.* Upon receipt of the contractors proposals and audit and field contract administration reports, and upon completion of thorough evaluation of technical aspects and price and contract terms, a pre-negotiation business clearance memorandum shall be prepared setting forth all significant details of the proposed contract negotiation and the course the procuring activity proposes to pursue (see § 727.1–403–52). Any major change in the pre-negotiation business clearance memorandum proposed by the requisitioning or procuring activity or proposed by an offeror which the procuring activity desires to adopt shall be covered by a revised prenegotiation business clearance memorandum.

(b) *Post-Negotiation Business Clearance.* Negotiation should be undertaken promptly after the Chief of Naval Material approval of the pre-negotiation business clearance memorandum, with the objective of submission of the post-negotiation business clearance within 30 days from the date of approval of the pre-negotiation business clearance memorandum. If negotiations are not completed within 60 days after appropal by the Chief of Naval Material of the pre-negotiation clearance, a supplemental pre-negotiation business clearance memorandum is required. Such clearance shall include the reason for the delay and discussion of any pertinent changes that have occurred since submission of the pre-negotiation clearance memorandum. Upon completion of negotiation, the post-negotiation business clearance memorandum shall set forth in detail the negotiation results obtained, in accordance with § 737.1–403–52. No commitment shall be made to a prospective contractor prior to obtaining the chief of Naval Material's approval of the post-negotiation business clearance memorandum.

(c) *Waiver of Post-Negotiation Business Clearance.* The post-negotiation business clearance may be waived by the Chief of Naval Material in individual cases. For activities regulated by § 737.1–403–51(b)(1) a and b, the post-negotiation clearance may be waived by the Head of Contracts of the SYSCOM concerned. In the latter case, the Head of Contracts shall forward a memorandum for record to the Chief of Naval Material outlining the reasons for the waiver. While the Heads of Contracts of activities regulated by § 737.1–403–51(b)(1) a and b are not required to obtain approval to waive post-negotiation clearances, they are encouraged to seek guidance from the Chief of Naval Material when circumstances warrant. Generally, such waivers will apply only if the final negotiated position is within the limitations and conditions prescribed by the Chief of Naval Material in its approval of the pre-negotiation business clearance. When a waiver has been granted, a memorandum confirming that the final agreement negotiated was within the limitation prescribed in the pre-negotiation approval shall be forwarded to the Chief of Naval Material except that, if negotiations are not completed within 60 days after approval of the pre-negotiation clearance, a supplemental pre-negotiation clearance is required as set forth in (b) above.

(d) *Use of RAN for Clearance Purposes.* In individual cases of justifiable urgency which necessitate the use of either a letter contract or a CPFF contract to be negotiated under 10 U.S.C. 2304(a)(11) through (16), and the total estimated amount of the contract exceeds the dollar thresholds set forth in § 737.1–403–51(b)(1), Chief of Naval Material business clearance can be requested and granted on a Request for Authority to Negotiate (RAN) (see § 737.3–306). This procedure does not relieve the SYSCOM or other procuring activity from providing the information required by § 737.1–403–52 in the RAN. Further, the RAN or APP shall contain a separate paragraph titled "Business Clearance Aspects" containing the information required by § 737.1–403–52.

§ 737.1–403–51 Business Clearance Requirements.

(a) *Business Clearance Within the Procuring Activity.* (1) Each procuring activity shall establish requirements and procedures for written pre-negotiation and post-negotiation business clearance similar to those prescribed in § 737.1–403–50, for procurements and other contract actions between $100,000 and the Chief of Naval Material clearance dollar values, of the type for which the Chief of Naval Material business clearance is required in (b) below.

(2) The business clearance memoranda shall set forth the evaluation of the contractor's proposals and the method by which negotiations are planned to be accomplished and shall be approved within the procuring activity at a level higher than that of the individuals assigned to the negotiations. The results of negotiations shall also be recorded and approved at the same higher level prior to the execution of the contract. This internal approval procedure shall also apply to business clearance procurement actions requiring business clearance from the Chief of Naval Material. This documentation shall be retained in the contract file of the procuring activity concerned.

(3) A copy of each post-negotiation clearance on contract actions obligating less than the clearance dollar values set forth in § 737.1–403–51(b) shall be submitted promptly, together with a copy of the related pre-negotiation clearance, to the Chief of Naval Material for information when such actions will obligate amounts above the following:

(i) For aircraft (airframe) and ship construction procurement: $2,000,000.

(ii) For all other procurements: $1,000,000 ($600,000 for activities regulated by § 737.1–403–51(b)(1)e).

(4) If a contract is to be awarded by an activity regulated by § 737.1–403–51(b)(1)e below, and is to include special clauses not authorized for general use which may affect the contract price, the information specified in § 737.1–403–52(a)(1)(i)(K), together with a copy of the procuring activity's pre- and post-negotiation business clearance, shall be furnished to the Chief of Naval Material for information. If a contract is to be awarded by an activity regulated by § 737.1–403–52(a)(1)(i)(K), information to include special clauses specified in § 737.1–403–52(a)(i)(K), information and business clearances specified in this subparagraph (4) shall be reviewed by the Head of Contracts, or in his absence, his principal deputy, of the SYSCOM or other procuring activity.

(5) The Chief of Naval Material (MAT 02) will, from time to time, review procuring activity procedures and records as appropriate to assure full compliance with paragraphs (a) (1) through (4) of this section.

(b) *Procurement Actions Requiring Business Clearance by the Chief of Naval Material.* (1) *Clearance Dollar Thresholds.* Except when different clearance dollar thresholds are specified in paragraphs (b) (2) or (3) of this section, business clearance shall be obtained from the Chief of Naval Material on all contract actions and circumstances set forth in this § 737.1–403–51(b) when such actions will obligate amounts above the following:

(i) For the Naval Air Systems Command, the Naval Sea Systems Command and the Military Sealift Command: $10,000,000.

(ii) For the Naval Electronic Systems Command: $5,000,000.

(iii) For the Automatic Data Processing Equipment Selection Office: $3,000,000.

(iv) For the Marine Corps, Aviation Supply Office, Ships Parts Control Center, the Office of Naval Research, the Naval Facilities Engineering Command, the Naval Training Equipment Center, and the Naval Regional Procurement Office, Los Angeles: $2,000,000.

(v) For all other Navy purchasing offices: $1,000,000.

(2) *Types of Contract Actions. Negotiated Procurements.* Business clear-

ance for negotiated procurements and other types of action shall be obtained from the Chief of Naval Material for the following:

(i) *New Procurements.* Business clearance, including type of contract clearance for multiple incentive (FPI, CPIF, and CPAF) contracts, is required for each contract or amendment effecting new procurement which by itself, or by the exercise of any option or options contained therein, would obligate the Government in a sum equal to or exceeding the specified clearance dollar value. Business clearance, including type of contract clearance for multiple incentive (FPI, CPIF and CPAF) contracts, is required for any contract amendment which, although effecting new procurement in a sum less than the specified clearance value, causes the aggregate obligation under the contract to equal or exceed the specified clearance dollar value. In all cases requiring clearance by reason of the amount of the aggregate obligation, full information shall be furnished explaining the existing portion of the contract being amended or the prior contract providing for the services being continued. Once a business clearance, including type of contract clearance for multiple incentive (FPI, CPIF and CPAF) contracts, has been obtained because of the aggregate obligation rule in the case of a contract amendment, a further such business clearance is required only when a subsequent amendment, in itself, is in an amount which equals or exceeds the clearance value specified in § 737.1–403–51(b)(1).

(ii) *Letter Contracts, Advance Procurement Contracts, and Long Leadtime Amendments.* Business clearance must be obtained from the Chief of Naval Material (MAT 02) for award of letter contracts, advance procurement contracts and long leadtime amendments, and from the Chief of Naval Material for other actions concerning these contracts and amendments as follows:

(A) *Contract Action or Circumstance.* Except as provided in paragraph (b)(2)(ii)(B) of this section, a business clearance must be obtained for:

(*1*) The award of a letter contract, advance procurement contract and long leadtime amendment when the total estimated amount exceeds the dollar threshold set forth in § 737.1–403–51(b)(1). Award of letter contracts, advance procurement contracts and long leadtime amendments that do not require Chief of Naval Material (MAT 02) business clearance, must be approved by the Head of Contracts, or in his absence, by his principal deputy. Further, such letter contracts, advance procurement contracts and long leadtime amendments proposed by activities controlled by § 737.1–403–51(b)(1)(v) must be approved by the Deputy Commander for Procurement Management, Naval Supply Systems Command prior to issue. *This authority may not be redelegated.* Further, the Head of Contracts shall sign a memorandum for the record regarding the salient aspects of the letter contract, advance procurement contract or long leadtime amendment, and setting forth a firm schedule for definition and conversion. This memorandum shall be submitted to the Chief of Naval Material no later than five (5) days after award of a letter contract, advance procurement contract, or long leadtime amendment, except that, this memorandum shall not be required if the procurement has previously been approved on a Request for Authority to Negotiate (RAN).

(*2*) The extension of the time period required for definitization of the letter contract, advance procurement contract and long leadtime amendment, or any increase in the maximum Government liability regardless of the authority for the award, including paragraph (b)(2)(ii)(B) of this section.

(*3*) Any increase in scope beyond the work scope initially specified in the letter contract, advance procurement contract and long leadtime amendment, except for contract changes, unless such changes themselves require business clearance pursuant to § 737.1–403–51(b)(2)(iii); and

(*4*) Conversion of the letter contract, advance procurement contract and long leadtime amendment to a definitive contract whose dollar value equals or exceeds the clearance dollar value for the particular procuring activity as set forth in § 737.1–403–51(b) above. If the letter contract, advance procurement contract or long leadtime amendment is definitized at a dollar value less than the clearance dollar value for the particular procuring activity, written notification of such definitization to the Chief of Naval Material (MAT 022) is required.

(B) *Exception.* When it is determined that a letter contract is the proper contractual instrument for a procurement designated "QRC" (Quick Reaction Capability) or "RDC" (Rapid Development Capability), as such procurements are defined in applicable SECNAV directives, such letter contract does not require the approval of the Chief of Naval Material (MAT 022).

(C) *Clearance Documents.* Letter contract, advance procurement contract, or long leadtime amendment business clearance approval may be obtained on any of the following documents:

(*1*) RAN (Request for Authority to Negotiate, Form NAVEXOS 2750) or

(*2*) RAC (Request for Authority to Contract, Form NAVEXOS 2760).

(D) *Definitization Time Limitations and Maximum Government Liability Under the Letter Contract.* § 3.408(c)(3) and (4) govern, respectively. Justification for the definitization schedule and maximum Government liability to be included in the letter contract shall be detailed in the business clearance.

(E) *Exceptions to ASPR Definitization Time Limitations or Maximum Liability.* Authorization by the Chief of Naval Material to issue a letter contract shall constitute approval to any requested exceptions to the limitations on the time for definitization or maximum Government liability prescribed by § 3.498(c)(3) and (4), respectively.

(iii) *Amendments and Changes.* Except for contract amendments incorporating the settlement of contractor "claims" (see § 737.1–401–55), business clearance is required for all amendments pursuant to contract clauses such as those entitled "Changes," or "Government Property," or other contract provisions, which would effect an equitable adjustment of a contract, either as to price, estimated cost, or fixed fee, as the case may be, *provided* the proposed adjustment amounts to or exceeds the specified clearance dollar value, regardless of whether the original contract required business clearance.

(iv) *Unpriced Items.* Business clearance is required for any amendment which would obligate the Government to pay a definitive price of the specified clearance dollar value or more for a previously unpriced item or items of a contract or for any item or items previously priced only an a maximum price or percentage allocation basis.

(v) *Options.* Business clearance is required for each exercise or pricing of an option or options which would obligate the Government to pay the specified clearance dollar value or more notwithstanding the fact that business clearance had been previously obtained for the contract containing such option or options. A pre-negotiation business clearance proposing to definitively price an option prior to the expiration date shall be submitted at least 30 days prior to the expiration date of the option.

(vi) *Billing Prices.* Chief of Naval Material business clearance is not required for billing price amendments. In lieu of NAVMAT business clearance, billing price amendments are to be reviewed and approved prior to execution by the Head of Contracts of the SYSCOMS and other procuring activity. Interim billing price amendments for provisioned item orders under a contract for such items as spare parts, special support equipment, etc., exclusive of those issued by Inventory Control Points and other stock points for supply purposes, shall not exceed 50 percent of the contractor's proposed price for those orders. Business clearance shall be required when it is proposed to provide an interim billing price in excess of 50 percent of the proposed price for such provisioned items and for any subsequent increase thereof.

(vii) *Basic Ordering Agreements and Indefinite Delivery Contracts.* Business clearance is required for the basic contract instrument prior to placement of individual orders to justify the type of contract, including a description of the type of material or service to be covered, the ordering period, the approximate total dollar value estimated to be placed under the contract, the timing and procedure for pricing individual orders and the major contract provisions. (However, only one business clearance submission combining the pre- and post-negotiation requirements is necessary). Approval of such business clearance is limited to the features of the proposed basic ordering agreement, or Indefinite Delivery Type contract. Individual orders

placed thereunder are individually subject to the requirements of § 737.1–403, though justification for the basic contract previously approved by the Chief of Naval Material need not be repeated.

(viii) *Cost-Plus-Award-Fee Contracts.* The clearance dollar value on business clearance covering cost-plus-award-fee contracts is established as follows:

(A) For the Naval Air Systems Command, and Naval Sea Systems Command: $2,000,000.

(B) For all other Navy procuring activities and the Marine Corps: $1,000,000.

(C) If the dollar value of the proposed contract is greater than those in paragraphs (b)(2)(viii)(A) and (B) of this section, but less than the specified clearance value set forth in § 737.1–403–51(b) above, the clearance need contain only: (*1*) Propriety of and basis for selection of cost-plus-award-fee-type of contract (2) details of evaluation criteria and procedures to be included in the proposed contract which will be used in determining the amount of award fee earned; and (3) statement as to the proposed base fee and maximum fee. In these cases, the clearance memorandum shall be labeled on its face as a "Type-of-contract; (2) details of evaluation cri-Contract Clearance" and shall be submitted prior to negotiation. Only a memorandum of accomplishment need be submitted if the objective of the pre-negotiation clearance are achieved.

(ix) *Redeterminations for FPI and CPIF Contracts.* Business clearance is required for every agreement or amendment redetermining or revising the price or fee of a contract pursuant to an incentive price or incentive fee revision clause or other price or fee redetermination clause, provided the redetermined or revised price is of a value at or in excess of the specified clearance dollar value, notwithstanding the fact that the final price or incentive fee amount is proposed at no change in the existing price. The business clearance for the Final Redetermination of an FPI contract shall also state whether the contractor has met warranty and/or performance specifications in the contract and will state the status of any equitable price adjustment required. No amendment providing for an increase in contract price pursuant to a final redetermination of contract price will be processed without effecting an equitable downward price adjustment when it is determined that the contractor has failed to meet contract guarantees and/or contract performance specifications. However, the Contracting Officer may effect such an amendment if an amount is withheld that is in the best interest of the Government, pending the settlement of the equitable downward price adjustment. When cost incentive provisions are the only incentive in a CPIF contract for which business clearance had previously been required, only an informational business clearance memorandum shall be submitted to the Chief of Naval Material.

(x) *Redetermination After Completion.* Business clearance is required for a new contract or amendment, regardless of dollar amount, providing for retroactive price redetermination after completion. (See § 3.404–6(c) for limitation on use of this type of contract).

(xi) *Price Adjustment Under Warranty Clauses.* Business clearance is required for any price adjustment, regardless of dollar amount, negotiated pursuant to a guaranty clause, warranty provision, or arising from failure to meet contract specifications, *provided* the related contract itself is of a dollar amount which required business clearance in accordance with this § 737.1–403–51. The price adjustment may be submitted in a separate business clearance memorandum from other price adjustments under the contract.

(xii) *Split Awards.* Business clearance is required where split awards are made to two or more sources, provided the aggregate total amount of all wards equals or exceeds the specified clearance dollar value.

(xiii) *New Industrial Facilities.* Post-negotiation business clearance only is required for each new industrial facilities contract or amendment obligating the Government to an amount over $200,000 and less than $500,000. This business clearance requirement is waived if there has been express coordination and concurrence of the proposed actions by the cognizant contract branch or equivalent contract organization within the purchasing or procuring activity concerned, and if such coordination is indicated in the project request submitted in accordance with NAVMATINST 4860.13A (Industrial Facilities Program). Clearance dollar value shall be based on acquisition cost. Business clearance within the procuring activity is required and information copies of such internal clearance shall be submitted to the Chief of Naval Material. On facilities contract actions over $500,000, a request for business clearance is required to be submitted separately or as a part of the project request submitted in accordance with NAVMATINST 4860.13A (Industrial Facilities Program).

(xiv) *Special Contract Cost Reporting Requirements.* Business clearance is required for use of PIR (Procurement Information Reporting), NAVMAT Form 4260/1 (Contract Functional Cost-Hour Report) and DD Form 1177 (Cost Incurred on Contract) and for any deviation in reporting permitted of the general instructions for preparation of the form regardless of the dollar value of the procurement. A description of the program and the circumstances making the use of this report desirable shall be made in the contract (A) to require the contractor to prepare and submit the report and (B) for any deviations or omissions from required reporting authorized by the business clearance.

(xv) *Special Requirements.* In individual cases, the Chief of Naval Material (MAT 02) may specifically require other procurements regardless of dollar value to be submitted for business clearance.

(xvi) *Multiple Incentive Type Contracts.* In addition to any other business clearance requirements hereof, the business clearance, both informational or formal, for all incentive contracts equal to or exceeding the dollar amounts specified in § 737.1–403–51(b)(2)(viii) of this section, which contain performance or delivery incentives, shall include therewith an original and two copies of an attachment which sets forth a summary of the incentive features of the contract (see § 737.1–403–52(a)(1)(iii)).

(c) *Advertised Procurements (Including Small Business Restricted Advertising).* Business clearance for formally advertised procurements, including two-step formal advertising, shall be obtained from the Chief of Naval Material for the following:

(1) *Sole Bidders.* For each award to a sole bidder if the award by itself, or by the exercise of any option contained in the resulting contract, would obligate the Government in an amount equal to or exceeding the clearance thresholds set forth in § 737.1–403–51(b)(1).

(2) *Options.* Whether or not business clearance may have been obtained for a contract award containing an option or options, business clearances is required for each exercise of an option or options which would obligate the Government to an additional amount equal to or exceeding the dollar values set forth in § 737.1–403–51(b)(1).

(3) *Price Revision Clause.* For any amendment of a contract after award inserting a clause providing for price redetermination, price escalation, or any other type of price revision; and any agreement or amendment effecting redetermination of the price of a contract pursuant to a redetermination clause contained therein if the contract previously obligated the Government to pay $1,000,000 or more and notwithstanding the fact that the redetermination is proposed at no change in the existing contract price.

(4) *Amendments Pursuant to Contract Provisions.* Except for contract amendments incorporating the settlement of contractor "claims" (see § 737.1–401–55), business clearance is required for any amendment, pursuant to contract clauses such as those entitled "Changes," or "Government Property," or other contract provisions, which would effect an equitable adjustment of the price of a contract, *provided* price adjustment amounts to or exceeds the dollar values set forth in § 737.1–403–51(b)(1).

(5) *New Procurement.* For any amendment effecting new procurement which by itself, or by the exercise of any option or options contained therein, would obligate the Government to an amount equal to or exceeding the dollar values set forth in § 737.1–403–51(b)(1). An amendment effecting new procurement in an amount less than that specified in § 737.1–403–51(b)(1), but causes the aggregate obligation under the contract to equal or exceed the dollar values set forth in § 737.1–403–51(b)(1) will require business clearance; and in this connection, full information explaining the existing portion of the contract will be furnished. Subsequent amendments, in amounts less than those specified in this

subparagraph b. do not require authority to contract.

(6) *Price Adjustment Under Warranty Clause.* For any amendment which would effect a price reduction, regardless of dollar amount, which is negotiated pursuant to a guaranty clause, warranty provision, or failure to meet contract specifications, *provided* the related contract itself is of a dollar amount of $1,000,000 or more. The price adjustment shall be submitted in the form of a separate business clearance whether such price negotiations are a part of, or separate from, other price adjustments under the contract.

(d) *Special Circumstances for Certain Naval Activities.* (1) *Naval Air, Electronic, and Sea Systems Command.* In addition to the clearance required in § 737.1—403–51(b) (1) and (2) above, for NAVAIRSYSCOM, NAVELECSYSCOM, and NAVSEASYSCOM, the clearance value of $10,000,000 ($5,000,000 for NAVELECSYSCOM) is subject to the following conditions:

(i) The Head of Contracts, or in his absence, his principal deputy shall approve contract actions between $1,000,000 and $10,000,000 ($5,000,000 for NAVELECSYSCOM) in the following circumstances:

(A) Departure from a procurement plan set forth in connection with an authority to negotiate previously granted by the Chief of Naval Material, specifically with respect to the degree of competition involved, or the use of an advanced contract type. This approval action does not preclude the need to fulfill RAN and APP procedures set forth in § 737.3–306 and § 737.1–2100, respectively.

(B) Award to other than the low offeror, in whole or in part, including split awards when award is made to other than the consecutive low offerors.

(C) Employment of an incentive contract based on factors other than cost, such as performance and/or delivery. Clearance review in such cases applies to the propriety of the proposed incentive features, with reference to other aspects of this procurement. The business clearance shall include the complete rationale to support the use of such incentives and how the Government will benefit from the incentives applied. All business clearances containing performance incentives shall be accompanied by a written endorsement thereof by the Project Manager.

(ii) Post-negotiation business clearance review before award will be required in all cases by a supervisory echelon higher than the Branch level in the Contracts Division (see § 737.1–403–51 (b));

(iii) Business clearance memoranda *may* be formulated to the Chief of Naval Material for review and approval on contracts between $1,000,000 and $10,000,000 ($5,000,000 for NAVELECSYSCOM) (although not otherwise required by this NPD) when, in the opinion of the Systems Command, controversial, sensitive or other issues on proposed contracts warrant such action.

2) *Contract Administration Office Contractual Actions.* (i) The Chief of Naval Material business clearance dollar value on both pre-negotiation and post-negotiation business clearance covering contractual actions negotiated and to be executed by the Contract Administrator is required only when the dollar amount to be obligated exceeds the Systems Command or procuring activity (whose contract is to be amended) Chief of Naval Material clearance dollar value threshold. However, a post-negotiation business clearance shall be approved by the SYSCOM or other procuring activity whose contract is being amended for actions between $1,000,000 and regular clearance dollar threshold. The clearance dollar value also applies to orders under basic ordering instruments. When orders under such instruments are subject to annual pricing or pricing at a stated time or point of production (such as 40 percent of deliveries) and are not individually priced at time of such annual or periodic pricing and not at the time of order issuance.

(ii) The Contract Administrator shall submit requests for business clearances via the procuring activities initiating the procurement action when the proposed contract exceeds the Systems Command or procuring activity specified Chief of Naval Material clearance dollar value, or such lower dollar limitations as my be established by the Systems Command or procuring activity.

(iii) The Chief Naval Material business clearance dollar value on post-negotiation business clearance may be increased to $5,000,000 when circumstances warrant. Requests to increase this value shall be submitted to the Chief of Naval Material (MAT 02) and shall include specific reasons and time period for which the increase is required.

(3) *Utility Contracts.* Prior to executing any contract for electric power, gas (natural or manufactured), water, or other utility service, and irrespective of the amount thereof, business clearance shall be obtained from the Naval Facilities Engineering Command in accordance with requirements of § 737.5–2003–1.

(e) *Other Clearance Procedures.* (1) The approval of a business clearance does not in itself constitute approval to deviate from the provisions of ASPR and NPD. Except as provided in § 737.1–109–51, deviations must be identified and approval to deviate must be specifically obtained from the Chief of Naval Material (MAT 02) in accordance with § 737.1–109.

(2) Copies of approved business clearance memoranda or any portions thereof, including any related Chief of Naval Material conditions of approval and the information required by § 3.811, shall be furnished to the cognizant Defense Contract Audit Agency officer and the ACO in accordance with 3.811.

(3) In addition to the foregoing requirements for Chief of Naval Material business clearance, procuring activities shall advise the Chief of Naval Material of any proposed procurement action which will be precedent setting, controversial or sensitive. Upon notification of such a proposed procurement action, the Chief of Naval Material may require submission of a Request for Authority to Contract.

§ 737.1–403–52 Content of Business Clearance Memoranda.

(a) A business clearance memorandum shall be prepared and submitted to the Chief of Naval Material (MAT 032) in duplicate (original plus 1 copy) on the forms, "Requests for Authority to Contract" (NAVEXOS 2760) or "Request for Authority to Accept Redetermined Price" (NAVEXOS 2762) as applicable. This paragraph describes in broad terms the type of information which should be submitted in the "Justification" portion of the NAVEXOS forms 2760 and 2762. In general, the purpose of the justification is to establish that the proposed procurement conforms both to Navy procurement policies and to good business practice. The Business Clearance Memorandum shall fully explain the costing and pricing aspects of the proposed procurement and provide detailed information with respect to any unusual features in the proposed procurement. It should briefly outline the dates of the proposed contractor's quotation and subsequent negotiations and steps taken by the negotiator to secure adjustment or explanation of any questionable features of the proposed contract pricing, together with the results obtained.

(1) *For approval of a proposed definitive contract or amendment.* (i) Each prenegotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information, to the extent possible before negotiation:

(A) A description of the supplies or services, showing the number of units, the unit price, and the extension of total contract amount being procured (when the Business Clearance Memorandum covers a contract amendment, the amount of the original contract and all amendments made previously to the instant clearance should be set forth in the space provided on the cover page under caption "Contract Amount(s)");

(B) A citation, on the cover page, of the particular paragraph of 10 U.S.C. 2304 permitting the negotiations, including any Class Determination and Finding (CDF) number previously assigned to an approved CDF applicable to the instant Business Clearance Memorandum, and an indication of the date of the approval of either the required Determination and Finding (D&F) or the statement of the contracting officer authorizing the negotiation (if there is knowledge or previous procurements for the same or similar items effected by means of formal advertising or informal competition, state the justification for the presented in an applicable Negotiation Clearance Memorandum);

(C) The extent to which competition was solicited and secured (if no competition was solicited, a statement as to the reasons therefor);

(D) Data on the proposed contractor's financial stability if the proposed contractor is one with whom the procuring

activity has had on previous contracting experience. (It is of prime importance that the proposed contractor's current balance sheet, profit and loss statement, and other financial statements, such as a cash flow sheet, be secured and carefully reviewed by the procuring activity if little is known of his financial position. A summation of this financial analysis establishing the proposed contractor's financial stability shall be included in the Business Clearance Memorandum. As suggested in § 737.31–202, where there is doubt that a prospective contractor has the financial capacity or credit resources considered essential to the performance of a contemplated contract, especially when the contemplated contract would clearly overextend the working capital position of the prospective contractor, the contracting officer should refer the case to the Chief of Naval Material (MAT0243), and, in appropriate cases, the contracting officer and the Chief of Naval Material (MAT0243), after determining that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should prior to or concurrent with the submission of any required Business Clearance Memorandum, consult with the Comptroller of the Navy to determine whether financing can prodently be arranged. (The Business Clearance Memorandum should explain in the "Justification" the presence of any such financial aspects of the proposed contract);

(E) When applicable, a statement that approval of advance payments has been secured in accordance with the requirements of § 30.5. (The cover page of the Business Clearance Memorandum carries check blocks to indicate any proposed advance payments, and an amplifying statement thereof shall be included in the "Justification" in the body of the clearance memorandum as well as a statement as to the presence in the proposed contract of any requirement for a guaranteed loan, as discussed in § 737.31–202 or a direct loan under Section 302 of the Defense Production Act of 1950);

(F) [Reserved]

(G) A complete cost estimate ("Cost Breakdown"), together with the negotiator's analysis of the estimated cost (The negotiator's analysis should contain a comparison of cost factors proposed in the instant case with (*1*) actual or estimated cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item, (*2*) any known recent operating statements of the proposed contractors, and (*3*) any pertinent Government-conducted audits of the proposed contractor's records. The negotiator's analysis should further indicate whether the labor rates used in estimating costs are (*4*) current or projected rates, (*5*) average rates for the company as a whole, or for a particular division or for the particular departments which will perform the instant work, or (*6*) specific individual rates of the personnel who will perform the work. The proposed contractor's cost data shall be furnished on the cost breakdown form "Contract Pricing Proposal" (DD Form 633), or other form permitted by § 16.206. In the case of a redetermined price or a final price in the case of an incentive type contract, furnish cost breakdown (DD Form 784) with the negotiator's analysis, or alternate form as provided in § 16.207. One copy of the proposed contractor's current and properly executed cost breakdown, together with all required supporting data, shall accompany the Business Clearance Memorandum for retention by the Chief of Naval Material (MAT 022);

(H) If the proposed contract is of the cost-type, with or without a fixed fee, an explanation as to whether the various burden rates used in estimating costs are (*1*) to be provisionally used for reimbursement proposed pending the determination of fixed burden rates, or (2) rates previously negotiated for a past period, and state the period, or (3) for estimating purposes only, with reimbursement to be on a true cost basis determined after full government audit (If paragraphs (a) (1) (i) (H) (*1*) or (2) of this section are present, an explanation should be set forth of the basis used in establishing the burden rates. The negotiator's analysis should further indicate whether the labor rates used in estimating costs are (*4*) current or projected rates, (*5*) average rates for the company as a whole, or for a particular division, or for the particular departments which will perform the instant work, or (*6*) specific individual rates of the personnel who will perform the work);

(I) A Justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering such factors as any competitive elements, established proficiency of performance, extent of the risk assumed by the proposed contractor, and nature and extent of contribution to the defense effort, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons therefor, capital employed, and such other factors as are appropriate;

(J) A price comparison with previous purchases for the same or similar supplies or services, with an explanation of variances in quantities, production rates, and, when known, cost factors;

(K) An original and one copy of each special clause affecting price proposed for use but not authorized for general use, together with a full explanation of its purpose and a statement of its approval by Counsel for the procuring activity (or where field purchasing activities under the cognizance of the Naval Supply Systems Command have no Counsel, a statement of approval by Counsel for that Systems Command);

(L) With respect to Government-furnished material or Government-provided facilities, equipment, tooling or other property, including any public or civil works-type facilities:

(*1*) Where such property is to be provided, (*i*) a full description thereof, (*ii*) the estimated dollar value thereof, (*iii*) the basis of evaluation for price comparison with competitors, and (*iv*) the basis of rental charge, if rental is involved;

(2) Where no such property is to be provided, a statement to that effect; and

(3) Where the providing of any property or the extent thereof has not been determined and is left open for future resolution, a detailed explanation;

(M) When applicable, a statement of such approval as may be required by any reviewing authority heretofore or hereafter established. (If a request for any such approval has been made but approval has not been received, state the date and to whom such request was made; if no request for approval has as yet been made, set forth the anticipated date and recipient of such request);

(N) When the proposed contract is to contain a price redetermination clause other than an incentive type, a copy of any special redetermination clause or a reference to the standard clause proposed for use together with a statement of the "target point" and the date on which the "target point" is estimated to occur and also a statement as to compliance with § 737.1–403–52(a) (1) (i) (G) (The "target point" for redetermination may be set at a point when either an approximate percentage of deliveries has been made or an approximate percentage of manufacturing costs has been incurred, normally at no earlier than 40 percent and no later than 50 percent of manufacturing costs incurred under the proposed contract. Consideration should be given to the proposed contractor's accounting periods when the "target point" is set.)

(O) When an incentive type contract is proposed, a reference to the standard, or a copy of any special, clause proposed for use together with a table showing the proposed incentive pattern;

(P) When applicable, a copy of any required approval or statement (as differentiated from a D&P or CDF) justifying the negotiation of a contract or an amendment under the authority of 10 U.S.C. 2304;

(Q) A statement of the extent to which Federal excise taxes have been deleted from the proposed contractor's quoted price by use of tax exemption certificates;

(R) A statement as to the consideration given to broadening of the industrial base by the establishment of sources additional to those previously utilized for the proposed supplies or services;

(S) When applicable, a statement of the date of any exemption to the Buy American Act granted by the Secretary, or if the request for such exemption has not been submitted, state the anticipated date of such submission in accordance with § 737.6–104–4(a);

(T) On all proposed contracts, as defined in § 1.201–4, with a dollar amount of $5,000,000 or more a statement as to (*1*) the extent of subcontracting of complete units or major components estimated for the instant contract; (*2*) the total dollar amount of uncompleted contracts now held by the particular plant or division of the proposed contractor, and also set forth the segregated dollar amount of governmental

contracts included in such total; and (3) an estimate of the months of production represented by the uncompleted contracts set forth under paragraph (a)(1)(i)(T)(2) of this section;

(U) In connection with any contract for experimental, developmental; or research work, a statement as to (1) the necessity for Government-furnished facilities, if any are included, (2) the nature and extent of any related production work that will be carried on by the contractor, and (3) the nature and extent to which production contracts may be awarded as a result of such experimental, developmental, or research work and the extent to which such production contracts may be awarded to the contractor who is to perform the experimental, developmental, or research work;

(V) Any supplemental cost data obtained from the contractor prior to negotiations;

(W) When use of a progress payments clause is contemplated, a specific statement will be included in the clearance memoranda indicating compliance with § 30.5 pertaining to the conditions to be met precedent to inclusion of a progress payments clause or justification for any departure therefrom.

(X) Identification by area of responsibility of the members of the negotiating team who participated in the cost and technical evaluations and those who are expected to participate in negotiations (This will include any personnel not directly assigned to the procuring activity, such as representatives of the field contract administrators);

(Y) The approximate date of beginning negotiations.

(Z) When other than a fixed-price type of contract is to be used, a reference to the Contract Audit Division's advice on the proposed contractor's accounting system and action thereon (see § 737.3–803).

(AA) A numbering of the clearance memorandum in the manner prescribed in § 737.1–403–53.

(BB) A copy of the contractor's proposed make-or-buy plan if required by § 3.902–2(b).

(CC) A statement as to whether the contractor has an approved procurement system and if so, the date such system was last reviewed.

(DD) For all letter contract or long lead time amendment conversions, the cover page of the clearance (if a clearance is required) shall clearly state that it is a letter contract or long lead time amendment conversion to a _____ type contract. The outset of the clearance shall state the history of the letter contract or long lead time amendment (i.e., when it was entered into, the date of the contractor's proposal or proposals, date of DCAA/CAS reports, the percent of costs incurred, the percent of physical completion of the contract, and if applicable, the reasons for delay in conversion).

(EE) A citation to the approved Advanced Procurement Plan and a statement that the business clearance is in conformity with the APP. If an APP has not been prepared and approved or if any departure from the approved APP is being made in this business clearance, a complete explanation of the reasons therefor shall be provided.

(FF) When required by SECNAVINST 5000.1 of 13 March 1972, the certification prescribed by paragraph G2c of enclosure (3) thereof.

(ii) Each post-negotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information:

(A) The results of negotiation, including any material changes from the approved pre-negotiation clearance, in sufficient detail so that both clearance papers reflect an adequate record of the negotiation. Information already furnished in the pre-negotiation Business Clearance Memorandum need not be repeated if no material change resulted from the negotiations.

(B) The actual date of negotiation and identification of the participating personnel.

(C) When the contracting officer has required a Certificate of Current Cost or Pricing Data in accordance with § 3.807–3 (excluding requests made to Canadian Commercial Corporation):

(1) A properly executed copy of the Certificate of Current Cost and Pricing Data.

(2) Any supplemental cost data obtained, or a summary thereof, such as written documents or oral presentations of actual cost data (material prices, labor hours, labor rates, overhead rates, etc.).

(3) An evaluation of the supplemental data, its effect upon cost trends, and the degree to which it supports or justifies the prices negotiated with the contractor.

(D) In accordance with § 12.808–3, a statement regarding requests for preaward compliance check of non-exempt contracts.

(iii) All business clearances above or below the applicable clearance threshold, which contain multiple incentives, shall contain the complete rationale supporting the usage of the cost, performances and/or delivery incentives and explain how the contractor is to be motivated by the incentives, why the incentive on performance is necessary, and how the Government will benefit from the incentives. All business clearances containing performance incentives shall be accompanied by a written endorsement thereof by the Project Manager.

(2) For approval of a *proposed definitive award* to be made *after advertising* each Business Clearance Memorandum submitted shall contain, or be accompanied by, the following information:

(i) A description of the supplies or services being procured, showing the number of units, the unit price, the total contract price, and when voluntarily submitted by the proposed contractor, the objective or anticipated profit;

(ii) Where three or less bids are received, indicate the number of bids requested and list the bidders together with their respective bids; if more than three bids are received, indicate the number of bids requested, the number received, and the price range of the bids received;

(iii) Where only one responsive and responsible bid is received and where there is no adequate price comparison or price justification, it is normally desirable to complete the procurement by negotiation regarding the Business Clearance Memorandum; in certain cases, it may be appropriate to complete the procurement and make the award by formal advertising and in such cases, an explanation of the absence of negotiation with the sole bidder should be given;

(iv) A comparison of the price of the proposed procurement with prices previously paid for the same similar supplies or services, considering changes in labor and material costs, as well as differences in contracted quantities and production rates;

(v) An original and two copies of each special clause affecting price proposed for use but not authorized for general use, together with a full explanation of its purpose and a statement of its approval by Counsel for the procuring activity (or where field purchasing activities under the cognizance of the Naval Supply Systems Command have no Counsel, a statement of approval by Counsel for that Systems Command;

(vi) And a numbering of the clearance memorandum as prescribed in (e).

(3) [Reserved]

(4) For *authority to accept a redetermined price, or a final price in the case of an incentive-type contract.* (i) Each pre-negotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information, to the extent possible before negotiation:

(A) A statement of any changes which have been made in quantities or delivery rates during the contract period to date;

(B) A statement:

(1) Whether or not the contractor submitted his redetermination proposal reasonably promptly after reaching the contract's target date, and

(2) If delinquent, how long the contractor was delinquent in relation to the actual performance period of the contract, and whether the delinquency was the contractor's the Navy's responsibility (the profit negotiated at the redetermination point should reflect any lessening of the contractor's risk due to unreasonable delinquency in submitting his redetermination proposal);

(C) A comparison of the actual and projected costs with the original estimated costs, including a comparison of the actual and estimated cost factors with any relevant Government audits (Whenever possible, actual production costs incurred at or near the point of attainment of the contract's peak production rate should be segregated from the total actual cost incurred to target point. Such segregation should then be used in evaluating costs projected from the target point to completion);

(D) A comparison of the delivery rates actually accomplished in the completed portion of the contract with the delivery rates projected for the uncompleted or run-out portion of the contract;

(E) When applicable, a statement in a Business Clearance Memorandum to the effect that redetermination of the contract price will not be required because partial termination prevents attaining the previously agreed target point and the target point has not been advanced under the terms of the redetermination clause. (In these instances, no cost data will be required by the Chief of Naval Material (MAT022), but the above required statement will complete the file);

(F) A statement as to whether or not the Government has audited the claimed actual costs and reviewed the projected costs and, if so, what such audit and/or comments disclosed;

(G) A statement as to any pending renegotiation proceedings encompassing the instant contract (Directives will be issued in the future regarding the handling of redeterminations which involve renegotiation);

(H) All cost data on the appropriate cost breakdown form ("Cost and Price Analysis" (DD Form 633), "Cost and Price Analysis for Contract Price Redetermination" (DD Form 784), or other form permitted or required by § 16.206, § 16.207, and § 737.1–403–52(a)(1)(i)(G) (At least one copy of the contractor's breakdown on such form shall accompany the Business Clearance Memorandum for retention by the Chief of Naval Material (MAT022));

(I) The information called for by paragraph (a)(1)(i) (V), (W), and (X) of this section; and

(J) A numbering of the Business Clearance Memorandum in the manner prescribed in § 737.1–403–53(a).

(ii) For the content of the post negotiation Business Clearance Memorandum, see paragraph (1)(ii) above.

§ 737.1–403–53 Business Clearance Memoranda Numbering Instructions.

(a) *Numbering.* (1) Requests for Authority to Negotiate, Business Clearance Memoranda, and Reports After Execution of Contract submitted to the Chief of Naval Material (MAT022) shall be numbered with serial numbers and symbols as set forth in (b) below. Any purchasing office, prior to the submission of its first clearance memorandum, should contact the Chief of Naval Material (MAT022) for the assignment of a symbol number, if one has not previously been assigned.

(2) When both Business Clearance Memoranda and Requests for Authority to Negotiate are required on a single contract, the Request for Authority to Negotiate shall bear the earlier number and the Business Clearance Memorandum shall bear the same basic number with the addition of a decimal digit. (For example, on a new contract proposed to be negotiated by NAVAIR, the Request for Authority to Negotiate would be numbered "NAVAIR–10327" and the Business Clearance Memorandum covering the request for authority to execute the same contract would be numbered "NAVAIR–10327.1.") If subsequent actions on a contract require either an additional Request for Authority to Negotiate or an additional Business Clearance Memorandum, or both, any such additional clearance memoranda should bear the same prefix and basic number plus the next consecutive decimal digit. The Request for Authority to Negotiate for any particular contract action always bears a lower decimal digit than the Business Clearance Memorandum for the same action. (For example, after the NAVAIR contract above referred to was issued, the scope of the contract was changed so that an amendment was necessary in an amount requiring clearance, then the new Request for Authority to Negotiate would be numbered "NAV AIR–10327.2" and the Business Clearance Memorandum covering that amendment would be numbered "NAV AIR–10327.3").

(3) An exception to the rule set forth in paragraph (a)(2) above would be in a case of Business Clearance Memoranda proposing a contract amendment negotiated under the authority of a CDF. Such Business Clearance Memoranda should be assigned new basic numbers and should not refer to the Request for Authority to Negotiate which submitted the CDF but should refer only to the CDF number assigned by the Chief of Naval Material (MAT 022) in accordance with § 737.3–306–53(g). (For example, if the Naval Air Systems Command *submitted* a CDF for Project X under Request for Authority to Negotiate "NAVAIR–10210" and this request for negotiation authority was granted, the Chief of Naval Material (MAT 022) would assign a CDF number (CDF–50) to the approved CDF. When the Naval Air Systems Command exercised this negotiation authority to let a contract requiring a Business Clearance Memorandum, the Business Clearance Memorandum would be numbered with the next unused consecutive number in the NAVAIR series which might be "NAVAIR–10285" and would cite CDF–50 as the negotiation authority). Any Business Clearance Memorandum covering a subsequent amendment to the same contract should be numbered "NAV AIR–10285," plus the appropriate decimal digit, and should always cite the appropriate CDF number.

(4) If a resubmission of any Business Clearance Memorandum or any Request for Authority to Negotiate covering either an individual or a CDF is required, or if a resubmission of only a D&F is required, such resubmission shall bear the same prefix and basic number plus the next appropriate unassigned decimal digit.

(5) Reports After Execution of contract (RAE's) shall be numbered by the originator consecutively beginning with "1" prefixed by the procuring activity symbol assigned in NPD paragraph (g) below. (For example, "ASO–120.") In instances where procuring activities have already begun their submissions of RAE's, numbering of submissions made subsequent to this directive will continue consecutively.

(b) *Symbols and Serial Numbers.* (1) Clearance memoranda symbols for either Requests for Authority to Negotiate or Business Clearance Memoranda are shown below.

Bureau or office	*Symbol*
Naval Air Systems Command Headquarters	NAVAIR
Naval Ordnance Systems Command Headquarters	NAVORD
Naval Electronic Systems Command Headquarters	NAVELEX
Bureau of Naval Personnel	BP
United States Marine Corps	MC
Military Sealift Command	MSC
Office of Naval Research	ONR
Naval Sea Systems Command Headquarters (Hulls), (Radio) and (Components)	SH–SR(s)–SS
Naval Facilities Engineering Command Headquarters	NAVFAC
Naval Academy, Annapolis, MD	AC
Aviation Supply Office, Philadelphia, Pa	ASO
Naval Regional Procurement Office, Naples	NAP
Naval Shipyard, Boston, Mass	B
Navy Resale System Office, Brooklyn, N.Y	BK
Puget Sound Naval Shipyard, Bremerton, Wash	BR
Charleston Naval Shipyard, Charleston, S.C	C
Naval Shipyard, Charleston, S.C	C
Naval Air Station, Corpus Christi, Tex	CC
Naval Ammunition Depot, Crane, Ind	CR
Electronic Supply Office, Great Lakes, Ill	ESO
Naval Ordnance Plant, Forest Park, Ill	FP
Navy Fuel Supply Office, Washington, D.C	FUSO
Naval Ship Repair Facility, Guam, Mariana, Ills	GU
Naval Propellant Plant, Indian Head, Md	IH
Naval Avionics Facility, Indianapolis, Ind	IND
Naval Air Station, Jacksonville, Fla	JAX
Naval Regional Procurement Office, Long Beach, CA	LB
Naval Regional Procurement Office, Naples (CAB London)	LON
Naval Supply Depot, Newport, R.I	N
Naval Air Development Center, Johnsville, Pa	NADC
Naval Air Engineering Center, Philadelphia, Pa	NAF
Ships Parts Control Center, Mechanicsburg, Pa	SPCC
Naval Supply Center, Norfolk, Va	NF
Naval Ordnance Laboratory, White Oak, Silver Spring, Md	NOL
Naval Ordnance Plant, Louisville, Ky	KY
Naval Shipyard, Philadelphia, Pa	NP
Naval Research Laboratory, Washington, D.C	NRL
Naval Training Equipment Center, Orlando, Fla	NTEC
Portsmouth Naval Shipyard, Portsmouth, N.H	P
Naval Supply Center, Pearl Harbor	PH
Naval Supply Depot, Seattle, Wash	SE
Naval Supply Center, Oakland, Calif	OAK

Bureau or office	*Symbol*
Navy Oceanographic Office, Suitland, Md	NHO
Naval Regional Procurement Office, Washington, D.C.	WA
Naval Supply Depot, Yokosuka, Japan	YOK
Naval Weapons Laboratory, Dahlgren, Va	NWL

(2) The initial serial number to be used by all above-listed activities on Requests for Authority to Negotiate or Business Clearance Memoranda is 10,000. All subsequent requests or memoranda are to be numbered consecutively in the 10,000 series without regard to date of submission.

§737.1–403–54 Utilization of Headquarters Naval Material Command Files.

All records and files of the Headquarters Naval Material Command (Procurement Control and Clearance Division (MAT022)). (Contract Appraisal Branch (MAT022)), are available at all times to properly qualified personnel of procuring activities who desire to secure additional data for use in their negotiations of specific contracts or amendments. Personnel desiring to utilize such records and files shall, however, first inform their Security Officer of their desire and request such Security Officer to inform the Chief of Naval Material (MAT022), by telephone, the highest security classification of the individual contemplating the use of the Contract Clearance records and files. The individual should identify himself by means of his Departmental identification pass when he visits the Chief of Naval Material (MAT022).

§ 737.1–403–55 Legal Approval of Contracts by the Office of the General Counsel.

See § 737.1–452–1.

§ 737.1–403–56 Tuition for Civilian Employee Training.

Contracts which require the payment of tuition for civilian employees from appropriated funds shall include a proper reference to the action of the authority approving the tuition payment. Civilian Manpower Management Instruction (CMM) 410.6 includes procedures which will be followed when requesting this approval. The Contracting Officer is responsible for ascertaining, prior to execution, that each proposed contract requiring the Government to pay tuition for civilian employees is within the scope of such approval.

§ 737.1–403–57 Prior Approval of Contracts for Management Engineering Organization and Management-Type Surveys and Studies.

See SECNAVINST 5040.1D.

§ 737.1–403–60 Reports After Execution of Small Business Partial Set-Asides.

In lieu of a business clearance, a report shall be made promptly to the Chief of Naval Material (MAT022) for each contract in excess of $300,000 which is awarded pursuant to the procedures referred to in § 1.706–2. This report shall be submitted on DD Form 350.

§ 737.1–403–61 Reports After Execution of Advertised Contracts.

(a) Unless business clearance has been or will be secured under the requirements of this NPD 1–403, a full report shall be made promptly to the Chief of Naval Material (MAT022) for each contract awarded by means of *formal advertising* and Small Business Restricted Advertising, other than purchases of subsistence supplies or supplies purchased for authorized resale, obligating the Government to pay $600,000 or more. This report shall be submitted on DD Form 350 and, in addition to the specific information requested thereon, shall include in Item 23 (Remarks) thereof, or as a rider thereto, the following information:

(1) The number of invitations for bids issued and the number of bids received on each item, and a listing of the unit, quantity, and unit price of each item awarded;

(2) A statement as to whether the procurement was advertised on a unit or lot basis;

(3) Where three or fewer items were procured, a listing of such items, and

(i) The unit prices bid by each bidder if three or fewer bids were received, or

(ii) The unit price range of the unsuccessful bidders if more than three bids were received; and

(4) Where more than three items were procured, a priced copy of the Award or of the contractor's bid, and

(i) The total contract price bid by each bidder if three or fewer bids were received, or

(ii) The total contract price range of the unsuccessful bidders if more than three bids were received.

§ 737.1–405 Selection, Appointment, and Termination of Appointment of Contracting Officers.

§ 737.1–405–50 General.

The Head of each Navy Procuring Activity is hereby designated a contracting officer (as defined in § 1.201–3) and subject to the provisions of § 1.405 is authorized to delegate all or any part of his contracting authority to such person or persons as he may select and designate as contracting officers.

§ 737.1–405–51 Contracting Authority of Head, Coordinated Negotiation Staff (MAT02D), Headquarters, Naval Material Command.

(a) Where a contractor has or is expected to have cost reimbursement type contracts with more than one Navy procuring activity or Military Department, the Head, Coordinated Negotiation Staff of Headquarters Naval Material Command is authorized, as contracting officer for the Department of the Navy, to negotiate, enter into and amend Navy-wide agreements for—

(1) Reimbursement of allowable costs;

(2) Overhead rates; and

(3) Advance understandings on particular cost items as provided in § 15.107.

(b) Agreements entered into under authority of paragraph (a) of this section shall, unless otherwise provided therein, be binding on all Navy purchasing activities and may apply to any and all Navy cost reimbursement type contracts, except that agreements under paragraphs (a) (1) and (2) shall be restricted to contracts which provide for reimbursement of overhead costs on the basis of negotiated final overhead rates in accordance with ASPR or § 737.3–700.

§ 737.1–406 Contract Administration Functions.

§ 737.1–406–50 Responsibilities of the Naval Plant Representative Offices (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs).

(a) *Policy.* The following policy, applicable to Navy field contract administration of major defense system acquisitions, is based upon the premise that the contractor is primarily responsible for his cost, schedule, and technical performance;

(1) A capability shall be established and maintained in the NAVPROs and SUPSHIPs to provide the required support to the procuring contracting officer, program manager and procuring activity.

(2) Maximum responsibility, within existing capability, shall be assigned to the NAVPRO or SUPSHIP by the procuring contracting officer, program manager, and/or procuring activity. Appropriate agreements shall be formalized which clearly define for each program assigned to a NAVPRO or SUPSHIP the detailed responsibility of the NAVPRO or SUPSHIP (see § 737.20–702–4).

(3) The basic method of operation of the NAVPRO or SUPSHIP shall be the monitoring of the contractor's performance, including management and operations. Emphasis shall be placed on ensuring that contractors incorporate controls to ensure tha the contract requirements are met.

(4) NAVPROs and SUPSHIPs shall coordinate their contract administration efforts with those of the DCAA (Defense Contract Audit Agency) auditor and other government activities. Functional area reviews conducted by the DCAA auditor and those conducted by the NAV PRO or SUPSHIP shall be coordinated in order to optimize use of audit and Government contract administration manpower with minimum disruptive effect upon the contractor.

(5) The goal of NAVPROs and SUP SHIPs shall be, through involvement with the contractor: earliest detection and correction of contractor inefficiencies; cost avoidance rather than disallowance; and compliance with contractual schedule and technical performance requirements.

(6) Contract administration personnel shall be fully observant of contract terms and conditions in order to avoid actions which exceed contract requirements and to assure that any directions, suggestions or requests to the contractor are consistent with the contract provisions.

(7) Contract administration procedures shall be tailored to the contract and contractor situations. The degree of monitoring exercised by the NAVPRO or SUPSHIP shall be consistent with the benefits to be derived. The art of the field

contract administrator is his ability to determine and to use the minimum amount of effort required to protect the Government's interests.

(b) *Primary Responsibilities.* NAVPROs and SUPSHIPs have the primary responsibilities listed below which require the integrated performance of the functions listed in § 1.406(c), and the assistance of the DCAA auditor:

(1) Determine on a continuing basis contractor compliance with the terms of the contract including schedule, cost and technical performance requirements;

(i) Advise the contractor of the need for corrective action and followup to obtain correction;

(ii) Advise, as appropriate, the procuring contracting officer, project manager, procuring activity, and/or other responsible official or activity of any contractor deficiencies which the NAVPRO or SUPSHIP cannot resolve within the limits of his authority;

(iii) Consult with the procuring contracting officer in the event of conflict or disagreement;

(2) Advise, as appropriate, the procuring contracting officer, project manager, procuring activity, and/or other responsible official or activity of any problem not covered by contract terms affecting the adequacy of the end item or the contractor's cost, schedule or technical performance which the NAVPRO or SUPSHIP cannot resolve within the limits of his authority.

(3) Advise the procuring contracting officer of any inadequacies in contract terms, including schedule, cost and technical performance requirements, revealed during the performance of contract administration functions.

(4) Determine whether the contractor's direct and indirect costs are reasonable, allocable and otherwise allowable, that costs represent what performance of the contractor should cost, assuming reasonable economy and efficiency; take appropriate corrective action when necessary.

(c) *Additional Functions.* The functions listed below are in addition to those listed in § 1.406(c) and shall be performed when requested by the procuring contracting officer, project manager or procuring activity.

(1) Conduct pre-solicitation review and evaluation of the Schedule, General Provisions, Specifications and other provisions of proposed contracts to determine the adequacy of contractual requirements for contract administration purposes.

(2) Participate in negotiations and in source selections.

(3) Issue orders under contracts for provisioned and other items, and orders under basic ordering agreements.

(4) Participate in cost and other studies conducted by higher authority.

§ 737.1–407 Functions of Defense Contract Audit Agency (DCAA) Offices.

DCAA audit offices are responsible for performing all necessary contract audit for the Department of Defense and providing accounting and financial advisory services regarding contracts and subcontracts to all Department of Defense components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. Audit offices perform the following functions:

(a) Audit, examine and/or review contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control; accounting, costing, and general business practices and procedures; to the extent and in whatever manner is considered necessary to permit proper performance of the other functions described in paragraphs (b) through (i) below).

(b) Examine reimbursement vouchers received directly from contractors, under cost-type contracts, transmitting those vouchers approved for payment to the cognizant Disbursing Officer and issuing DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with a copy to the cognizant contracting officer, with respect to costs claimed but not considered allowable.

(c) Provide advice and recommendations to procurement and contract administration offices on:

(1) Allowability of costs incurred under redeterminable, incentive and similar type contracts;

(2) Allowability of incurred costs and estimates of cost to be incurred as represented by contractors incident to the award, negotiation, modification, change, administration, termination, or settlement of contracts;

(3) Adequacy of financial or accounting aspects of contract provisions;

(4) Adequacy of contractors' accounting and financial management systems; adequacy of contractors' estimating procedures.

(d) Assist responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors.

(e) Direct audit reports to the Government management level having authority and responsibility to take action on the audit findings and recommendations.

(f) Cooperate with other appropriate Department of Defense components on reviews, audits, analyses, or inquiries involving contractor's financial position or financial and accounting policies, procedures, or practices.

(g) Establish and maintain liaison auditors as appropriate at major procuring and contract administration offices.

(h) Review General Accounting Office reports and proposed responses thereto which involve significant contract or contractor activities for the purpose of assuring the validity of appropriate pertinent facts contained therein.

(i) In an advisory capacity, attend and participate, as appropriate, in contract negotiation and other meetings where contract cost matters, audit reports, or related financial matters are under consideration.

§ 737.1–408 Relationships—DCAA and Purchasing and Contract Administration Offices.

(a) Organizationally, the DCAA is separate from, and independent of, purchase and contract administration offices. Audit reports and other services provided by DCAA are advisory and, as such, will be responsive to the needs of purchasing and contract administration offices and will be consistent with specific contract provisions and applicable regulations, e.g., ASPR.

(b) Areas of interest to the auditor often meet and overlap those of interest to purchasing and contract administration offices. A clear understanding of the responsibilities of DCAA auditors is essential to ensure continuous close cooperation and team work. These responsibilities are set forth in § 737.1–407.

(c) Purchasing and contract administration offices have responsibility for:

(1) Requesting contract audit service;

(2) Providing maximum allowable time for the conduct of audits;

(3) Furnishing the auditor, in connection with a request for audit, copies of any contracts (including change orders, supplements, amendments, and termination notices), cost statements, proposals, and other financial data submitted by contractors or, as appropriate, requested by the auditor;

(4) Established access to contractor records required by auditors, and

(5) Furnishing such other information, data, or technical service as may be required (such as the advice of industrial engineers on cost matters, copies of pricing memoranda, etc.) or otherwise may be useful in performing the audit.

(d) Contract audit services shall be requested by purchasing and contract administration offices when necessary in connection with:

(1) Development of procurement packages prior to solicitation.

(2) Pre-award surveys.

(3) Pricing procurement actions.

(4) Functional reviews of contractor performance.

(5) Progress payments, and

(6) Contract terminations.

(e) Contract audit services are performed automatically in connection with:

(1) Reimbursement of costs, and

(2) Problems and unsatisfactory conditions encountered by the auditor and within his purview.

(f) The independent professional advice of DCAA auditors is essential to good contracting. The purchasing and contract administration office must consider such advice. However, decisions of the PCO and ACO on contracting and contract administration matters often have to take into account many factors in addition to those presented by the auditors and will therefore represent the considered judgement of the contracting officer.

(g) The auditor is required to discuss all significant and potentially controversial problems, particularly those having a continuing impact on the reasonableness of pricing or on administra-

tion of the procurement program with the ACO prior to finalization of audit action. Where agreement on such problems cannot be arrived at locally, the matter should be elevated through the respective audit and contract administration chain of command for final resolution. Any other unresolvable disagreements concerning services provided by DCAA shall be referred to higher procurement authority for discussion and resolution with counterpart DCAA echelons.

§ 737.1–450 The Assistant Secretary of the Navy (I&L).

(a) SECNAV Instruction 5430.7J assigns to the Assistant Secretary of the Navy (I&L) certain responsibilities for administration of the Department of the Navy. Included therein is responsibility for: All matters related to the procurement, production, supply, distribution, alteration, maintenance, and disposal of material; all transportation matters; the acquisition, construction, utilization, improvement, alteration, maintenance, and disposal of real estate and facilities, including capital equipment, utilities, housing and public quarters; printing and publications; labor relations with respect to contractors with the Department of the Navy; industrial security; and the Mutual Defense Assistance Program as related to the supplying of material.

(b) In addition to the responsibilities set forth above, individual responsibilities set forth in paragraph 6d include, but are not limited to:

(c) Liaison with the Assistant Secretary of Defense (Installations and Logistics), the Renegotiation Board, and, for those matters within his area of responsibility, the Assistant Secretary of Defense (International Security Affairs).

§ 737.1–451 Headquarters Naval Material Command.

§ 737.1–451–1 Authority and Responsibility of the Chief of Naval Material.

Paragraph 3 of SECNAVINST 4200.29 of 3 August 1973 and paragraphs 5e. and 6 of SECNAVINST 5400.13 of 24 August 1971 set forth the areas of authority and responsibility of the Chief of Naval Material for the performance of Departmentwide procurement functions and services.

§ 737.1–451–2 Organization and Functions of the Headquarters Naval Material Command.

(a) The Headquarters Naval Material Command is composed of Chief of Naval Material, Vice Chief of Naval Material, Deputy Chiefs of Naval Material, Project Managers, Special Assistants, and Division Directors. In addition to rendering staff assistance to the Assistant Secretary of the Navy (I&L in the performance of his logistic function, the Chief of Naval Material is responsible for the functions set forth below:

(1) Formulating, promulgating, and effectuating procurement contracting policies and methods to be followed by the Naval Material Command (NMC) in meeting the material requirements of the operating forces, and coordinating and directing the efforts of the Naval Material Command in this respect; and evaluating the effectiveness and efficiency of Navy procurement;

(2) Formulating, promulgating, and effectuating policies and methods of the NMC governing production of material; assisting the bureaus, offices and systems commands of the Navy Department and industry to achieve production which is efficient, economical, and timely; and coordinating production activities of the NMC with other segments of the Department of Defense and appropriate civilian agencies;

(3) Exercising policy direction and coordination control over all field contract administration offices (§ 737.1-201 (c)(7)) within the Naval Material Command and conducting reviews of these activities to ascertain basic problems in the procurements being managed and the activities' effectiveness in eradicating or minimizing these problems.

(4) Formulating, promulgating, and effectuating policies and methods of the NMC relative to supply programs, including standardization, cataloging, property disposition and inventory control; and reviewing compliance therewith;

(5) Collaborating with the Chief of Naval Operations and Commandant of the Marine Corps in reconciling difficulties encountered in meeting the material requirements of the operating forces;

(6) Providing for representation of the Navy's material requirements before other Government agencies controlling the availability of products, materials, and facilities;

(7) Coordinating and integrating industrial mobilization planning within the Department of the Navy;

(8) Developing and coordinating Navy policy on labor relations and industrial manpower with respect to private industry; and

(9) Implementing and administering the Industrial Security Program which operates outside of the Department of the Navy.

§ 737.1–451–3 Procurement Policy Advisory Group.

(a) The Procurement Policy Advisory Group serves as an advisory group on procurement policies and practices within the Department of the Navy, as well as on other subjects allied therewith. Subjects for discussion may be presented by any Navy activity or by other components of the Department of Defense. The Group shall conduct free and full discussion of the problems, or problem areas, presented to it. Where agreement is reached on solutions to problems, such agreements will, as appropriate, be submitted as recommendations for official action.

(b) The Procurement Policy Advisory Group shall be chaired by the Assistant Deputy Chief of Naval Material (Procurement and Production). The Head, Coordinated Negotiation Staff (MAT 02D), Headquarters Naval Material Command, shall act as Co-Chairman. The Group shall consist of the following: senior negotiation personnel of the Naval Systems Commands Headquarters, the Office of Naval Research, Military Sealift Command, Bureau of Naval Personnel and Headquarters, Marine Corps; the Navy ASPR Committee Policy Member or his Alternate; the Head, Procurement Management Review Group; a representative from the Office of the General Counsel; and the Directors of the Procurement Policy and Planning Division (MAT 021) and the Procurement Control and Clearance Division (MAT 022), Headquarters Naval Material Command.

§ 737.1–452 Office of the General Counsel for the Department of the Navy; Legal Services in the Field of Business and Commercial Law.

Pertinent paragraphs of SECNAV Instruction 5430.25C are set forth below:

1. *Purpose.* To restate and delineate the organization, duties and responsibilities of the Office of the General Counsel of the Department of the Navy.

3. *Organization of the Official of the General Counsel.* a. The head of the Office of the General Counsel shall be designated the General Counsel for the Department of the Navy, shall be appointed by and be responsible to the Secretary of the Navy, and shall report to him as the Secretary may prescribe. The General Counsel is authorized to appoint, with approval of the Secretary of the Navy, three Deputy General Counsels.

b. The Office of the General Counsel shall include the Offices of Counsel for the Commandant of the Marine Corps, the Bureau of Naval Personnel, the Military Sealift Command, the Office of Naval Research, the Office of the Comptroller of the Navy, the Naval Air Systems Command, the Naval Electronic Systems Command, the Naval Facilities Engineering Command, the Naval Sea Systems Command, and the Naval Supply Systems Command. It shall also include such Offices of Counsel for their respective field activities and such Branch or Regional Offices as have been or may hereafter be established.

c. The General Counsel shall furnish or arrange to furnish legal services for which the Office of the General Counsel is assigned responsibility by paragraph 4, below, to other Naval Activities when it is mutually agreed such services are required. The Office of the General Counsel shall include any office established under this paragraph.

4. *Responsibilities of the Office of the General Counsel.* a. The Office of the General Counsel shall, except as otherwise provided below, be responsible throughout the Department of the Navy for providing legal services in the field of business and commercial law, including all legal services relating to:

(1) The acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the Naval Petroleum Reserves;

(2) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract;

(3) The Office of the Comptroller of the Navy;

(4) Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments and similar matters, including those in the Armed Services Procurement Regulation and Navy Procurement Directives and deviations therefrom; and

(5) Industrial security. b. The Office of the General Counsel shall be responsible for liaison and relations with the other departments and agencies of the Government with respect to the foregoing matters.

c. All patent legal matters submitted to the Secretary of the Navy, the Under Secretary of the Navy, and Assistant Secretary of the Navy, the Attorney General of the United States shall be forwarded via the General Counsel for the Navy for review and comment.

5. *Counsel for the Marine Corps, Bureaus, Offices and Commands.* For the Commandant of the Marine Corps and each Naval activity, specifically listed in paragraph 3, there shall be a single Office of Counsel which shall be responsible for providing in the Marine Corps or in such Naval activity all legal services for which the Office of the General Counsel is assigned responsibility by paragraph 4, above. Each such Office of Counsel shall be headed by a Counsel who shall be appointed by the Secretary of the Navy upon the joint recommendation of the General Counsel and the Commandment of the Marine Corps or the head of the Naval activity concerned, as appropriate. Such Counsel shall report directly to the Commandment of the Marine Corps or the head of such Naval activity, as appropriate, and shall also report, via the General Counsel, to the Secretary of the Navy, as he may prescribe.

6. *Lawyers in the Office of the General Counsel.* The lawyers in the Office of Counsel for the Commandment of the Marine Corps and for each Naval activity, including their respective field lawyers, shall be selected by the General Counsel subject to the approval of the Commandment of the Marine Corps or of the head of such Naval activity, as appropriate. The General Counsel shall prepare, or assign responsibility for the preparation of, performance rating reports for all lawyers in the Office of the General Counsel, and shall review all such reports. Personnel actions involving lawyers in the Office of General Counsel, such as changes in grade, transfers or terminations of services, and the establishment or elimination of position descriptions shall in all instances be subject to the approval of the General Counsel. The General Counsel with the approval of the Secretary of the Navy, may establish Regional or Branch offices of the Office of the General Counsel; and the General Counsel shall select and designate the Counsel and other lawyers therein.

7. *Uniformity, Integration and Supervision.* The legal services to be rendered by the Offices of Counsel listed in paragraph 3, the Counsel for Branch or Regional offices, and all other lawyers in the Office of the General Counsel, both departmental and in the field, shall be integrated, coordinated, and supervised by the General Counsel. The General Counsel shall also be responsible for achieving and maintaining, so far as practicable, uniformity in the application of legal principles with regard to matters for which the Office of the General Counsel is assigned responsibility by paragraph 4, above.

8. *Legal Documents.* Contracts and amendments thereto, modifications thereof, and other documents pertaining to matters for which the Office of the General Counsel is responsible shall be submitted to the appropriate lawyer or lawyers of that Office for an opinion as to form and legality, and for any additional pertinent comment or advice prior to execution.

§ 737.1–452–1 Legal Approval of Contracts.

The Office of the General Counsel shall approve as to form and legality all contracts to be entered into by any procuring activity. Any such contract may be executed by a contracting officer without securing further approval as to form and legality.

§ 737.1–454 Responsibilities of the Navy Publications and Printing Service (NPPS).

By public law and mandatory regulations issued by the Congressional Joint Committee on Printing, the Congress of the United States holds the Secretary of the Navy responsible for insuring that all publications and printing financed in whole or in part by Department of the the Navy funds (appropriated or non-appropriated), or which are produced or procured in its behalf, are essential and necessary in the conduct of its business and are economically prepared, produced, and distributed. The Assistant Secretary of the Navy (Installations and Logistics), supported by the Navy Publications and Printing Policy Committee, is assigned responsibility by the Secretary of the Navy for matters relating to publications and printing. The Navy Publications and Printing Service is the Department of the Navy central service for publications and printing, chartered by the Department of Defense to operate under the Navy Industrial Fund to provide printing and related service or products for the Department of the Navy and for agencies of the Department of Defense, and responsible for the conduct of a coordinated program.

(a) To assure the economical and efficient development of materials to be printed or duplicated and the procurement, production, and distribution thereof, including a corollary responsibility for the protection of classified information in accordance with the Department of the Navy Supplement (OPNAVINST 5510.1D); and

(b) To prevent or to remedy any neglect, delay, duplication, impropriety, or waste in the acquisition, production, and distribution of Department of the Navy publications and printing. (See § 737.1–108–51(c)(v), NAVSO P–35; § 737.1–201 (c) (iv), (v) and (vi), Definitions; § 737.5–601 Procurement of Printing and Related Supplies.)

§ 737.1–600 Debarment, Eneligibility, and suspension.

§ 737.1–601 Establishment and Maintenance of Records and Lists of Firms or Individuals Debarred, Ineligible or Suspended.

§ 737.1–601–3 Joint Consolidated List Debarred, Ineligible and Suspended Contractors.

The Chief of Naval Material (MAT 09G) distributes the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors to appropriate Navy activities. As an interim measure pending distribution of amendments to the List, appropriate activities will be notified when an individual or firm is added to the List.

§ 737.1–603 Grounds for Listing and Treatment To Be Accorded Listed Concerns.

(a) Authority to permit exceptions for Type A listings within category (iii) and for Type D listings has been given to the Chief of Naval Material. Exceptions will be granted only in extraordinary cases where the best interests of the Government may be served.

(b) All delegations of authority to contractors to settle terminated subcontracts should be revoked when such contractors are suspended. When it appears necessary to protect the interests of the Government, action to withhold payments to contractors should be initiated promptly and should not be deferred pending a determination by the Chief of Naval Material to debar or suspend. The Chief of Naval Material may initiate withholding action based on information available to him.

§ 737.1–604 Administrative Debarment of Firms or Individuals (Type A).

Procuring activities may recommend debarment of firms or individuals for the causes listed in § 1.604. Recommendations should contain a full statement of all available facts with necessary supporting documents and be forwarded through channels to the Chief of Naval Material (MAT09G). Intermediate addresses should add pertinent comments and recommendations.

§ 737.1–605 Suspension of Firm or Individual.

The Chief of Naval Material may make determinations to suspend firms or individuals based on reports submitted in accordance with SECNAVINST 4385.1B. Referral to the Department of Justice shall be a prerequisite to suspension.

§ 737.1–700 Small Business Concern.

§ 737.1–702 General Policy.

§ 737.1–702–50 Dissemination of Listings of Commodities and Services Purchased by Navy Activities.

(a) In order to acquaint prospective prime contractors with the numerous types of commodities and services purchased by the Navy's widespread purchasing, activities and to provide more effective local one-stop counseling to them, it is desirable that listings of commodities and services purchased by Navy activities be furnished to major Navy purchasing activities and to contract administration offices.

(b) The following activities shall furnish listings of commodities and services purchased to each of the purchasing activities listed in the Navy Small Business and Economic Utilization Personnel Directory and to the offices listed in paragraphs (c) and (d) below. The listings will be updated annually and distribution made by 31 July.

Naval Air System Command
Department of the Navy
Washington, D.C. 20361

Naval Electronic Systems Command
Department of the Navy
Washington, D.C. 22081

Naval Sea Systems Command
Department of the Navy
Washington, D.C. 20360

Naval Ship Systems Command
Department of the Navy
Washington, D.C. 20360

Headquarters, U.S. Marine Corps
Washington, D.C. 20380

U.S. Naval Research Laboratory
Washington, D.C. 20350

U.S. Navy Ships Parts Control Center
Mechanicsburg, Pennsylvania 17055

U.S. Navy Aviation Supply Office
Philadelphia, Pennsylvania 19111

U.S. Naval Regional Procurement Office
Long Beach, CA 90801

U.S. Naval Regional Procurement Office
Philadelphia, Pennsylvania 19112

U.S. Naval Regional Procurement Office
Washington, D.C. 20374

U.S. Naval Supply Center
Norfolk, Virginia 23511

U.S. Naval Regional Procurement Office
Oakland, California 94625

U.S. Naval Supply Center
Charleston, South Carolina 29408

U.S. Naval Ammunition Depot
Crane, Indiana 47522

U.S. Naval Supply Center
Puget Sound
Bremerton, Washington 98314

Portsmouth, Naval Shipyard
Portsmouth, New Hampshire 03801

U.S. Naval Avionics Facility
Indianapolis, Indiana 46218

U.S. Naval Air Development Center
Warminster, Pennsylvania 18974

U.S. Naval Air Engineering Center
Philadelphia, Pennsylvania 19112

U.S. Naval Ordnance Station
Louisville, Kentucky 40214

(c) Contract administration offices which will receive listings of commodities and services purchased are the Naval Plant Representative Offices, Supervisors of Shipbuilding (SUPSHIP), and Directors Defense Contract Administration Services Regions (DCASR) listed in the DOD Directory of Contract Administration Service Components (DOD 4105.59-H).

(d) The following offices will also receive listings of commodities and services purchased:

Headquarters
Defense Supply Agency
Attn: DSAH-PS
Cameron Station
Alexandria, Virginia 22314

Chief of Naval Material
Attn: MAT 0212F
Department of the Navy
Washington, D.C. 20360

§ 737.1-704 Small Business Officials.

§ 737.1-704-50 Council of Small Business Specialists.

To accomplish full coordination of effort in considering and resolving problems primarily affecting small business concerns, there has been established a Council of Small Business Specialists for the Department of the Navy, the chairman of which is the Special Assistant for Small Business and Economic Utilization, ASN(I&L), and includes the senior small business specialists appointed by the Heads of the Procuring Activities. The senior small business specialists on the Council shall perform the following functions:

(a) Serve as assistants and advisors to develop new or improved policies and procedures for increasing small business participation in Navy procurement, and to accomplish unity of action on small business matters;

(b) Attend, upon request, Congressional hearings pertaining to small business matters for the purpose of presenting the Small Business matters as may be prescribed by appropriate authority.

§ 737.1-706 Set-Asides.

§ 737.1-706-1 Documentation of Small Business Set-Aside Action.

The contract file of each procurement in excess of $10,000 shall be appropriately documented by the small business specialist and the contracting officer to indicate the action taken relative to small business set-asides. Documentation shall be accomplished by the use of Form NAVMAT 4380/1 "Small Business/Labor Surplus Set-Aside Review," revised 9/73, obtainable from the following stocking point: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Exceptions to the foregoing are procurements involving modifications to or orders placed against existing contracts; procurements involving negotiations with educational institutions; procurements resulting from acceptance of unsolicited proposals; orders against indefinite quantity type contracts.

§ 737.1-706-5 Total Set-Asides.

A total small business set-aside shall be made only when there is a reasonable expectation that bids or proposals will be received from a minimum of two small business concerns and that awards will be made at reasonable prices. In instances where solicitation is to be limited to a single business source, negotiation authority other than that used for small business set-asides shall be cited. See § 737.3-201-50(b).

§ 737.1-707 Subcontracting With Small Business Concerns.

§ 737.1-707-4 Responsibility for Reviewing Subcontracting Program.

(a) *Chief of Naval Material.* In those cases where the Navy has contract administration responsibility, the Chief of Naval Material (MAT 0212) shall assign to a single Navy procuring activity the responsibility for reviewing and evaluating the Small Business Subcontracting Program at a contractor's plant(s).

(b) *Procuring Activities.* The procuring activity, designated in accordance with subparagraph (a) above, is responsible for advising the contractor or subcontractor of the requirements of the program and for insuring that a program to fulfill these requirements is carried out on a continuing basis. The cognizant Field Contract Administration office shall be advised by the designated procuring activity whenever a contractor or subcontractor is required to establish a Small Business Subcontracting Program that will be evaluated by the Navy, and such office shall assist the procuring activity in carrying out its responsibilities. Periodic formal reviews of contractor's Small Business Subcontracting Program will be accomplished by the small business specialist as the procuring activity, or by a Field Contract Administration office when so requested by the procuring activity, using for guidance an Evaluation Check-off Sheet as prescribed in § 1.707-4(c)(3). Advance notice of intention to conduct such surveys or visit plants shall be given by the small business specialist to the appropriate Contract Administration office. Personnel from the cognizant procuring activity, preferably from the Small Business Office, will visit contractors or subcontractors in the Program at least once a year to review their performance.

(c) *Field Contract Administration Office.* The designated procuring activity shall request the cognizant Field Contract Administration office to maintain continuous surveillance over the purchasing practices of prime contractors and subcontractors participating in the Small Business Subcontracting Program to insure compliance with the provisions of § 1.707-3. Such surveillance by the Field Contract Administration office will include observation of the extent to which consideration is given to the potentialities of small business concerns in make-or-buy decisions. The field Contract Administration office representative shall make appropriate representations to a contractor or subcontractor when a make-or-buy decision is contemplated which would adversely affect small business concerns and appears unwarranted in the light of the contractor's responsibilities under this Program. When requested by the procuring activity to conduct a formal review of a contractor's Small Business Subcontracting Program, using the Evaluation Check-Off Sheet as prescribed in § 1.707-4(c)(3), one copy of the completed report should be furnished to the requesting activity and the other copy to the Chief of Naval Material (MAT0212).

(d) *Prime and Subcontractor Performance.* In the event of unsatisfactory subcontracting practice by a contractor under this Program, the designated procuring activity should so notify the contracting officer and insure that the contractor is similarly advised on this action.

§ 737.1-900 Responsible Prospective Contractors.

§ 737.1-950 Navy Contractor Experience List.

(a) *General.* The Chief of Naval Material maintains a Navy Contractor Experience List (NCEL), issued quarterly in the form of a NAVMAT NOTICE, which lists the names of contractors whose performance under one or more Navy contracts has been unsatisfactory. Similar lists covering contractors who have not performed satisfactorily under their respective contracts are maintained by the Air Force and the Defense Supply Agency. The Air Force Contractor Experience List (AFCEL) and the Defense Supply Agency Contractor Experience List (DSACEL) are distributed as enclosures with the NAVMAT NOTICE. The NCEL and all correspondence disclosing the names of contractors included, or proposed to be included, on the NCEL

shall be designated and marked "FOR OFFICIAL USE ONLY," except that the original of correspondence addressed to the contractor concerned need not be so marked; however, any distribution copies of letters addressed to the contractor do require the designation and marking, "FOR OFFICIAL USE ONLY." The NCEL provides the following data:

(1) Name of supplier (where appropriate, division or plant concerned will be specified);

(2) Address (city and state only);

(3) Reason for inclusion on the List (identified by the related Code Symbol referenced in the publication);

(4) Activity recommending inclusion on the List (abbreviated symbol: SUP SHIP 5 ND, SPCC, NAVAIR, DCASR New York, etc.); and

(5) Date placed on List.

(b) *Purpose.* The NCEL has a number of purposes, the principal ones being to:

(1) Motivate the contractor to improve his performance to the degree necessary to prevent his inclusion on the List or to accomplish his early removal therefrom in the event he has been listed.

(2) Identify contractors who have not performed satisfactorily and provide notification thereof to other service components.

(3) Alert the contracting officer to the deficiencies of listed contractors who may be under consideration for new contract awards, and

(4) Focus the attention of both contractor and Navy management on the unsatisfactory conditions which require correction.

(c) *Application.* The NCEL consists of contractors whose performance on one or more Navy contracts, during the 12 months preceding listing, has been determined to be unsatisfactory. The NCEL is intended to aid the contracting officer in making the required determination, pursuant to § 1.904, of the responsibility or nonresponsibility of prospective contractors. If a listed contractor is being considered for a new award, the NCEL provides the contracting officer with information concerning past or recent unsatisfactory performance by the prospective contractor or with other data bearing upon the prospective contractor's responsibility. The areas of weakness thus identified indicate to the contracting officer the need for further information in determining whether the minimum standards for responsible prospective contractors can be met (see § 1.903). Based on such additional information (see paragraph (f) of this section) the contracting officer is in a better position to evaluate the responsibility of a prospective contractor.

(d) *Limitation.* The listing of a contractor on the NCEL must not itself be interpreted to mean that the listed contractor will not be given an opportunity to bid or quote on a proposed procurement; that negotiations cannot be carried on with that contractor; or that an award cannot be made to such contractor. Such listing indicates only that the unsatisfactory situation existed at or prior to the time the supplier was added to the list and does not constitute an exclusive basis for a determination of current responsibility. The NCEL has no relationship to the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors (NAVEXOSP-1205) and the inclusion of any sense be regarded as a determination of debarment or ineligibility. The procedures covered herein do not apply to foreign procurements.

(e) *Reasons for Listing Contractors.* A contractor may be included on the NCEL for one or more of the reasons shown below, identified by the related code symbol indicated:

(1) CODE SYMBOL F—*Contractors Who Have a Less Than Adequate Financial Capability for Contract Performance.* Recommendations under this category must be supported by a financial statement demonstrating lack of financial capability together with evidence that adequate financial support is not available. All contractors who have filed for bankruptcy or who have been placed in receivership shall be reported to the Chief of Naval Material for NCEL listing.

(2) CODE SYMBOL T—*Contractors Other Than Those Included on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (NAVEXOSP-1205), Who Have Had One or More Contracts Terminated for Default.* The documentation in support of the recommendation shall cite the contract(s) terminated for default, the date(s), supplies or services covered by the contracts, reasons for such terminations and the results of any appeal or other disposition of the case if available. All defaulted contractors shall be reported to the Chief of Naval Material for NCEL listing.

(3) CODE SYMBOL D—*Contractors Who Have An Unsatisfactory Record of Delivery on One or More Contracts.* Include in the letter of recommendation a summary of the frequency, duration and seriousness of late deliveries where the delay is considered to be the fault of the contractor in whole or in part. Indicate the nature and extent of any Government contribution to delinquency and the consequent number of days of excusable delay granted the contractor. Provide a list of contracts concerned and the applicable original contract delivery dates, revised delivery dates (give reasons therefor and whether consideration was obtained), actual delivery dates, number of days late and estimate cure date. Do not list contracts where the contracts are not considered responsible for any portion of the delay.

(4) CODE SYMBOL Q—*Contractors Who Have An Unsatisfactory Record of Quality Assurance/Control.* Furnish a current evaluation of the contractor's quality control or inspection system or specific examples of unsatisfactory or defective material.

(5) CODE SYMBOL M—*Contractors Whose Performance Is Considered Unsatisfactory or Whose Responsibility is Questioned for Other Reasons.* Recommendations must specify the particular area(s) considered to be unsatisfactory and provide an adequate but concise explanation as to the reasons therefor; e.g., inadequate property administration, poor purchasing system, failure to comply with specific contract requirements, a record of knowingly and willfully submitting unfounded or unsupportable claims or a course of conduct designed to frustrate the settlement of claims, etc.

(f) *Responsibility of Listed Contractors.* In determining the responsibility of prospective contractors who are listed in the NCEL, the PCO shall decide what additional information will be required, what sources of information will be utilized and what means, including preaward surveys as appropriate, will be employed to obtain the required information. In addition, where the supplier is listed in the NCEL because of his record of knowingly and willfully submitting unfounded, unsupportable claims or a course of conduct designed to frustrate the settlement of claims, approval must be obtained from the Chief of Naval Material (MAT 02) before making any award in excess of $100,000 to such supplier unless the procurement is from a sole source supplier for stock items or spare parts.

(g) *Recommending Activities.* Recommendations that contractors be included on the NCEL shall be submitted to the Chief of Naval Material (MAT 0241) by both purchasing and contract administration activities. Two important sources of information concerning contractor performance are requirements personnel and technical personnel. The PCO (Procuring Contracting Officer) shall therefore take necessary action concerning contracts under his cognizance to assure that information is received, on a recurring basis, from cognizant requirements and technical personnel regarding unsatisfactory contractor performance. Similarly, the ACO (Administrative Contracting Officer) shall assure that the technical organizational elements of the contract administration activity furnish requisite information. Both PCO and ACO activities shall pay particular attention to information received concerning contracto failure to meet quality control requirements or product quality standards, including cases where material has been delivered and accepted by the Government but is subsequently reported to be defective. It is emphasized that a contractor may be included on the NCEL for unsatisfactory performance on one contract only, notwithstanding the fact that performance under other contracts may be adequate. The PCO or the ACO shall submit a recommendation where the evidence warrants such action, regardless of the fact that knowledge of the contractor's performance is limited to a few contracts or to a single contract. Coordination between ACO and PCO is essential to assure that the Government has not contributed to the poor performance of a contractor by failure to provide special tooling, drawings and specification clari-

fication or contract modification where required.

(h) *Procedures.* If the PCO or ACO determines that a contractor should be placed on the NCEL for one of the reasons indicated in paragraph (e) above, the PCO or ACO shall submit a recommendation to that effect to the Chief of Naval Material (MAT 0241), stating the appropriate reason(s), together with the related code symbol. Recommendations shall be forwarded to the Chief of Naval Material (MAT 0241) via the cognizant command or office. Prior to submitting a recommendation to the Chief of Naval Material, the PCO or ACO shall take the following measures:

(1) Notify the contractor by letter (see paragraph (l)(1) of this section) that a recommendation to place his company on the NCEL is considered warranted. State the specific deficiencies in the contractor's performance which provide the basis for the proposed action. Enclose in this initial notice to the contractor a copy of the § 737.1-950. Inform the contractor that he may submit a reply to the notifying activity, mailed in sufficient time to be received within 15 days from the date of the notice, advising of proposed corrective measures to be taken and presenting reasons why he should not be recommended for NCEL listing.

(2) Send copies of the above initial notice to the cognizant ACO or to the cognizant Navy PCOs, as the case may be, requesting a reply be submitted within 15 days from the date of the notice, including concurrence or nonconcurrence in the proposed action together with appropriate comments.

(3) If the contractor's response and the ACO/PCO comments received within the specified 15 days do not justify cancelling the proposed recommendation, or if no contractor response has been received, immediately inform the contractor, by means of a second letter (see paragraph (l)(2) of this section), that he has been recommended for placement on the NCEL. On the same date this notification is forwarded to the contractor, submit the NCEL recommendation to the Chief of Naval Material (MAT 0241).

(4) If the response from the contractor and the replies received from the ACO/PCO do justify cancellation of the proposed recommendation, a prompt acknowledgement to the contractor should be forwarded.

(i) *Information to be Included in Recommendation.* The minimum information to be furnished with each recommendation is as follows:

(1) Full name of company, address, product line and name of president or top responsible official. If the recommendation applies to an affiliate or subsidiary only, so indicate and explain relationship to parent company.

(2) Cognizant purchasing and/or contract administration office, name and position of person to be contacted and autovon and commercial telephone numbers.

(3) Applicable contract number(s), effective date, type of contract, total dollar value, dollar value of undelivered balance and unusual contract provisions, if any, considered to have a bearing upon the issues presented.

(4) Code symbols for which the contractor is being recommended. (See paragraph (e) of this section for the information required under the applicable symbol and include additional details as appropriate). Indicate whether the recommendation is concurred in or not concurred in by the ACO or the PCO, as the case may be. The reasons for recommending the contractor for placement shall be based on the contractor's performance during the preceding 12 months. If Code Symbol F (inadequate financial capability) is cited, comments covering the following points should be furnished: (i) Whether the contractor is in a position to obtain the additional financial resources necessary to complete the contract, (ii) whether Government assistance is feasible and advisable and (iii) whether any plans exist or are being prepared to minimize Government losses in the event the contractor is not able to continue. If the recommendation (regardless of which code symbol is cited) is intended to apply only to certain supplies or services or only to a specific plant, the areas of limitation shall be clearly defined and any listing subsequently made as a result of such a recommendation will indicate its limited nature.

(5) Brief statement of previous corrective action indicated by the PCO or ACO, e.g., conferences with contractor indicating dates held and outcome; revision of delivery schedules; issuance of "cure notices" or "show cause notices," including dates such actions were taken and results thereof.

(6) Brief narrative of factors considered responsible for contractor's unsatisfactory performance, such as poor production planning, failure to place timely orders with vendors or subcontractors, lack of correct evaluation of solicitations, failure to take timely and aggressive action to identify and correct deficiencies, etc.

(7) A copy of both the initial and second notice to the contractor together with a copy of any contractor response to these notices.

(8) A copy of the ACO/PCO comments on the initial notice to the contractor. If these comments or the contractor's response are received by the recommending activity after it has submitted the NCEL recommendation, promptly forward such replies separately to the Chief of Naval Material (MAT 0241).

(9) A detailed analysis of the contractor response taking exception to the recommended action. This analysis shall consist of a comprehensive evaluation of the information furnished by the contractor, indicating specific areas of agreement or disagreement with the contractor's statements, providing detailed comments, fully documented of the issues involved and an up-date of earlier information supplied by the recommending activity.

(j) *Review of Listed Suppliers.* The continuing review of each contractor listed on the NCEL will be the primary responsibility of the applicable recommending activity for the purpose of determining whether or not retention on the list is warranted. Recommendations for removal from the NCEL may be made at any time that the deficiencies which resulted in the listing have been corrected or sufficiently improved to justify such action. Specific information substantiating the recommended removal shall be furnished. Contractors who no longer have Government contracts after having been included on the NCEL for one year should normally be recommended for removal. Removal shall also be recommended in the case of any contractor who has subsequently been included on the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors (Part 1, Subpart F). Recommendations for removal should not be made where a contractor has appealed any matter which resulted in his being listed unless and until the appeal is resolved in the contractor's favor. In the case of a Code T listing, removal from the NCEL should not be recommended until (1) the termination for default has been converted to a termination for convenience, (2) the Armed Services Board of Contract Appeals has substantially upheld the contractor's position, or (3) the contractor has been listed for one year. Where a contractor has been listed under Code F for bankruptcy/receivership, removal should not be recommended until such proceedings have been completed and the contractor has been listed for one year. Whenever the contractor's retention is recommended, briefly indicate the reasons therefor (omitting information previously reported) and also validate the applicable code symbols.

(k) *Quarterly Report.* Pursuant to paragraph (j) of this section, the recommending activity shall, within 45 days after the date of each quarterly issue of the NCEL, submit by letter to the Chief of Naval Material (MAT 0241) recommendations to remove or retain the names of listed contractors.

(l) *Formats for Letters to Contractors.* Suggested formats for the initial and subsequent notice to the contractor are set forth below.

(1) Format for Initial Notice to Contractor:

(Letterhead of Recommending Activity)

Mr. ----------, President
(Name of Contractor)
(Address)

DEAR MR. ----------: The Navy Department has established a list of contractors whose performance or financial condition has been determined to be unsatisfactory. This list is the Navy Contractor Experience List (NCEL). The policies and procedures to be followed in listing contractors on the NCEL are set forth in Section I, Part 9 of the Navy Procurement Directives (NPD), a copy of which is enclosed. The NCEL provides a means of informing contracting officers that an unsatisfactory situation existed at, or prior to the time a contractor was added to the list. It should be understood, however,

that contractors included on the NCEL are not barred from submitting bids or offers on proposed procurements or from receiving future contract awards.

This is to notify you that in view of the unsatisfactory conditions noted below (indicate contract number(s) involved and discuss specific deficiencies thereunder) this office considers that a recommendation to place your company (insert name of company, plant or division and location) on the NCEL is warranted. Action recommending your inclusion on the NCEL is being deferred, however, to afford you an opportunity to advise what corrective measures you propose to take and to present your reasons why the company should not be listed.

Please forward your reply in sufficient time to be received by this office within 15 days after the date of this letter.

Sincerely,

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(2) Format for Notice to Contractor of Recommendations Submitted to the Chief of Naval Material:

(Letterhead of Recommending Activity)

Mr. _____, President
(Name of Contractor)
(Address)

DEAR MR. _____: We have carefully reviewed your letter of (date) (or: We have received no reply to our letter of (date)) and have concluded that a recommendation that your company be placed on the Navy Contractor Experienced List (NCEL) is still warranted for the reasons stated in our letter dated _____. Accordingly we have recommended that your company be included on the NCEL.

If this recommendation is approved by Headquarters, Naval Material Command, your firm will subsequently be listed on the NCEL. A record of your performance on present and future contracts will be reviewed at least quarterly. At such time as there is assurance that your company has taken effective action to correct the unsatisfactory conditions, we shall recommend your removal from the NCEL.

We earnestly hope that you will promptly correct the conditions which resulted in this recommendation.

Sincerely,

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§ 737.1–1000 Publicizing Procurement Actions.

§ 737.1–1002 Dissemination of Information Relating to Invitation for Bids and Requests for Proposals.

§ 737.1–1002–6 Paid Advertisements in Newspapers and Trade Journals.

Subject to the requirements of Part 4, Subpart H, the Head of a Procuring Activity may authorize the publication of paid advertisements, notices, or proposals as are deemed necessary in order to secure effective competition.

§ 737.1–1002–50 Announcement of New Major System/Project Procurement.

The text of the synopsis to be published in the Commerce Business Daily shall be in the following format. The procedure for preparation and transmission set forth in § 1.1003–9 shall be used. Development sources sought:

(a) The Department of the Navy contemplates the procurement of contract definition studies leading to the selection of a contractor to design, produce, and deliver the following:

(Describe system's mission, operating characteristics, subsystems, etc., provided information is unclassified.)

(Describe scope of contractor's responsibility.)

(Describe extent of GFE.)

This procurement will follow the procedures required by DOD Directive 3200.9 of 1 July 1965 "Initiation of Engineering and Operational Systems Development." Solicitation of proposals will be restricted to a bidders list of qualified concerns. The preparation of this restricted bidders list will be undertaken by the _____ project office. It will be based on evaluation of applications to determine the capability of prospective offerors to perform the "Contract Definition" contract and design and production of _____ during the development and production contract. Interested firms as separate corporate entities or as proposed joint ventures should submit applications to the project manager, _____ (insert _____ project, _____ by mailing address)

_____
(insert date)

Information submitted should:

(1) Describe capability for design, systems analysis, financing, computer programing, and production. Include experience on work performed or being performed pertinent and specific in the areas under consideration.

(2) Furnish names and professional qualifications of engineers, technical, management and other key personnel who may be assigned as principal project officers for this task.

(3) Describe availability and capacity of facilities including access to labor supply.

(4) Furnish statement regarding industrial security clearance.

(5) Furnish financial statement including corporate structure.

(6) Describe in detail the overall management system, and how the system will meet Navy management and date requirements regarding such areas as cost control ssytem criteria and technical performance measurement.

(7) Any other specific information pertinent to this particular procurement that merits consideration in our evaluation of the information submitted.

Regardless of any previously submitted information or information on file in the Navy, interested organizations must submit qualifying information requested by this specific synopsis. Award of contract definition contract will be made to two or more offerors selected by the Government based on managerial and technical excellence as evidenced in proposals received in response to a formal request for proposals presently schedule for issue approximately _____. Work under "Contract Definition" contract will consist of the preparation and submission of firm proposals for the engineering development and production of _____. For purposes of identity, respondents should reference this synopsis No. _____.

§ 737.1–1004 Announcements of Contracts Valued at $1,000,000 or More.

(a) Announcement of any newly executed contract, including announcement of any modification to a previously awarded contract, valued at $1,000,000 or more, shall be forwarded for coordination to the Navy Chief of Information (CHINFO) and release by the Office of the Assistant Secretary of Defense (Public Affairs). In the case of a letter contract, the announcement will be forwarded to CHINFO (1) at the time of issuance of the letter contract, (2) when it involves any modification, and (3) at the time of its conversion to a definitive contract. No public release (including advice to the prospective contractor) shall be made until such time as designated by CHINFO. All necessary precautions shall be taken to prevent the unauthorized disclosure of information prior to the designated release time.

(b) *Submission.* Contract announcements shall be submitted in accordance with the following procedures:

(1) Two (2) copies of the covering letter forwarding the announcement shall be prepared. The covering letter shall indicate:

(i) That the information contained in the announcement is unclassified;

(ii) Any areas of possible sensitivity and of any high level interest.

(2) Five (5) copies of the announcement shall accompany the covering letter and the announcement shall include:

(i) Full, simple and unclassified description of the supply or service being procured;

(ii) The new total dollar value of the overall contract, along with the new commitment, if the contract announcement is a modification to a previously awarded contract. Sample formats of modification announcements are illustrated in (f) below.

(iii) The name and telephone number, appearing at the bottom left corner of the announcement, of the person handling the contract announcement.

(c) *Security Review.* Routine contract announcements are exempt from the security review process. However, full security review is required for contract announcements which are accompanied by amplifying press releases.

(d) *Exceptions.* Exceptions to the foregoing requirements may, and should, be sought from CHINFO when the urgency of the procurement warrants such action.

(e) *Requests for Extensions.* If, after submission of the contract announcement, it is determined that (1) award will not be made concurrently with public announcement thereof, or (2) award will be delayed considerably subsequent to its announcement, the Navy Chief of Information (01–22) shall be advised immediately in advance of the scheduled release time and a request for extension of release shall be made.

(f) *Format.* To provide a more succinct understanding to the public of the procurement action being awarded, Procuring Activities shall insure adequate explanation in public announcements of the specific type of procurement action being awarded (i.e., state that the Navy has exercised a "contract option" or negotiation of a "change order"). Sample formats of contract modification announcements, containing minimum re-

quired information, are illustrated below. Formats may be enlarged upon or altered to suit the circumstances of the procurement.

NOTICE OF AWARD OF CONTRACT MODIFICATION

_____ is receiving modification number _____ to previously awarded Contract No. _____ issued by the _____. This modification increases the value of the basic contract by $_____, the new total value of the entire contract is _____.

Insert one of the following as appropriate:

(i) This modification is the _____ increment of this _____ year multi-year basic contract.

(ii) This modification covers the purchase of an additional quantity of _____ being produced under the basic contract.

(iii) This modification covers the exercise of an option for an additional quantity of _____ being produced under the basic contract.

(vi) This modification covers the negotiation of change orders issued under the basic contract which provides for the purchase of _____.

The contractor indicates that the work (is being) (will be) performed at _____.

NOTICE OF AWARD OF CONTRACT MODIFICATION DEFINITIZING A LETTER CONTRACT

_____ is receiving a negotiated _____ modification which definitizes previously awarded Letter Contract _____ at a contract/target price of $_____. The contract covers the purchase/construction of 150,000 widgets. The contractor indicates work will be performed at _____. This is a _____ Contract Modification _____.

§ 737.1–1007 Public Release of Long-Range Procurement Estimates.

(a) Public releases of long-range procurement estimates shall be made by the Head of the Procuring Activity through use of the Department of Commerce Business Daily and other appropriate means for all procurements expected to exceed $100,000 in a fiscal year unless release of the information will (1) adversely affect procurement by encouraging undesirable practices or (2) indicate the existing or potential mobilization of the industry as a whole. Long-range procurement estimate releases shall include planned requirements beyond the current fiscal year whenever available.

(b) A copy of each release shall be forwarded to the Chief of Naval Material (MAT 02E).

§ 737.1–1100 Qualified products.

§ 737.1–1102 Responsibility for Qualification.

The Navy frequently uses specifications with product qualification requirements where the designated Preparing Activity is an Army or Air Force organization, or even another Government agency. In such a case the Navy Custodian identified in the specification acts in a liaison capacity with the Preparing Activity.

§ 737.1–1104 Availability of Lists.

(a) *To Suppliers.* The usual source for suppliers to obtain QPL (Qualified Products List) lists is the DOD Single Stock Point (DOD SSP) located at the Naval Publications and Forms Center, Philadelphia. However, any Navy activity maintaining a set of QPL's may, upon request, and subject to the requirements of § 1.1104, make QPL information available by giving the supplier's representatives access to such lists; by furnishing them with reproductions, copies, or transcripts of the list or lists involved; or by other appropriate means. The exact method of making such information available is left to the discretion of the Navy activity concerned. However, when such information is made available to a supplier, all qualified products and the manufacturers and their plants listed for the grade, class, or type of products and the manufacturers and their plants listed for the grade, class, or type of products for which the information was requested, and the date of furnishing such data shall be included.

§ 737.1–1109 Inadequate Competition.

A copy of correspondence directed toward increasing competition shall be forwarded to the Chief of Naval Material (MAT 042).

§ 737.1–1500 Options.

§ 737.1–1504 Establishment of Procedure to Insure Timely Exercise of ontract Options.

Each procuring activity shall establish a procedure to insure timely exercise of any contract option when such exercise is in the best interest of the Government in accordance with Part 1, Subpart 0.

§ 737.1–1900 First Article Approval.

§ 737.1–1902 Placement of Additional Procurements Prior to First Article Approval of the Same Item Under a Previous Contract.

(a) *General.* The purpose of a first article approval, as provided in § 1.1900, is to assure that the contractor can furnish a product that is satisfactory for the intended use and therefore minimize risks for both the contractor and the Government. Follow-on procurements have been made for items prior to Government approval of the first article test called for in the first contract. This procedure is considered to have increased the risks to the Government since possible increased costs and technical or legal complications are invited by such action.

(b) *Policy.* The award of additional procurements for the same item prior to first article approval of that item under a previous contract is inconsistent with the objective of reducing risks to the Government. Under unusual circumstances, urgent requirements may arise that would necessitate placement of additional procurement for the same item under a previous contract requiring first article approval of that item. Such urgency should be carefully evaluated against any possible increased costs and the potential legal and technical complications that may develop by premature contracting for items requiring first article testing shall be considered.

(c) *Approval.* The Head of the Procuring Activity or his designee shall:

(1) be the only individual authorized to approve additional contracts to companies when an acceptable first article, as required under a previous contract, has not been approved;

(2) insure that each contract involving follow-on procurement prior to approval of the first article is handled on a selective basis and in a judicious manner. The risks to the Government, particularly increased costs, if an acceptable first article is delayed, must be carefully considered and, if possible, avoided.

(3) insure that the risks involved in follow-on procurements prior to first article approval, if such procurements are justified, are fully documented in the Procurement Directive as well as in the Business Clearance.

§ 737.1–2100 Advance Procurement Planning.

§ 737.1–2100–1 General.

(a) The purpose of the Advance Procurement Plan (APP) is to document, at an early point in time, the long range contractual method or methods which will be utilized for the procurement by contract of both the development and production of an individual item or system. It is the written result of advance procurement planning, as defined in § 1.2100–1, as the means by which the efforts of all personnel responsible for the procurement, by contract, are coordinated as early as practicable in order to obtain, on time, required items of requisite quality and at the lowest sound price.

(b) Since the APP is intended to document the contractual plans, including realistic milestones for acquiring a system or item, the detail to be included in a particular APP, including updates thereof, must necessarily vary with the magnitude of the program and the stage in development and/or production of the specific item or system to be acquired (for example, in accordance with SECNAVINST 5000.1, the advance procurement planning aspects accompanying an initial DCP should address, on a system basis and only in general terms, the intended business and contractual relationship(s) between the Navy and industry). Contractual planning may be firm or tentative.

(c) As a management tool the APP can serve many useful functions; however, the specific purpose, as set forth in sub-paragraph (a) above, must remain

dominant if the APP is used for any other purpose.

(d) The APP *shall not* be used as the sole support of a Determination and Finding (D&F).

§ 737.1–2100–2 Applicability.

(a) In addition to the requirements prescribed in § 1.2100–2 for the preparation of APPs on negotiated hardware procurements (not applicable to major overhaul programs), APPs will be prepared or will require coverage, in the manner prescribed in § 737.1–2101(d), for the following:

(1) Negotiated hardware multi-year procurements, if the total estimated value of the multi-year is in the amount of $1 million or more.

(2) In-house development efforts where it is anticipated that the eventual production effort will be contracted to industry and for which the production effort will require the preparation of an APP. The APP should be prepared at the commencement of the in-house effort and should show how the transition from in-house R&D will lead to production by industry.

(3) Other procurements which the Chief of Naval Material (MAT 023) designates as requiring APP preparation.

(4) Non-hardware procurements will be included in APPs covering system procurements under the conditions set forth in § 737.1–2101(d).

(5) A system APP shall be prepared to accurately portray the provisions of each DCP.

(b) Whenever emergency procurements under § 3.202 are justified as described in § 1.2100–2(b), the requirement for preparation of an APP is waived for that particular procurement. This does not automatically waive the requirement for an APP when there will be additional requirements for an item, and an APP will be prepared and approved for these future requirements prior to their procurement in accordance with § 737.1–2100–3.

§ 737.1–2100–3 Initiation of Advance Procurement Planning.

(a) The initiation of timely APP preparation requires that the Acquisition Manager (AM), as defined in § 737.1–2100–4(a), must notify the appropriate contract group or division and commence forming the planning council as soon as the Specified Operational Requirement (SOR) or Advanced Development Objective (ADO) is assigned to the Principal Development Activity (PDA) by the Chief of Naval Material (MAT 03). The APP must be prepared, submitted and approved in sufficient time so that it can be incorporated or referenced in the Technical Development Plan (TDP), or comparable plan.

(b) Advance procurement planning for items which do not require a TDP shall be initiated if the procurement meets the criteria set forth in § 1.2100–2, § 1.2100–3 and § 737.1–2100–2. If circumstances prevent such preparation, the APP shall be prepared and approved no later than each January for the ensuing fiscal year.

(c) Advance procurement planning and early preparation of an APP may in fact provide additional justification for the requirement of specific funding and may also contribute to program stabilization. The APP can show the optimal funding to provide the most economical contractual method and alternative contractual methods for less than optimal funding.

§ 737.1–2100–4 Responsibility for Preparation.

(a) *Acquisition Manager (AM).* The Acquisition Manager (AM) is defined as that individual charged with overall responsibility for acquisition of weapons systems, individual items of equipment and facilities, as well as planning for logistic support of these end items. Project Managers, Project Officers, Program Directors, Commodity Managers and other officials responsible for the material program are considered Acquisition Managers for the purpose of this Subpart.

(1) The Acquisition Manager, as defined above, in consultation with the appropriate contracting officer, shall ensure the preparation of each APP and updating thereof.

(2) The Acquisition Manager (AM) and/or the procuring activity are encouraged to require preparation of APPs for internal use for procurements not specified by § 1.2100 or this Subpart, even though submission to the Chief of Naval Material for approval is not required.

(b) Each organization shall make such organizational arrangements, including assignment of functions and responsibilities as necessary, to coordinate, establish and implement advance procurement planning and to the preparation of APPs. When the procurement of a system spans several procurement organizations, the AM shall coordinate the plans for all the organizations into preparation of an APP for the entire system.

(c) Each APP shall be updated:

(1) In accordance with specified milestones set forth in the plan and such planned date for update shall be set forth in the APP (Note: Approval of the APP will constitute an endorsement of the update schedule), and/or

(2) Whenever changes occur that will materially affect the method of procurement and/or objectives of the AP Plan.

(3) As appropriate and necessary in connection with DCP updates.

§ 737.1–2100–5 Approval.

(a) Advance procurement plans shall be approved by the Chief of Naval Material (CNM) or the Head of the Procuring Activity (HPA) in accordance with the criteria set forth in paragraphs (b) and (c) below. The HPA is authorized to delegate approval authority for certain APPs in accordance with paragraph (d) below.

(b) The CNM shall approve APPs in the following categories:

(1) All Systems APPs defined in § 737.1–2101(d).

(2) APPs for programs included in the current FYDP which have a total estimated RDT&E contractual cost in excess of the following thresholds:

	Million
NAVAIR	$5.0M
NAVSEA	5.0M
NAVELEX	1.0M
Misc	1.0M

and/or

(3) APPs for programs in the current FYDP which have a total estimated production contractual cost in excess of the following thresholds:

	Million
NAVAIR	$25.0M
NAVSEA	25.0M
NAVELEX	6.0M
Misc	3.0M

(4) APPs covering special cases not covered in paragraphs (b)(1) through (3) which have been specifically identified for CNM or higher level review.

(5) APPs in the foregoing categories shall be approved by the HPA prior to forwarding to NAVMAT for CNM final approval.

(c) The HPA shall approve APPs covering programs specifically designated for CNO review and approval covered by OPNAVINST 3960.8 and identified in OPNAVNOTE 3960 when they do not exceed the above thresholds. CNM approval is not required.

(d) Programs not in the above categories (paragraphs (b) and (c)) may be approved by either the HPA or his Flag designee.

(e) In addition to the approvals noted above, APPs shall be signed by the Acquisition Manager (AM) and the head of the contracts group (contracting officer).

(f) Copies of APPs shall be forwarded to MAT 02 as follows:

(1) APPs requiring CNM approval: ten (10) copies.

(2) APPs requiring only HPA or his designee approval: two (2) copies.

(3) Upon submission of secretarial RANs/D&Fs, one (1) copy of the approved APP must be attached thereto.

(g) The content of Advance Procurement Plans is considered privileged information to the Navy and must be prepared internally.

(h) For APPs requiring CNM approval, a review of the program will be accomplished by Headquarters Naval Material Command and, providing it is in accordance with Defense procurement objectives and Navy policy, approval of the APP will be granted. The review of the APPs will be primarily directed toward determining the soundness of long range contractual plans in the APP.

(i) Based on the information provided and such other information which may be available, the CNM approval of the APP is defined to mean, specifically, that the long range contractual plans set forth in the APP are judged to be sound. It is recognized that the APP is a plan, subject to unforeseen events and changes which may require deviation from the contractual plans set forth. The Chief of Naval Material (MAT 02) should, however, be kept informed by either a memorandum or a revision to the APP when significant changes occur which affect the approved plan.

§ 737.1–2101 Guidelines for Development of Advance Procurement Plan.

(a) The § 1.2101 guidelines are flexibly outlined. Each plan must be self-supporting to the extent practical, but where necessary, references to specific parts or the whole of other documentation should be included in the APP rather than including redundant information. Referenced documents shall be made available upon request to facilitate review of the APP. If the procurement approach in the APP is supported by, or differs from, that contained in any document which has been approved at any level higher than the Chief of Naval Material, the document must be referenced and differences noted in the APP.

(b) Among the milestones the APP should identify are:

(1) The date the ILS Plan will be completed and/or

(2) Reference the existing ILS Plan.

(3) When the information becomes available, the milestone chart should show the estimated date of contract award for each item of Government Furnished Material (GFM) included in the APP and the point at which it will be available and, if different, the date of the GFM must be delivered to the systems integration contractor to preclude having a detrimental effect on the program.

(4) Test and evaluation to be accomplished.

(5) Approval for service use.

(c) While some programs may only have several decision points, others which are more complex may have many, especially if there are several major subprojects under one project. Though the primary concern is the procurement milestones, any other milestones or decision points which will effect the procurement should be indicated (e.g., for those programs meeting the thresholds of DODD 5000.1, the milestones for update of the Development Concept Paper (DCP), and for DSARC and OSD approvals should be identified).

(d) § 1.2101(d) requires preparation of APPs on an individual item basis or on a project basis, however, a system APP will be prepared within the Department of the Navy for each complete system.

(1) A system APP shall be prepared to accurately portray the provisions of each DCP and shall designate approval authorities and responsibilities for the preparation of related lower tier sub-systems and/or component APPs. Where no DCP exists, the system will cover:

(i) Procurements of a total cost of more than $1,000,000 or

(ii) Procurements by contract for studies, services and software where the total cost of the procurement will exceed $1,000,000 or

(iii) Any other procurement not covered in paragraphs (d)(1) (i) or (ii) of this section, but which may have an effect on the system development/production.

(2) In-house efforts related to the system will be discussed and the relationship shown between this effort and the system. If a sub-system is being procured under another APP, it is only necessary to reference the APP and indicate on the system APP milestones which reflect how the acquisition effects the system procurement. Where applicable, the intended relationships incident to accomplishing the total system integration function shall be addressed.

(e) The following important specific areas will be covered in the APP:

(1) Integrated Logistics Support (ILS) is necessary in all procurements. Just as it is necessary to plan the procurement of hardware for service use, it is important to procure the ILS for that hardware. Assurance shall be provided in the APP that provision has been made to procure that ILS. An Acquisition Logistician shall be designated for each program, identified in the APP, and shall take part in APP Council meetings to insure provision is made for the procurement of required ILS. Where ILS planning has already been done in a TDP or ILS plan, such document need only be referenced in the APP.

(2) The APP shall contain a discussion of the technical and economic risks in the program. The discussion should avoid nebulous words which are not well defined and which would convey different meanings to different persons. The discussion shall outline (i) what has been accomplished to eliminate risk, (ii) the results of testing that took place, and (iii) a comparison of these test results with the goals established for the item or program at its inception. When no test results are available, the comparison may be made to similar programs which had similar developments in the past. When the terms high, medium, low, or no risk are used, an explanation as to how this determination was made shall be included. It may be sufficient to reference specific parts of an approved TDP, or equivalent document.

(f) *Technical data package for reprocurement purposes.* (1) The purchase of a technical data package for the intended purpose of future competitive reprocurement must be carefully considered because it is an expensive element in the acquisition of data and contributes in a great measure to the cost of buying military hardware. The decision to buy such a data package is difficult because it must be made well in advance of the contracting phase for production; and it must be correlated with the plan to obtain competition which, when made in connection with the development of the long range procurement plan, must be documented in the APP. Even though the APP may provide for the planned purchase of a reprocurement technical data package, the actual purchase of the data package must be deferred until such time as a realistic determination can be made as to whether competitive reprocurement of the hardware is appropriate and practicable. In reaching the decision to purchase the data package, its estimated cost and benefits to be derived from the use of the data package for competitive reprocurement purposes must be carefully analyzed and documented in the APP. This decision is to be appropriately reflected in the evolution of the APP and shall identify the contents of the data package that best meet the need for procuring follow-on hardware by competition and outline the proposed contractual plan for acquiring the data package. The contractual plan should also consider and define the rights the Government will have to use the entir data package for competitive procurement (see Part 9, Subpart B). Technical data specified in a contract for delivery is subject to the rights established by the appropriate Rights in Technical Data clause of Part 9, Subpart B, required to be made a part of the contract. A contractor, therefore, may be allowed to deliver certain technical data with restrictive-use legends when the data pertains to items, components or processes developed at private expense. Restrictive-use data cannot be used for competitive procurement. Thus, restrictive-use data furnished as part of a technical data package for competitive reprocurement can limit the usefulness of the entire package.

(2) In deciding whether to plan for the purchase of a technical data package for competitive reprocurement of hardware, it would not be appropriate to plan for such a purchase if, for example:

(i) A one-time requirement is involved;

(ii) The hardware is expected to be or can only be procured from a single source because of design considerations and technical know-how possessed by that source;

(iii) Commercially available hardware from a number of sources will satisfy requirements;

iv) Procurement can be made initially on the basis of performance specifications even though a technical data package may eventually be required for substantial follow-on procurements to be contracted to industry;

(v) Limited quantities will be procured and competition is considered remote in view of substantial start-up costs and extensive lead time required for a new source;

(vi) Procurement of hardware is to satisfy an interim requirement and for a limited quantity while awaiting future production results from an on-going R&D effort;

(vii) The hardware is being purchased for a unique purpose (i.e., side-by-side testing with functionally-equivalent equipment, or a "one-of-a-kind" hardware for test and evaluation);

(viii) Breakout of components for future competitive procurement (§ 1.326) is desired but the design of the end item is not yet considered sufficiently stable for breakout from the prime contractor and the risk of the procurement of data is considered too great;

(ix) The design of the hardware is not sufficiently stable and further design or engineering effort is anticipated or required; and

(x) A determination has not been made as to the earliest point at which

it is practicable to introduce competition, considering performance, safety, reliability, maintainability ,or delivery requirements.

(3) An estimate must be developed as to the probable net savings anticipated if a technical data package were to be acquired for competitive reprocurement (will substantial net cost savings result, considering the offsetting factors of: costs of the technical data package, the potential risks inherent in the use of the package by a competing source, probable technical risks as to performance, reliability, maintainability of the equipment, desirability of obtaining identical or functionally and physically interchangeable items).

(4) If competitive procurement is not practicable, the type of data that is needed for use with the delivered equipment should be specified. Thus, for example, in lieu of reprocurement data package, engineering data to enable installation, testing, training, maintenance, or repair should be obtained, including computer software (if appropriate).

(5) If competitive procurement of the hardware is determined to be practicable, the type of data package should be identified:

(i) Complete data package (specify appropriate MIL-SPEC);

(ii) Performance-type specification (this form of data package should be given serious consideration when the end item is not complex or it is believed that a complete technical data package cannot be effectively used by other than the originator of the hardware).

(g) Whenever APPs do not schedule the introduction of competition for the end item, the following information concerning breakout shall be included in such plans:

(1) A statement that § 1.326 is being complied with;

(2) Identification of components for which a decision to breakout has been made, and brief discussion of acceptability of risks and estimated overall cost savings;

(3) With respect to those components which have been reviewed and earmarked as being susceptible to breakout pursuant to § 1.326-3, the number of items included thereunder shall be indicated and identified if their number is sufficiently small to do so without imposing an excessive administrative burden, briefly stating the reason why such components are not now subject to an affirmative decision to breakout;

(4) If the listing of the components under paragraph (g)(3) of this section will impose an excessive administrative burden, the Advances Procurement Plan shall state that the documentation required by § 1.326-5 has been prepared and will be available for review by representatives of the Chief of Naval Material. Such documentation will be reviewed by the Chief of Naval Material on a selective test basis;

(5) Identification of components of systems and sub-systems not susceptible to breakout shall not be made in the APP but a listing thereof, and a brief statement as to the reasons for their non-susceptibility, shall be maintained on file in the procuring activity subject to review by the Chief of Naval Material.

§ 737.1-2101-1 Establishment of Cut-Off Dates.

Advance procurement planning is a continuing process. The APP only represents the plans at a single point in the process. To allow for an orderly processing, the Acquisition Manager shall establish a cut-off date and the APP shall be prepared and submitted with the information available as of that date. The APP need not be redrafted if changes that occur prior to the date of submission to the Chief of Naval Material (MAT 023) do not effect the contractual method(s) to be used. A memorandum shall be attached to the APP indicating the changes that have occurred.

§ 737.1-2101-2 Classification of APPs.

Because of their planning nature, APPs which do not contain classified information shall be marked "For Official Use Only" and be handled and safeguarded as required for documents so marked.

§ 737.1-2101-3 Execution of Advance Procurement Plans.

Where circumstances dictate, procuring activities may proceed with the execution of the plan, pending its approval, up to the point of issuance of Request for Proposals or Quotations.

§ 737.1-2101-4 Sample Format.

(a) In accordance with the guidance discussion contained in § 1.2102, it is intended that the APP be a flexible document and that the content thereof should be held to the minimum essential data required to support the plan. The planning should be appropriate to the plan involved and address the total system or component system, as appropriate.

(b) The SYSCOM/Procuring Activity procurement plan identified should define and justify selected alternative(s). Discussion of other procurement alternatives considered should demonstrate to the reviewing officials that the alternative(s) selected is/are the alternative(s) in the Government's best interest.

(c) The following illustrative format is designed to give guidance in the preparation of APPs by Navy/Marine Corps elements.

ILLUSTRATIVE ADVANCE PROCUREMENT PLAN FORMAT

Page ------

ADVANCE PROCUREMENT PLAN NO.

Description of item ----------
Project ----------
Project manager ----------
(Code and name)

DESCRIPTION OF PROJECT OR ITEM

(Contracting Officer)	Date
(Procurement Representative)	Date

Approved:

(Project Manager)	Date

ILLUSTRATIVE FORMAT
GENERAL PROVISIONS

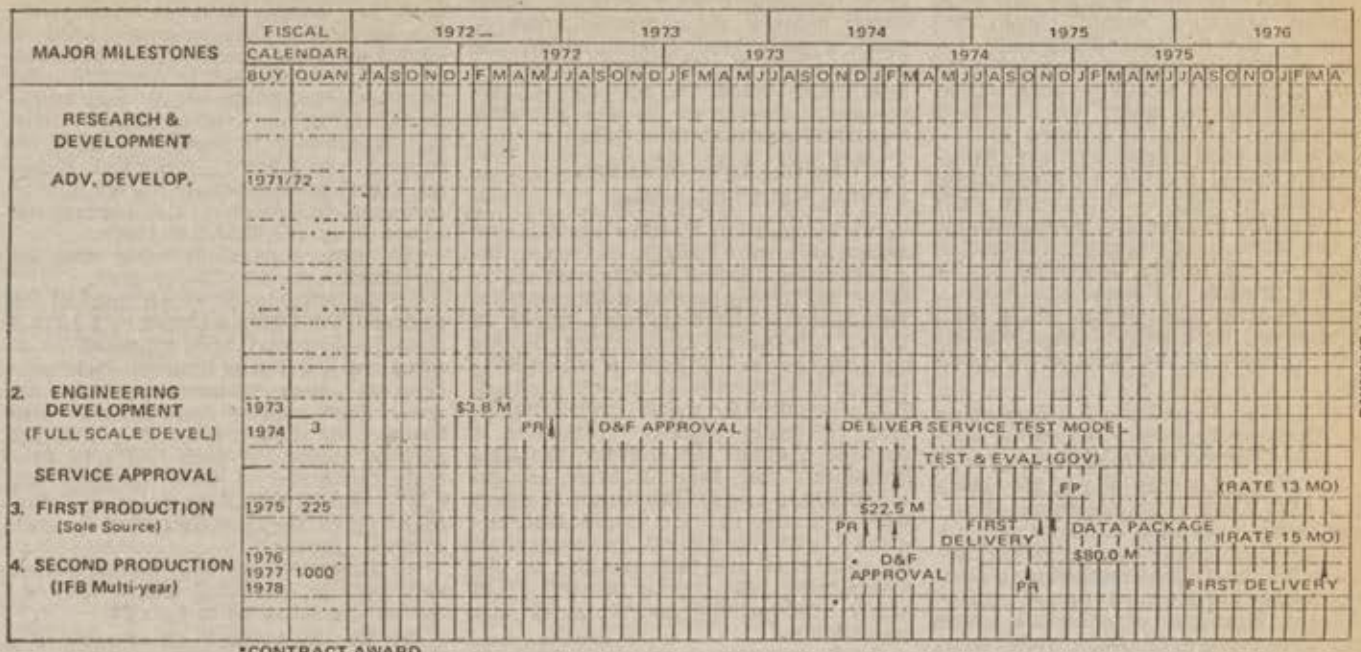
ADVANCE PROCUREMENT PLAN
(NARRATIVE PORTION)

1. Item or system.
2. Program identity.
3. Planned funding.
   - A. R&D.
   - B. Production.
4. Delivery requirements.
   - A. R&D.
   - B. Production.
5. Estimated total development costs.
6. Total estimated cost and quantity for production life.
7. Background history (a brief factual summary).
8. Evaluation of risks.
   - A. Technical.
   - B. Economic.
9. The SYSCOM/Activity procurement plan. Each planned procurement or effort, whether short-range or long-range, should be identified with respect to the following, as appropriate, and in such detail as is warranted by the particular phase of development and/or production.
   - A. Scope.
   - B. Estimated cost.
   - C. Source(s) and basis for selection.
   - D. Procurement plan/contract type.
   - E. Negotiation authority planned and justification therefor.
   - F. GFM.
   - G. Technical data considerations.
     - (1) Data to be available for procurement.
     - (2) Data to be generated by proposed procurement.
     - (3) Acquisition of data for competitive procurement.
10. Procurement alternatives considered:
11. Integrated Logistics Support (ILS) planning:
    - A. Milestone date for completion, *or*
    - B. Identify by reference if completed.
12. Sub-system/component breakout:
13. Test and evaluation-service approval:
14. Milestones for updating.
15. Milestone chart. Statement to the effect that attached milestone chart provides a graphic presentation of the objectives stated in the narrative and of the timing of milestones leading to the attainment of the objectives.
16. Identification of members of the Planning Team.

ILLUSTRATIVE FORMAT

ADVANCE PROCUREMENT PLAN NO._____

ITEM:_____ PROCUREMENT PLANNING CHART



*CONTRACT AWARD

Subpart B—Procurement by Formal Advertising

§ 737.2–100 Use of formal advertising.

§ 737.2–103 General Requirements for Formal Advertising.

Contract Clearance. See § 737.1–403–51

§ 737.2–200 Solicitation of Bids.

§ 737.2–203 Methods of Soliciting Bids.

§ 737.2–203–1 Mailing or Delivering to Prospective Bidders.

Not less than three copies of the invitation for bids shall be mailed (or delivered) to each prospective bidder.

§ 737.2–300 Submission of Bids.

§ 737.2–303 Late Bids.

§ 737.2–303–2 Consideration for Award.

The determination as to whether a late bid may be considered for award normally shall be made by the contracting officer of the activity issuing the Invitation for Bids (see § 737.1–401–51(b)). Where the number of late bids imposes an undue administrative burden on the contracting officer, he may delegate this responsibility on a continuing basis to a responsible official of the purchasing activity. Such delegation shall be made in writing and only to such person who, by reason of experience or otherwise, is considered by the contracting officer to be fully competent to discharge this responsibility.

§ 737.2–305 Late Modifications and Withdrawals.

(a) The determination as to whether late receipt of a modification or withdrawal was due solely to one of the reason set forth in § 2.303–2 shall be made by the contracting officer of the activity issuing the Invitation for Bids (see § 737.1–401–51(b)), except that such responsibility may be delegated under the same conditions as apply to late bids in § 737.2–303–2. This determination shall be made in advance of any determination which may be made in accordance with (b) below.

(b) Determinations, as to whether late modifications received from an otherwise successful bidder are favorable to the Government shall be made only by the contracting officer of the activity which evaluates the bids, which the prior approval of Counsel where Counsel is assigned to such activity.

§ 737.2–400 Opening of Bids and Award of Contract.

§ 737.2–404 Rejection of Bids.

§ 737.2–404–2 Rejection of Individual Bids.

(a) *Collusive Bids.* In accordance with the requirements of § 1.111–2, the contracting officer shall report all bids he considers were not independently arrived at in open competition or are collusive, or were submitted in bad faith. Awards shall not be delayed because of the reporting requirements prescribed by § 1.111–2, except as otherwise deemed necessary or desirable by the contracting officer.

§ 737.2–406 Mistakes in Bids.

§ 737.2–406–3 Other Mistakes.

(a) Authority to make the administrative determinations described in § 2.406–3(a)(1) is hereby delegated, without power of redelegation, to the Head of the Contracts Division (as defined in § 737.1–201(c)) of each purchasing activity of the Department of the Navy having legal counsel available. If legal counsel is not available, then the determination will be made by the Deputy Commander for Purchasing, Naval Supply Systems Command.

(b) Authority to make the administrative determinations described in § 2.406–3(a) (2), (3), and (4) is hereby delegated, without power of redelegation to the following:

(1) Assistant Commander for Contracts, Naval Facilities Engineering Command, when arising under invitation for construction, maintenance, or repair of public works; and

(2) Deputy Commander for Purchasing, Naval Supply Systems Command, when arising under invitations for supplies or services.

§ 737.2–407 Award.

§ 737.2–407–6 Equal Low Bids.

See § 737.1–850(f).

§ 737.2–407–9 Protests Against Award.

(a) *Protests Before Award.* Where it is known that protest against the making of an award has been lodged with the Comptroller General (GAO), a determination to proceed with award under § 2.407–8(b)(3) shall be made at the next higher level within the purchasing activity than the Contracting Officer who is to execute the contract. When a filed purchasing activity is notified that a protest against the making of an award has been lodged with the Comptroller General, the notice to the Comptroller General of the intent of the purchasing activity to make an award under § 2.407–8(b)(3) shall be via the Command, Bureau, or Headquarters which advised of the protest, and award shall be withheld until receipt of the advice of the

Comptroller General concerning the current status of the case.

(b) *Protests After Award.* Protests addressed only to the purchasing activity shall be handled in accordance with § 2.407–8(a). In such matters field purchasing activities should obtain the views of the Systems Command, Bureau or Headquarters having procurement cognizance whenever such action is considered desirable. When a field purchasing activity is notified that a protest has been lodged with the Comptroller General (GAO), all information necessary to reply to the protest shall be submitted as promptly as practicable to the Systems Command, Bureau or Headquarters which forwarded notice of the protest. All pertinent records, documentation and factual data shall be reviewed by cognizant legal counsel prior to reply to the Comptroller General.

§ 737.2–150 Procedures for Requesting Decisions From the Comptroller General Prior to Contract Award.

(a) Except for "mistake in bid" cases (see § 737.2–406–3), contracting officers may request advance decisions directly from the Comptroller General, when necessary for the prompt resolution of legal questions as to the award of an advertised contract. Examples of questions which may be referred to the Comptroller General are those which involve late bids, nonconforming bids, and informalities in bids. Such requests shall be accompanied by all necessary records, exhibits, and factual data; shall be reviewed by Counsel; and, in the case of field activities, shall be submitted via the cognizant procuring activity. A copy of each written communication, as well as the Comptroller General's reply, shall be furnished to the Chief of Naval Material (MAT021).

(b) The foregoing procedure is not authorized (i) where the decision is likely to alter existing procedures or practices, or (ii) where the question is one of unusual importance. Questions involving either of these two cases shall be referred through channels to the Chief of Naval Material (MAT021) for appropriate action.

Subpart C—Procurement by Negotiation

§ 737.3–200 Circumstances Permitting Negotiations.

§ 737.3–201 National Emergency.

§ 737.3–201–50 Memorandum for File.

(a) *General.* A memorandum for file shall be prepared to justify each procurement negotiated under authority of 10 U.S.C. 2034(a)(1). The memorandum for file shall be signed by the contracting officer unless the signature of a different person is prescribed. Where procurements are negotiated under 10 U.S.C. 2304(a)(1) in furtherance of small business, labor surplus, or disaster area programs, the memorandum for file shall indicate the particular program involved. (For procedures pertaining to labor surplus areas, see Part 1, Subpart H. For disaster areas see § 737.1–850.)

(b) *Set-Asides for Small Business Concerns.* § 1.706–2 prescribes the negotiation authority to be used for small business set-asides. Where conventional negotiation has been used to place a contract involving a total set-aside, based either upon a joint determination or upon a unilateral determination, the memorandum for file shall set forth a brief justification for the use of conventional negotiation in lieu of Small Business Restricted Advertising.

§ 737.3–202 Public Exigency.

§ 737.3–202–3 Limitation.

(a) In addition to the circumstances authorized in § 3.202–2, purchase requests citing "Rapid Development Capability (RDC)" as priority designator, are authorized to be negotiated under 10 U.S.C. 2304(a)(2). Contracting Officers need only cite this designator as justification in the determination and findings. However, purchase requests which do not cite (i) issue priority designator 1 through 6 under the Uniform Material Movement and Issue Priority System (UMMIPS), or (ii) Electronic Warfare QRC Priority, or (iii) Rapid Development Capability (RDC) Priority, shall be scrutinized and fully justified by the Contracting Officer prior to utilizing 10 U.S.C. 2304(a)(2) as authority for negotiation.

(b) In activities to which Counsel are assigned, the determination and findings required by § 3.202–3 shall be reviewed and approved as to form and legality by Counsel.

(c) Examples of the determination and findings required by § 3.202–3 are set forth in Part 30.

§ 737.3–205 Services of Educational Institutions.

§ 737.3–205–3 Limitation.

See § 737.1–403–56 concerning approval requirement for civilian employee training involving tuition payment.

§ 737.3–207 Medicines or Medical Supplies.

§ 737.3–207–3 Limitation.

(a) In activities to which Counsel is assigned, the determination and findings required by ASPR 3–207.3 shall be reviewed and approved as to form and legality by Counsel.

(b) An example of the format of the determination and findings required by § 3.207–3 is set forth in Part 30.

§ 737.3–208 Supplies Purchased for Authorized Resale.

§ 737.3–208–3 Limitation.

(a) In activities to which Counsel is assigned, the determination and findings required by § 3.208–2 shall be reviewed and approved as to form and legality by Counsel.

(b) An example of the determination and findings required by ASPR 3–208.3 is and findings required by § 3.208–3 is set forth below in Part 30.

§ 737.3–210 Supplies or Services for Which It Is Impracticable to Secure Competition by Formal Advertising.

§ 737.3–210–3 Limitation.

(a) The contracting officer's determination and findings, required by § 3.210–3 to justify negotiation under § 3.210, shall include, directly below the date, the Roman numeral representing the applicable circumstances listed in § 3.210–2. Where none of the examples set forth in § 3.210–2 is applicable, the DD Form 350 coding of "26" may be inserted to denote "no example." This identification is to ensure accurate recording and correct statistical representation in the monthly Survey of Procurement Statistics of the Department of the Navy (NAVMAT P–4200).

(b) With respect to basic ordering agreements, see § 737.3–410–2(c).

(c) In activities to which Counsel are assigned, the D&F's required by § 3.210–3 shall be reviewed and approved as to form and legality by Counsel. Field purchasing offices without regularly assigned local counsel shall arrange with Counsel for their procuring activity for periodic reviews of such D&F's by Systems Command of Filed Counsel. See § 737.3–306–52(d)(6) for review by Counsel of D&F's that are submitted for Secretarial approval.

(d) Examples of the determination and findings justifying use of this authority are set forth in Part 30.

(e) The following is an example of a CDF with respect to Basic Ordering Agreements (BOAs) for the overhaul, repair or modification of existing equipment under this authority:

CDF No._____

DETERMINATION AND FINDINGS—AUTHORITY TO NEGOTIATE CLASS OF CONTRACTS

Upon the basis of the following findings and determination, which I hereby make as [insert title of official] the proposed classes of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10).

FINDINGS

1. The classes of contracts proposed (orders issued under Basic Ordering Agreements) will be for services and materials consisting of:

(a)(i) Change kits, together with installation instructions, as required to retrofit changes in aircraft, including related equipment installed therein (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer), hereinafter called "related equipment"; (ii) engineering, prototyping and testing of such changes; and (iii) technical manual changes or revisions, or new technical manuals, as required incident to such changes.

(b) (i) Change kits, together with installation instructions, for contractor-furnished ground support equipment, and new items of ground support equipment, as required incident to aircraft changes referred in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer) and (ii) technical manual changes or revisions, or new technical manuals, covering ground support equipment, as required incident to such changes.

(c) Changes or revisions, other than those referred to in subparagraphs (a) and (b) above, to existing technical manuals covering out-of-production aircraft and related equipment delivered by the contractor, as re-

quired to provide up-to-date information on operation and maintenance of such aircraft and equipment. For purposes of the changes and revisions covered in this subparagraph (c), aircraft and related equipment shall be considered out-of-production at such time as the last publication, or change or revision thereto, has been delivered under the production contract for such aircraft and equipment.

(d) Change kits, consisting of selected parts, materials, additional training units, graphic aids, data, maintenance training parts and services consisting of instructor updating or refresher training and contractor technical assistance on site for set-up and checkout of the change material for maintenance, operational and weapon system trainers, as required incident to aircraft changes referred to in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer).

(e) (i) Change kits, together with installation instructions, for contractor-furnished spares and repair parts and new items of spares and repair parts, as required incident to aircraft changes referred to in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); and (ii) technical manual changes or revisions, or new technical manuals, covering spares and repairs parts, as required incident to such changes.

2. Orders within the scope of this Class Determination and Findings will include the furnishing of all parts, components, and documentation necessary to make changes to delivered aircraft, including their related equipment, their ground support equipment, and the affected spares therefor, and the installation instructions will present by text and illustration of such kits by Government personnel; however, such orders will include the furnishing of only such parts, components, and documentation as are necessary therefor. The work to be performed under each basic ordering agreement will relate only to previously produced aircraft and related equipment and documentation; it will not include any research and development effort, nor will it include the furnishing of any parts, components, subassemblies, or materials which are not an integral part of the work described above.

3. Changes and developments in the design, equipment, or outfitting of military aircraft are required on a continuing basis in order to improve safety, combat readiness, and general capabilities. Such changes and developments most frequently occur after partial delivery of aircraft and at a point in production where it is no longer practicable to incorporate them in production in some of the aircraft remaining to be delivered; and they may occur after the aircraft model is out of production. Accordingly, the proposed basic ordering agreements will be utilized to make aircraft of a particular model substantially identical in configuration, and to provide delivered aircraft with the latest changes and developments. Publications furnished by the contractor also require modification in a timely manner in order to reflect changes and developments made in the aircraft, its related equipment, and its ground support equipment, and to provide new and improved operational and maintenance techniques.

4. The classes of contracts proposed are to be negotiated with the firms listed below and will relate solely to the specific aircraft indicated, including their related equipment, their ground support equipment, and the affected spares therefor. These firms are the designers, developers, and sole manufacturers of the respective aircraft. These items are complex, technical, and specialized, and a thorough knowledge of their design, production, and assembly is essential in order that the various categories of work described above may be timely performed. Such knowledge with respect to these aircraft is unique to the contractors listed below; no other contractors have the requisite knowledge of and familiarity with these highly technical items to accomplish within the necessary time frame the work that has to be done. In the case of related equipment and ground support equipment involved in orders within the scope of this Class Determination and Findings, although the airframe manufacturer concerned may have subcontracted large portions of design, development, and manufacture to subcontractors, it is necessary, since the airframe manufacturer retains overall design control, that orders for the work involved be placed with him so as to permit him to maintain the compatibility of the related equipment and ground support equipment with the airframe. Because it is impracticable to secure competition in these classes of procurements, the use of negotiation and not formal advertising is justified.

Contractor	*Aircraft*
Sikorsky	SH/RH/VH-3 Series; CH-53 and UH-34 Series
Lockheed-Marietta.	C-130, KC-130 and LC-130 Series
Lockheed-Burbank.	P-3 and P-2 Series
Douglas	A-1, A-3, A-4 and TA-4 Series
North American-Columbus.	RA-5, T-2 and OV-10 Series
North American-Los Angeles.	T-39 Series
Bell Aerospace Corp.	H/UH/TH-1 Series
General Dynamics.	F-111 Series
Kaman	H/UH-2 Series
Grumman	F-9, F-11, EA-6B, A-6, E-2, S-2 and E-1B Series
Boeing	CH-46 Series
Ling-Temco-Vought.	A-7 and F-8 Series
McDonnell	YF/F/RF-4 Series

DETERMINATION

The proposed classes of contracts are for property and services for which it is impracticable to obtain competition. This Class Determination and Findings shall be effective from date of execution through [insert expiration date].

CONDITION OF USE

The authority of this Class Determination and Findings shall be used only when the person placing an individual order certifies, in writing, at the time of placing such order, that it is for property or services authorized by this Class Determination and Findings.

Date _____

(xxvi)

Signature _____

§ 737.3–211 Experimental, Developmental or Research Work.

§ 737.3–211–3 Limitation.

(a) The Findings part of any D&F under this negotiation authority shall include sufficiently detailed description of the work involved so that it will readily appear, describe which category of research and development, as defined in § 4.101(a), the proposed contract is to cover. Additionally, the Determination part of the D&F shall be cast so as to identify that particular type of research and development work (e.g., "The proposed contract is for exploratory development work as defined in § 4.101(a)(2)"). The term "research and development," as defined in § 4.101(a), does not cover Category (7) "Operational System Development" and Category (8) "Management and Support." In a particular case however, and under exceptional circumstances, the facts may be such that Categories (7) and (8) of § 4.101(a) would involve a procurement within the meaning of research and development. Therefore, contracting officers must be assured, when Categories (7) and (8) are involved, that the procurement falls under research and development definition prior to utilizing 10 U.S.C. 2304(a)(11) as negotiation authority.

(b) Requirements for Counsel review of Secretarial D&Fs shall be in accordance with § 737.3–306–52(d)(6). In activities to which Counsel is assigned, contracting officer D&F shall be reviewed and approved as to form and legality by Counsel.

(c) Example of the determination and findings justifying use of this authority is set forth in Part 30.

§ 737.3–212 Classified Purchases.

§ 737.3–212–3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3–213 Technical Equipment Requiring Standardization and Interchangeability of Parts.

§ 737.3–213–3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3–214 Technical or Specialized Supplies Requiring Substantial Initial Investment or Extended Period of Preparation for Manufacture.

§ 737.3–214–3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3–215 Negotiation After Advertising.

§ 737.3–215–2 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3–216 Purchases in the Interest of National Defense or Industrial Mobilization.

§ 737.3–216–3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3–217 Otherwise Authorized by Law.

For small business set-asides see § 737.3–201–50(b).

§ 737.3–217–2 Application.

10 U.S.C. 2304(a)(17) preserves the authority to negotiate contracts when negotiation is authorized by law other than 10 U.S.C. 2301 et seq. Contracts may be negotiated under this authority only with the prior written approval of the

Chief of Naval Material (MAT 02) except that such approval is not required in the following cases:

(a) Architectural and Engineering services under 10 U.S.C. 7212.

(b) Transportation Service by common carrier under 49 U.S.C. 65.

(c) Training of Civilian Employees under 5 U.S.C. 2308.

Contracts so negotiated shall also cite the applicable authorizing statute. For example: Negotiated contracts resulting from joint determinations of total or partial small business set-asides shall cite 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act; Negotiated contracts for Architectural and Engineering Services shall cite 10 U.S.C. 2304(a)(17) and 10 U.S.C. 7212. Requests for authority to cite 10 U.S.C. 2304(a)(17) as the authority to negotiate in instances other than those noted above shall be submitted to the Chief of Naval Material (MAT 023) on the form "Request for Authority to Negotiate (NAVEXOs 2759)" generally following the procedures in § 737.3-306-52 except that Secretarial authority will not be required.

§ 737.3-300 Determinations and findings.

§ 737.3-303 Determinations and Findings by a Contracting Officer.

(a) *Determination and Findings.* See Part 30 for guidance in the preparation of determinations and findings.

(b) *Memorandum for File.* See § 737.3-201-50.

(c) *Certification by Originator of Purchase Request.* Contracting officers are authorized to make determinations and findings with respect to individual purchases and contracts as set forth in § 3.303. Each Navy procuring activity shall establish procedures whereby the individual submitting the purchase request (requisition or other request form upon which the determination to negotiate is based) will certify to the accuracy of the facts and representations contained in such request; except that such certifications are not required in procurements citing authority of 10 U.S.C. 2304(a) (3), (5), (6), (7), (8), and (9). When (1) a purchase request (requisition or other request form upon which the determination to negotiate is based) cites Procurement Method Code (PMC) 3, 4, or 5 in accordance with NAVMATINST 4200.33A; (2) certification of facts would be required by the preceding sentence; and (3) the contracting officer has determined to negotiate a contract, then the contract file shall contain a statement signed by the contracting officer in lieu of the foregoing certification that the PMC data are accurate and current. These certifications and statements shall be retained in the contract file of the procuring activity concerned in those instances where the procurement does not require a Chief of Naval Material business clearance. Where a Chief of Naval Material business clearance is required, a copy of the determinations and findings with the certification or statement thereon, shall be furnished with the pre-negotiation clearance required by § 737.1-403-51(b). The Chief of Naval Material will, from time to time, conduct such reviews of procedures and records as appropriate to assure full compliance with this paragraph (c).

§ 737.3-305 Forms of Determinaitons and Findings.

§ 737.3-305-50 General.

(a) *Format.* The customary and approved form of a determination and findings (D&F) contains a title or heading, a D&F number and Systems Command or activity identification (or other identifying number such as procurement request number), an opening statement of authorization, a series of numbered findings under the subhead "Findings," one or more determinations (depending on the specific exception used and on the facts of the particular case) under the subhead "Determination(s)," and places for date of signature and signature. Determinations and findings by a contracting officer may be written on Standard Form 1036 or on a separate sheet of paper. Determinations and findings requiring approval of the Secretary of the Navy shall be prepared on a separate sheet of paper. Determinations and findings shall be in proper form, neat and free of grammatical, spelling and typographical errors.

(b) *Heading.* The following wording of a typical heading to a D&F for an individual contract is approved:

DETERMINATION AND FINDINGS

Authority To Negotiate Individual Contract for Experimental, Developmental, or Research Work

In a D&F for a class of contracts, the words "Class of Contracts" would replace the words "Individual Contract." It is desirable to indicate in the heading the precise negotiation authority covered by the D&F. As a general rule the bottom line of this heading would set forth, after the word "for," the title of the applicable paragraph of Part 3, Subpart B.

(c) *Numbering.* At the top right-hand corner of each D&F there should appear an identifying number or numbers. For purposes of administrative simplicity, it is suggested that D&F's (i) signed by a contracting officer or head of a procuring activity bear the same number as the procurement request, requisition or contract, or, (ii) signed by the Secretary be numbered by the originating activity in a simple numerical system which may bear a suffix of the originator's accounting number and/or the contract number to which the D&F applies. It is suggested that when numbering D&F's requiring approval by the Secretary no distinction be made between the numbering of D&F's and CD&F's (Class Determination and Findings).

(d) *Scope of D&F.* In general, it is desirable to confine each D&F to a single page, to set forth the four or five necessary findings as briefly as possible, and to confine them to only those facts which are necessary and relevant to support the one or more determinations being made. With respect to the determination or determinations, it is important to set forth only that one (or those) which are responsive to the various findings, and necessarily to confine them to the requirements and the particular language set forth under the applicable exception in the Act; further in this connection, it is important to guard against a determination in the alternative and to use cumulative language only when more than one determination is in fact supported by the findings (for example, under 10 U.S.C. 2304(a)(14), "substantial initial investment" *and* "extended period of preparation for manufacture"). Each D&F or CD&F for authority to negotiate shall clearly indicate that the use of formal advertising would be impracticable and the reasons therefor.

§ 737.3-306 Procedure With Respect to Determinations and Findings.

§ 737.3-306-50 Definitions of Terms.

As used in this NDP.

(a) *"Determination and Findings"* (D&F) means the document signed by the Secretary, Head of a Procuring Activity, or a contracting officer, which justifies negotiation of an individual contract or procurement (see § 3.301);

(b) *"Class Determination and Findings"* (CDF) means the document signed by the Secretary, which justifies negotiation of a class of contracts or procurements;

(c) *"Requests for Authority to Negotiate," or "RAN"* (NAVEXOS Form 2759) is the memorandum transmitting the D&F or CDF to the Secretary via the Chief of Naval Material (MAT 023). This memorandum contains detailed factual information explaining the necessity for procuring supplies or services by negotiation rather than by formal advertising and includes supporting documents and information required by this NPD;

(d) *"Advance Procurement Plan"* or "APP" means the long-range advance plan prepared as required by § 737.1-2100 and forwarded to the Chief of Naval Material for review and approval; and

(e) *"Negotiation Exception" and "EXCEPTION"* refer to the authority to negotiate in subparagraphs of 10 U.S.C. 2304(a) as described in § 3.201 through § 3.217.

§ 737.3-306-51 Submission of "Request for Authority to Negotiate" for Individual Purchase or Contract.

(a) Except as provided in § 737.3-306-51(b), the "Request for Authority to Negotiate" (NAVEXOS Form 2759) will be used to request authority to negotiate an individual purchase or contract when a Determination and Findings by the Secretary is required by § 3.302. An original and two good, legible copies of the RAN, numbered in accordance with instructions set forth in § 737.1-403-53, and of the D&F proposed for signature of the Secretary shall be submitted to the Chief of Naval Material (MAT 023) (the D&F shall be prepared in proper form, neat and free of grammatical, spelling and typographical errors). The original (ribbon copy) of the RAN, when approved, and the signed D&F will be returned by the Chief of Naval Material. (Where negotiation EXCEPTIONS (11) or (13) under § 3.302 (i) or (iii) are cited, an original and three copies each of the RAN and the D&F shall be submitted to the Chief of Naval Material (MAT 023).)

(b) If an APP (Advance Procurement Plan) has been approved, as provided in § 737.1–2100, it may be used as the justification to support an individual procurement or a class of procurements as applicable. When the APP is used as the justification, the RAN (NAVEXOS Form 2759) should be utilized as the transmittal document for such APP and the accompanying D&F or CDF. The RAN should include:

(1) Any information necessary to update the APP and

(2) any information required by this § 737.3–306 not previously furnished in the APP. All blocks including signature blocks, on the RAN should be completed.

§ 737.3–306–52 Preparation of RAN–NAVEXOS Form 2759.

The determination to formally advertise or to negotiate is governed by the specific facts in a proposed procurement. (See § 737.3–306–52(c) for RAN's on Classes of items.) When the decision is to negotiate and Secretarial authority is required, the RAN will set forth the basic facts in the following manner:

(a) *Description of Item or Services to be Procured.* So that it is clear to a nontechnical reader what is being procured, a brief general description is required, in addition to the customary military nomenclature; also, a statement of the general application and particular significance or specialized character is required. Though the description should avoid unnecessary technical details, it should cover in precise form all supplies or services being procured including the estimated value and the approximate numbe of items.

(b) *Justification.* The RAN must contain facts—not just conclusions—that (1) clearly and convincingly establish that the use of formal advertising would not be practicable and (2) support the proposed Determination and Findings. Detailed information requirements to be included in the justification, where applicable, are set forth in subparagraphs (1) through (10), the subject groupings of which are recited below. See § 737.3–306–56 for sample format of RAN's for exceptions (11) through (16).

1. Procurement plan
2. Advance planning coordination
3. Selection of prospective contractors for negotiation
4. Technical data requirements
5. Evaluation and conformance with specifications
6. Type of contract
7. Synopsis of proposed procurement
8. Government facilities
9. Additional information for all exceptions
10. Additional information for specific negotiation exceptions

(1) PROCUREMENT PLAN—Describe the procurement plan and proposed method of award. The following are examples of such a description: (i) (where a number of named contractors are to be solicited for an R&D job) "Technical proposals will be solicited from the above-named firms after a conference on the objectives to be reached. Selection of the firm to perform the work will be on the basis of technical competence for the particular research and development work,"; (ii) (in the case of a competitive production item) "Award will be made to the responsive, responsible supplier offering the best price."

The plan specifically shall include:

a. The planned or estimated time to be allowed contractors to submit proposals;

b. An explanation of the urgency, if any, of the requirement, including the origin of the urgency representations, when lead time is cited as a basis for restriction of competition (such as delay in the procurement through use of formal advertising, etc.);

c. The basis for establishing the delivery requirements; and

d. The circumstances should be stated when the procurement requirement is the result of termination or other unusual action on a prior contract.

(2) ADVANCE PLANNING COORDINATION—In presenting information with respect to the procurement plan under (1), refer to any advance planning information previously prepared or furnished together with information with respect to any change(s) proposed in the present RAN which represents a departure or modification of prior procurement plans.

(3) SELECTION OF PROSPECTIVE CONTRACTORS FOR NEGOTIATION—Include an analysis of possible sources, indicating the following:

a. Extent of competition available; identity and location of firms to be solicited; the size classification of each concern to be solicited shall be indicated by the symbol (S) for small business, (L) for large business and (NP) for nonprofit or educational; and whether it is located in a labor surplus area;

b. Where appropriate, the caliber of technical or scientific personnel to be employed on the work;

c. A brief description of the method of evaluation used in selecting a contractor when the selection is based on technical skills, ability to produce, available capacity, or similar factors (this is particularly important when such evaluations result in a reduction in the number of firms to receive RFP's);

d. The exclusion of apparently qualified firms must be briefly and clearly explained (statements that the "XYZ Company is considered best qualified" or "no other sources are considered qualified" should be thoroughly supported in the justification presented);

e. The circumstances surrounding the proprietary position of a contractor;

f. The basis for representation as to advantageous lead time position of the selected contractor, including stage reached in the development or production of the item(s) (such as what production run) and the relation to the proposed procurement of any prior experience (such as R&D or the furnishing of prototype);

g. For follow-on contracts proposed for award on a single source basis, the method of original selection, of contractor should be identified, i.e., competition, design competition, or technical competition.

(4) TECHNICAL DATA REQUIREMENTS—Where the absence of necessary technical data is a factor in contractor selection, the acquisition of technical data under the proposed procurement is basic to obtaining competition on future procurements (unless such data is already a requirement under another procurement). See NAVMAT Instruction 4000.15A. Each RAN shall state:

a. The procuring activity's time schedule to obtain, prepare, and issue technical data for purposes of obtaining competition;

b. The specific nature of technical data to be acquired, indicating the type and class of drawings, as defined in Specification MIL–D–70327 and MIL–STD–7, and including a reason for deviation if the drawings to be acquired do not fully comply with this specification;

c. The technical data to be required by the contract, or required by an existing contract, the delivery schedule for such data and for revisions;

d. Whether the technical data will be adequate for competitive procurement and when evaluation thereof is expected to be completed;

e. If the technical data will not be adequate for competitive procurement, in a full explanation state why data adequate for competition is not being procured and when it is expected that data adequate to obtain competition will be secured, evaluated, and made available for issue, and

f. If the technical data, though adequate for competitive procurement, will not be available in time for the next procurement of the item(s) concerned, an explanation as to why it is not feasible to effect delivery and evaluation of the data in time to permit their use for competitive procurement on the next buy, including information as to any delinquency in contract performance with respect to such data.

(5) EVALUATION AND CONFORMANCE WITH SPECIFICATIONS—Where service evaluation requirements are operative for the procurement under consideration, the RAN shall present the following, where applicable:

a. Status and results of service testing of the equipment. If tests have not yet been made, information as to why not and as to when such tests will be commenced and completed;

b. Where technical evaluation or operational evaluation by the Navy Operational Test and Evaluation Force has been completed, information as to whether equipment to be procured meets the operational specifications;

c. If the equipment to be procured does not meet the operational specification, information as to what waivers or deviations are being granted, why, and the source of approval of such waivers or deviations, with identification of the approving document(s); and

d. In the case of Requests for Authority to Negotiate under Exception (14), included in this paragraph (instead of under the "Basis of urgency representation," (10)d(1) below) information as to whether the procurement covers property being acquired in advance of approval for service use, and *one* of the following:

(i) A statement that, pursuant to OPNAVINST 4720.9B of 13 February 1963, the item(s) concerned require(s) only technical evaluation and that no further CNO approval is required;

(ii) A reference to CNO approval for service use; or

(iii) A reference to CNO authorization to procure in advance of CNO approval for service use. (In this case a copy of the related waiver of prior CNO approval for service use should be attached to the RAN.)

(6) TYPE OF CONTRACT—RAN's should specify the type of contract tentatively contemplated and, where a cost, CPFF, CPIF, of redeterminable fixed price type contract is being considered, a statement shall be included as to (i) the reasons for selection of such type of contract, and (ii) plans for use of a more advanced type of contract (i.e., firmed fixed price or fixed price incentive) on any continuing portion of the program. (Where a firm fixed price or fixed price incentive type contract is contemplated on the current procurement, a brief statement to that effect is sufficient except that where the bases for selection of a fixed price incentive over a firm fixed price are not readily apparent the intention to use an incentive type contract should be explained).

(7) SYNOPSIS OF PROPOSED PROCUREMENTS—Where the proposed procurement will not be publicized, a brief statement of explanation shall be included with reference to the specific basis for exemption under § 1.1003–1.

(8) GOVERNMENT FACILITIES—The Request shall indicate the type and estimated amounts of additional Government facilities, materials, equipment, special tooling, services, or property of any type to be furnished the contractor, such as Government-furnished materials to be incorporated into end-items or products, use of existing Government land, building or equipment, construction such as civil or public works or other incidental construction, modification, alteration, rearrangement or improvement of Government or contractor facilities, construction or installation of nonseverables, and Government-furnished services of any type. If facilities requirements or amounts cannot be precisely determined, so state and include known facts. If a facilities contract is involved or if a facilities business clearance memorandum was furnished the Chief of Naval Material pursuant to § 737.1–403–51 (b)(2)a(xiii), reference should be made to such documents.

(9) ADDITIONAL INFORMATION FOR ALL EXCEPTIONS—Justifications for negotiation shall include:

a. The estimated cost of the proposed procurement, how obtained, and a brief description of the basis on which the estimated cost of the procurement was derived;

b. A description of the content of the RFP relating to the range of stepladder quantities, if applicable, and;

c. Where procurements involve electronic equipment requiring radio frequency approval, a statement that the frequency allocation has been approved by the Director, Naval Communications, in accordance with OPNAVINST 2410.11E.

(10) ADDITIONAL INFORMATION TO BE FURNISHED FOR SPECIFIC NEGOTIATION EXCEPTIONS.

a. When EXCEPTION (11) is proposed for use, include the following where applicable: (Also see NAVMATINST 3900.3A of 5 July 1967 for requirments for RDT&E brief)

(i) R&D is frequently related to other previous or concurrent contracts. In such cases, a brief discussion of the accomplishments leading to, or the reason for, the proposed procurement and the specific objectives thereof;

(ii) A statement as to whether the project (or program) has been coordinated with the Director of Defense Research & Engineering with the other Military Departments, with other Federal agencies, or with other Navy agencies who have an interest in the same or similar R&D fields. If joint project, identify the Military Departments, other Federal agencies, and other Navy agencies involved and indicate the participation of each and the source of the current funding—whether the funds are Navy funds, those of another agency or split, giving dollar amounts of current funding in each case. The specific identifying project number and line items in the Navy R&D Program;

(iii) An estimate of future program costs not covered by the proposed D&F, when available from present procurement planning information;

(iv) Information as to whether a Technical Development Plan is required and if so, whether CNO approval for such plans has been obtained. Reference to any such approval should be cited.

(v) Information as to whether advance notice of the Government's interest in the particular R&D field was published in accordance with § 1.1003–2;

(vi) Where no small business is to be solicited for R&D, a statement setting forth the reasons for not soliciting small business;

(vii) Information as to whether the item to be developed, or the knowledge gained in its development, may have potential commercial application(s).

(viii) In order to establish a basis for decisions as to type of contract(s) to be used (see § 3.403(b)), the specific category of R&D work to be procured shall be identified. The category shall be one of those listed in § 4.201(a).

b. When using EXCEPTION (12), the RAN shall contain sufficient information about the item being procured in order to identify the characteristics warranting a security classification. The simple statement that an item is classified is not sufficient. The nature of the security requirement should be identified in unclassified language to amplify what will be revealed by data included in the Invitation, such as "operating depth of submarines," "noise characteristics of the equipment," or "operating radius," etc.

c. RAN's based on standardization under Exception (13) shall clearly identify the benefits of such action, in accordance with the criteria under § 3.213, stating the extent of the coordination accomplished within the Navy, other Military Departments and the Department of Defense.

d. When EXCEPTION (14) is proposed for use, the RAN shall contain the following additional information on a sheet attached to Form NAVEXOS 2759:

(i) An affirmative statement of the technical and specialized nature of the item;

(ii) If urgency is the basis for negotiation (see § 737.3–306–52(b)(1)(b), positive verification of delivery needs is required (e.g., include a list of ships and/or activity installation and dates of delivery required). If procurement is for property in advance of approval for service use, CNO waiver should be referenced and a copy attached (see 5(d) above);

(iii) Relation of the proposed procurement to any prior experience of the firm recommended, such as R&D or furnishing of prototypes. Include contract references, estimated costs and list all previous R&D and production contracts for the item including applicable values of the contracts, and the number of units, unit prices, and aggregate values of production contracts and RAN or Business Clearance Numbers;

(iv) Stage reached in the development or production (such as what production run) and any additional circumstances justifying the advantageous lead time position of the proposed contractor. State minimum production lead time for such contractor(s);

(v) Information establishing that the lead time for a firm other than the firm(s) recommended would unduly delay procurement. Show lead time for other firms with a breakdown in the following manner:

(A) Design and engineering;

(B) Manufacture of preproduction unit;

(C) Test and evaluation;

(D) Acquisition of materials, including tooling, and manufacture of first production equipment;

(vi) If duplication of investment by the Government is applicable, the type and value of the substantial investment shall be outlined, including any Government-furnished tooling and facilities;

(vii) The date the requirement originated or was received by the Navy requiring activity;

(viii) The date the Purchase Request was received in the contract division, purchasing division, or equivalent, of the contracting activity;

(ix) The date when funds were made available or are scheduled to be made available;

(x) A statement as to whether the procurement represents all quantities for which requirements are known, and funds, in whole or in part, are available. (Where requirements exist but the material purchased is to be delayed or ordered in increments due to the nonavailability of funds, the purchasing plan for the entire requirement shall be furnished, including a schedule covering the release of funds. The activity curtailing the use of such funds will be identified.);

(xi) A statement as to whether subsequent purchases of the same or similar equipment are planned, together with a statement as to the impracticability of consolidation of a portion of the current procurement with the subsequent procurement in the interest of broader competition.

e. When forwarding a D&F under EXCEPTION (15) requesting Secretarial approval to negotiate on the grounds that bid prices received from formal advertising are unreasonable or were not independently reached in open competition, the following information shall be furnished in the Form 2759;

(i) IFB number and date;

(ii) Number of firms furnished IFB's and number which responded, including a list of the firms and respective bids submitted;

(iii) The procuring activity's original estimate of costs and basis for this estimate leading to an affirmative showing of the excessive nature of bid or bids received;

(iv) In the Procurement Plan, list the firms to be solicited.

f. In forwarding the second D&F required under EXCEPTION (15) for secretarial approval, with regard to the particular contract being negotiated, the following shall be included in the Form 2759:

(i) Reference to the previous D&F and date of Secretarial approval;

(ii) Facts pertinent to the rejection of all bids, prior notice of intention to negotiate, and each responsible bidder given opportunity to negotiate in accordance with previous D&F;

(iii) List applicable firms and proposals submitted on basis of Request for Proposal;

(iv) Show conclusively that final negotiated price is lower than all other prices offered on negotiated basis and is lower than all rejected prices on advertised procurement.

g. If EXCEPTION (16) is cited as negotiation authority, the following additional information shall be included:

(i) An affirmative statement of the technical and specialized nature of the item;

(ii) Statement of the current annual requirement and prospective needs for the item;

(iii) Procurement history of the item, including firms which have produced the item and a statement of the complexity and reasons for lack of sources;

(iv) If for maintenance of an existing mobilization base, show that the firm(s) will lose capability of producing the item in the time required under projected mobilization planning if not awarded contract(s). If item is on the Navy Industrial Readiness Planning Program, show established data and indicate time involved to reacquire lost skills;

(v) If for establishment of a new source, indicate hazards of relying on present source(s) and the time required to acquire skills and the capacity necessary to produce. Explain selection of new source if award is to be proprietary, or if competitive, the reasons for choice of firms to be solicited. Also, reasons should be stated for exclusion of any apparently qualified sources, if applicable.

(c) *RAN's Related to Class Determinations and Findings.* The information furnished in a Request for Authority to Negotiate related to a proposed Class Determinations and Findings shall fully support the proposed negotiation authority as to each item covered by the

Request for Authority to Negotiate, furnishing, pursuant to § 737.3–306–52, the same information as to each item as would be furnished if the item were covered by an individual RAN and D&F. Such information should generally, particularly where numerous items are included, be presented in tabular form on an enclosure, attachment, or exhibit to the Request for Authority to Negotiate.

(d) *Specific Responsibilites.* (1) *Heads of Contract Divisions and Contracting Officers.* The head of the contract division, purchase division, or equivalent, of the contracting activity (i) shall be generally responsible for the preparation of the Request and proposed D&F, and for decisions discussed in the Request or based on the facts presented therein; and (ii) except as set forth in paragraph (d)(2) of this section, shall sign the Request in the appropriate space. He shall also be responsible for the accuracy of the facts presented in the Request, except those furnished by another requiring activity as provided in paragraph (d)(3) of this section. At the time of entering into a negotiated contract, the contracting officer of the contracting activity will ascertain that the D&F is consistent with the facts present at the conclusion of negotiations and, if it is not, will promptly initiate action to obtain a revised D&F.

(2) *Head of Procuring Activity and Project Manager.* The Head of the Deputy of the Navy Procuring Activity (as defined in § 1.201), or Deputy Chief of Staff for Installations and Logistics of the Marine Corps or his "Assistant", or SECNAV designated Project Managers under the command or direction of CNM, or CNM designated Project Managers in which the requirement originated shall sign the RAN and include his recommendations whenever:

(i) Exception (11) is proposed as negotiation authority and the estimated amount of the procurement is $1,000,000 or more;

(ii) Exception (12) or (14) is proposed as negotiation authority and

(A) The procurement is to be negotiated with competition and the estimated amount of the procurement is $5,000,000 or more, or

(B) The procurement is to be negotiated without competition and the estimated amount is $1,000,000 or more;

(iii) Exception (13) is proposed as negotiation authority; or

(iv) Exception (16) is proposed as negotiation authority.

(Where purchases subject to this subparagraph are to be made by a contracting officer of the Naval Supply Systems Command, the contracting officer will forward the Request to the Secretary via the Systems Command or Project Manager having technical cognizance of the program for which the purchase is made, for signature of the Commander or Vice Commander of such Systems Command or the Project Manager.)

(3) *Requiring Activity.* Where a contracting activity is to place a contract for requirements originating in another activity, the requiring activity shall furnish the contracting activity with information concerning the requirement, which will enable the contracting activity to prepare the Request and proposed D&F, and shall be responsible for the accuracy of such information.

(4) *Technical Personnel.* (i) In connection with that portion of the Request covering the selection of contractors for research and development, the responsibilities of technical personnel are set forth in § 3.107–6. In the case of production contracts it is the responsibility of technical personnel to furnish adequate information in the procurement request so that the contracting officer will have the facts on which to base a decision and will be able to provide the information required by (a) above. In connection with standardization, technical personnel shall follow the procedures set forth in § 737.3–306–54.

(ii) On the last page of each Request for Authority to Negotiate transmitting the D&F, the following statement should be made and executed by cognizant technical and requirements personnel:

It is certified that the facts and representations under my cognizance which are included in this Request for Authority to Negotiate or Supporting Advance Procurement Plan Number ------ and attached Determination and Findings are accurate to the best of my knowledge and belief.

Technical Cognizance	Requirement Cognizance
Date	Date

(5) *Mobilization or Industrial Planning Personnel.* When the procurement is for a Preferential Planning List (PPL) item or when the proposed contract is one of several related contracts to be negotiated under exception (14) or (16), personnel responsible for mobilization or industrial planning shall be responsible for furnishing the necessary information on a current basis to the contracting officer.

(6) *Counsel.* It shall be the responsibility of Counsel for the Contracting Activity preparing the Request to review the D&F as to form and legality. Field purchasing activities of the Naval Supply Systems Command without assigned Counsel shall forward the Request with the D&F attached via the Naval Supply Systems Command for such review by counsel for the Naval Supply Systems Command. The Request shall be signed or initialed by the member of the Office of the General Counsel who reviewed the proposed D&F.

(7) *Comptroller.* In connection with that portion of the Request covering the availability and release of funds, exception (10)d(ix) above, it shall be the responsibility of the Comptroller of the requiring activity to furnish the necessary information on a current basis to the contracting officer.

(e) *Submission and Distribution of Requests and D&F's.* The original and two copies of both the Request (NAVEXOS 2759) and the D&F to be signed by the Secretary shall be submitted to the Chief of Naval Material (MAT 023). Additional copies of the D&F under exceptions (13)(Standardization) and (16)(Mobilization) shall be prepared by the procuring activity for distribution after receipt of the signed D&F to any other interested procuring activities. The original Request, when approved, and the signed D&F will be returned to the initiating procuring activity. The two copies of each will be retained by the Chief of Naval Material (MAT 023).

(f) Numbering instructions for Requests for Authority to Negotiate are set forth in § 737.1–403–53.

(g) *Coordinated Procurement.* For procedures, see § 737.5–1106–2.

§ 737.3–306–53 Class Determinations and Findings (CDF's).

(a) *When Authorized.* CDF's are used when obtaining authority to negotiate a number of contracts for the same or related items and the use of separate D&F's would result in a repetition of the same set of facts. CDF's may be approved only when:

(1) The character of the supplies or services is such that they can only be procured by negotiation. Such supplies or services include:

(i) *Standardized items of equipment* which are to be procured in contracts negotiated under exception (13).

(ii) *Research and development programs* which have not reached the evaluation lot or pilot production stage and are to be procured in contracts negotiated under exception (11).

(2) The nature of the equipment is such that it is not only highly "technical and specialized" but the requirement of military urgency or limited numbers of qualified proven producers (in the sense of facilities, investment, continued contractor interest, extensive preparatory time) preclude the use of formal advertising methods now and in the foreseeable future. This usage is generally confined to execptions (14) and (16). This type of Class D&F requires the maximum in substantiation and is approved only where a fully supported clear case can be presented.

(b) *Secretarial Approval.* Except as provided in paragraph (c) of this section, all CDF's will normally be signed by the Assistant Secretary of the Navy (Installation and Logistics). All requests for CDF's must be signed by the Head or the Deputy Head of the Procuring Activity (including its field activities) or Project manager (see § 737.3–306–52(d)(2)) in which the requirement originated. Contracting Officers are *not* authorized to sign CDFs.

(1) *Limitation.* The authority granted by a CDF may be used to procure only property and services individually identified and justified in the *supporting* RAN (Request for Authority to Negotiate) or approved APP (Advance Procurement Plan). Authority to negotiate for supplies and/or services not individually identified and justified in the *initial* RAN or APP must be requested through submission of a *new or supplemental* RAN or revised APP, accompanied by either:

(i) A proposed new individual or Class Determinations and Findings, or

(ii) A proposed memorandum for signature by the Assistant Secretary of the Navy (I&L) expressly including within the authority of the previously executed CDF the supplies or services covered by the *new or supplemental* RAN or APP.

(c) *Delegation of Authority to Make Certain CDFs.* With respect to Basic Ordering Agreements (BOAs) for the overhaul, repair or modification of existing equipment under Exception (10) (10 U.S.C. 2304(a)(10) and § 3.210), the authority to make CDFs is delegated to the Commander, Naval Air Systems Command; and the Commander, Naval Sea Systems Command, with power of redelegation to a level no lower than the Director of Purchasing, as defined in § 1.201–24.

(1) *Limitations.* This authority shall be, in every case, subject to the following express limitations:

(i) Such CDFs shall only support the overhaul, repair or modification of equipment or weapon systems to be procured on a sole source basis through orders placed under BOAs;

(ii) They shall be limited to the overhaul, repair or modification of existing equipment or systems;

(iii) They shall exclude the performance of any research and development effort;

(iv) They shall exclude the procurement of any parts, components or materials not an integral part of the work to be performed;

(v) They shall specifically list the items or equipment upon which the work will be performed, together with the proposed sources for such work;

(vi) They shall be effective for a period of no more than one year; and

(vii) They shall require the person placing any individual order under the BOA to certify in writing, at the time of placing such order, that: (A) it is for work specifically authorized by the CDF, and (B) the circumstances still justify contracting with the proposed firm on a sole source basis.

(2) *Format.* The suggested format incorporating the conditions listed in paragraph (c)(1) of this section is illustrated in § 737.3–305–59.

(3) *Preparation and Submission.* (i) A RAN and the CDF shall be prepared in the same manner as they would be for submission to the Assistant Secretary of the Navy (I&L).

(ii) Each such CDF shall be numbered consecutively by the activity.

(iii) One copy of each such CDF, together with the associated RAN, shall be forwarded to the Chief of Naval Material (MAT 023) promptly after execution.

(d) *Reports of Procurements Under CDFs.* (1) Certain procurements require business clearance approval by the Chief of Naval Material (see § 737.1–403–50 for business clearance requirements).

(2) For each procurement not requiring business clearance approval by the Chief of Naval Material, a report after execution shall be made. The Individual Procurement Action Report (DD Form 350) shall be prepared and a copy submitted promptly to the Chief of Naval Material (MAT 022). Item 27 of DD Form 350 shall indicate the following information:

(i) The CDF number, assigned by the Chief of Naval Material, under the authority of which the procurement was negotiated, except as provided in (c)(3)(ii) above;

(ii) The number of concerns initially solicited, additional number of concerns submitting proposals and their respective quotations.

(e) *Content of Request for Authority to Negotiate (RAN) Under CDFs.* In addition to the information specified in § 737.3–306–52, the following shall be included in the Requests for Authority to Negotiate for CDFs:

(i) Insert the word "Class" after the particular exception cited as the negotiation authority;

(ii) State the estimated quantity and dollar value of contracts expected to be negotiated under the proposed CDF; and

(iii) When the CDF covers a proposed standardization of equipment under exception (13), include statements of action taken in conformance with § 737.5–1106–2.

(iv) An activity submitting a proposed CDF shall specifically indicate the Navy procuring activities, including field activities, and other Military Departments which will be assigned responsibility for any procurement under the proposed CDF.

(v) The RAN shall be numbered in the manner prescribed in § 737.1–403–53.

(f) *Distribution of RANs and CDFs.* (1) The minimum number of copies of a RAN and proposed CDF to be submitted to the Chief of Naval Material (MAT 023) shall be as follows:

Negotiation Exception 2304(a)	*Required Copies*
(12), (14), and (16)	Original and three (3) copies of the RAN and proposed CDF.
(11) and (13)	Original and four (4) copies of the RAN and proposed CDF.

(2) After CDF has been approved, the Chief of Naval Material (MAT 023) will:

(i) Assign to the CDF an idenification number preceded by the letters "CDF," except as provided in paragraph (c)(3)(ii) of this section, and

(ii) Return the original and one (1) copy of the RAN and the original and one (1) copy of the approved CDF to the originating activity. (Copies submitted in excess of requirements in paragraph (f)(1) above will be returned to the originating activity).

(3) Upon receipt of an approved CDF, the originating activity shall distribute the following documents to the other Navy procuring and field activities, and other Military Departments which will be assigned responsibility for any procurement under the CDF:

(i) A reproducible copy of the RAN.

(ii) A reproducible copy of the CDF.

(iii) A reproducible copy of other related sigificant documents, including correspondence having the effect of placing limitations or conditions on the use of the CDF.

(g) *Citation of an Approved CDF.* Whenever it is necessary to cite an approved CDF, both the symbol, e.g., NAVORD–10210 and the number, e.g., CDF 57–1 assigned by the Chief of Naval Material (MAT 023), shall be used.

(h) *Period of Effectiveness.* The time period for which a CDF is to be effective shall not exceed one year unless evidence is presented indicating the need for a longer period. For example, (1) CDFs covering a standardized item should cover the period for which the requirements are known or have been calculated; (2) in research and development programs, anticipated progress should govern the length of the period of effectiveness. The period for programs subject to foreseeable change or for multiple contracts under an outstanding requirement should be limited to the period necessary to accomplish the stated purpose of the CDF.

(i) *Extensions of D&Fs.* The continuation of a CDF beyond its effective date requires a *new* RAN (Request for Authority to Negotiate) setting forth the basic need, the actions accomplished under preceding authorized period, a forecast of the expected activity under the CDF, and a new effective period.

(j) *Reviews.* The Contracting Officer should periodically review the continued necessity for use of a CDF particularly in those instances where the effective period extends one year.

§ 737.3–306–54 Additional Procedure with Respect to Determinations and Findings under the Standardization Program (§ 3.213).

(a) Sections 5.1106–2(b) and 737.5–1106–2 set forth requirements for determinations and findings under § 3.213 in coordinated procurement.

(b) Within the Department of the Navy, where procurement involving standardization of technical equipment is required by one activity (Requiring Activity) but is to be effected by another activity (Procuring Activity) the Requiring Activity shall (1) prepare and obtain execution of the required D&F (unless a D&F applicable to the program involved has already been executed), (2) include a statement in the requisition that the applicable D&F has been executed, and (3) attach to the requisition two copies of the applicable D&F. The Requiring Activity shall preserve the original D&F and copies of all supporting documents, in accordance with § 3.308. One of the copies of the D&F shall be used by the Procuring Activity to complete its contract files and, in accordance with § 3.307, the other shall be sent to the General Accounting Office with the copy of the contract negotiated and executed thereunder. The Procuring Activity shall inform the Requiring Activity of any adverse circumstances affecting the proposed procurement.

§ 737.3–306–55 Documentation of Files for Negotiation Under EXCEPTION (10).

(See § 3.210.) In connection with D&F's citing EXCEPTION (10) as a justification for negotiation, where the lack

of inadequacy of technical data represents a major or contributing reason precluding competition, the official contract file shall contain the same supporting documentation as required for RAN's under § 737.3–306–52(b)(4). In all other cases where EXCEPTION (10) is cited and where competitive procurement is precluded or limited by reasons other than the lack or inadequacy of technical data, the official contract file should set forth the action being taken to develop or increase competition on future procurement of the items or services concerned, or fully explain why action toward that objective would be unavailing and is therefore not being taken. This is aimed at requiring concrete plans and evidence of progress toward removing obstacles to competition. Business clearance memoranda submitted to the Chief of Naval Material pursuant to § 737.1–403–51 shall be accompanied by or include therein this required information.

§ 737.3–400 Types of Contracts

§ 737.3–408 Letter Contracts.

(a) *Authority to contract.* Where, in accordance with § 3.408, it has been determined that a letter contract is a proper contractual instrument, authority to contract shall be obtained from the Chief of Naval Material (MAT 022) in accordance with § 737.1–403–51(b)(2)a (ii) prior to issuance of modification of the letter contract, as applicable.

(b) *Reporting Letter Contract Status.* (1) A *quarterly* Letter Contract Report shall be submitted to the Chief of Naval Material (MAT 0214) not later than the 10th working day after the end of the quarter. The Commander, Naval Supply Systems Command will report on the Navy Inventory Control Points and the other NAVSUP procuring activities. The report consists of three parts:

(i) Part 1, NAVMAT Form 4330/2 (Rev. 5–66), is the basic report listing all outstanding letter contracts and those that have been definitized during the reporting quarter. Preparation requires that appropriate information be shown in columns 1 through 10 for each letter contract. Data appearing in columns 1, 2, 3 and 6 shall remain the same for the life of the letter contract; information in columns 4, 5, 7, 8 and 9 shall be updated, when appropriate. Column 10 shall not be filled until the definitive contract has been signed by both parties. Once the definitization date has been entered in column 10, the item shall no longer be reported. Letter contracts that have been definitized during the quarter should appear last on the report. NAVMAT Form 4330/2 need be submitted in *original* only.

(ii) Part 2, NAVMAT Form 4330/3 (9–68), serves the dual purpose of reporting current status of definitization of letter contracts aged 6 months or more and stating what has transpired in the past affecting definitization progress. In the space entitled "Detailed Reasons Why Contract Has Not Been Definitized," the explanation should be given in chronological form so that there is a clear outline of sequential actions. In the space entitled "Present Status," a one-line statement of status as of the end of the reporting quarter will be sufficient. NAVMAT Form 4330/3 need be submitted in *original* only.

(iii) Part 3, NAVMAT Form 4330/27 (2–70), is a one-time report that shall be submitted on each newly awarded letter contract the first time the award is listed on NAVMAT Form 4330/2. The report is required in an *original* only, except where clearance must be obtained from the Chief of Naval Material (MAT 022). In such instances, the *original* of NAVMAT Form 4330/27 shall be furnished MAT 022 and a copy shall be included in the quarterly report to MAT 0214. The negotiation authority for the letter contract shall be indicated in parenthesis in Part II of this Form near the righthand margin on the line provided for the Letter Contract Number.

(2) NAVMAT Forms 4330/2 (Rev. 5–66), 4330/3 (9–68) and 4330/27 (2–70) are available through the Navy Supply System as "Cog I" items.

(3) Report Control Symbol (DD-I&L (Q)679) applies.

(c) *Designation of Paying Activity.* Letter contracts shall name the paying activity to be designated in the definitive contract as the paying office for the letter contract. A copy of the letter contract shall be furnished promptly to the paying office named therein.

§ 737.3–409 Indefinite Delivery Type Contracts.

See § 737.1–350–1.

§ 737.3–410 Other Types of Agreements.

§ 737.3–410–2 Basic Ordering Agreement.

(a) *Limitations.* In regard to basic ordering agreements described in § 3.410–2, compliance with § 3.410–2(c)(3) requires a formal determination and finding (D&F), pursuant to Part 3, Subpart C, in support of each individual order issued under such agreements, except where the negotiation of such an order is authorized by a class determination and findings (CDF). Where the authority of a CDF is exercised under a basic ordering agreement, the requirements of § 3.410–2(c)(1), which do not require a *formal* determination and finding, may be satisfied if the person authorized to issue the order certifies in writing, at the time of its placement, that the circumstances under which the order is being placed are covered by the CDF and that it is impracticable to obtain competition for the supplies or services being procured under the order by either formal advertising or negotiation, and places such certification in the contract file either as part of the individual order or separately.

(b) *Standardization of Time Frames for Definitization of Unpriced Orders Issued Under BOAs.* The Basic Ordering Agreement shall provide a time frame for the furnishing of contractor price quotations for unpriced orders issued. The period should be as short as practicable, usually 30 days, and normally should not exceed 60 days from receipt of the order. When the Contracting Officer, upon notification by the contractor that pricing cannot be established within the specified period, determines that a longer period is necessary, he shall document the contract file indicating the basis for the determination.

§ 737.3–500 Solicitations of Proposals and Quotations.

§ 737.3–507 Treatment of Procurement Information.

§ 737.3–507–50 Safekeeping of Proposals and Quotations.

In all competitive negotiated procurement estimated to be in excess of $2,500, there shall be provided a central locked storage where proposals (or quotations) shall be held unopened (except for the purpose of identification) until after the established date for their receipt.

§ 737.3–700 Negotiated Overheated Rates.

§ 737.3–705 Procedure.

(a) Contracting officers must obtain the prior written approval of the Head, Coordinated Negotiation Staff (MAT 02D), Headquarters Naval Material Command before—

(1) Including special provisions for the treatment of designated items of costs in cost reimbursement type contracts for which overhead rates are negotiated.

(2) Excluding a cost reimbursement type contract from the operation of a Navy-wide agreement for reimbursement of allowable costs and

(3) Entering into advance understanding of particular items of costs as authorized by § 15.107.

Such approval is not required for provisions making anticipatory costs allowable or to provisions for cost sharing by the contractor. It is recognized that special cost provisions may be desirable from time to time in connection with individual contracts. Accordingly, contracting officers should feel free to request approvals required by this paragraph.

(b) Where only one Navy procuring activity has cost-reimbursement type contracts with a particular contractor involving negotiated overhead rates, the rates shall be negotiated by that activity. If more than one Navy procuring activity is involved, or if either the Army or the Air Force is involved along with one or more Navy procuring activities, the Coordinated Negotiation Staff (MAT 02D) shall be responsible for conducting the negotiation of overhead rates, except where the negotiation is sponsored by another Department in accordance with § 3.706. See § 737.1–405–51(a) for contracting authority of the Head, Coordinated Negotiation Staff. The Head, Coordinated Negotiation Staff (MAT 02D), when responsible for conducting the negotiations, shall arrange a negotiation conference to which shall be invited representatives of the contractor and the procuring activities concerned. If more than one Department or more than one Navy procuring activity is involved, the audit report will be submitted to the Head, Coordinated Negotiation Staff (MAT 02D), with copies to the procuring activity concerned. The audit report may

be supplemented, within the Navy, by information from the files of the Headquarters Naval Material Command and the cognizant contracting offices, plus any information available from individual negotiators currently dealing with the contractor and any additional information the contractor may wish or be requested to furnish. On the basis of the audit report and all additional information, the negotiation of rates shall be accomplished as set forth in § 3.705 and this paragraph (b).

(c) Where contracts are completed and Tri-Service overhead rates have not been finalized covering that period(s), the final rates affecting such contracts may be negotiated by the ACO subject to the following:

(1) Physically completed as to performance and all other administrative and technical requirements other than financial; namely, overhead;

(2) The allocable overhead dollars are considered to be not substantial;

(3) Consultation and advice of the DCAA auditor who would then be made aware of the base(s) for settlement;

(4) Applicable period contract costs be included in the base for determining final overhead rates.

§ 737.3–750 Method of Interim Payment.

Paragraph (e) of the Negotiated Overhead Rates clause (§ 3.704) authorizes two alternative methods of interim payments pending negotiation of final rates: (a) negotiated provisional rates set forth in the contract Schedule, or (b) billing rates acceptable to the contracting officer or his authorized representative. In the case of contracts with commercial concerns the billing rate method is preferred where only Navy contracts are involved. Under this method, interim payments will be made at billing rates acceptable to the Defense Contract Audit Agency but the billing rates will not be incorporated in an amendment to the contract. This procedure is more easily administered, provides greater flexibility for prompt adjustment to meet changed circumstances during the rate period, and eliminates the necessity of negotiation by procurement personnel. Where the billing rate method is adopted for Navy contracts, the contracts shall provide that interim payments for overhead will be made at billing rates acceptable to the Defense Contract Audit Agency and that, in the event of failure to agree on the specific billing rates to be used in any given period, the contracting officer and the contractor shall negotiate provisional rates for incorporation into the contract. Where contractors have contracts with more than one Department, the method of interim payment shall be determined by mutual agreement between the contractor and the Departments involved and shall be incorporated in the negotiation report or summary.

§ 737.3–800 Price Negotiation Policies and Techniques.

§ 737.3–803 Type of Contract.

(a) When it is proposed to use other than a firm fixed-price type of contract, and the contract is subject to business clearance by the Chief of Naval Material, the Cognizant Auditor shall be requested by the contracting officer to furnish advice as to whether the proposed contractor has an accounting system which lends itself to the satisfactory administration of the particular type of contract or pricing provisions proposed. If placement of the contract is imperative due to a valid urgency, the request to the Cognizant Auditor and the Auditor's reply may be made orally.

(b) The Business Clearance Memorandum submitted to the Chief of Naval Material (MAT022) shall make reference to the advice received from the Auditor concerning the proposed contractor's accounting system. Omission from the Business Clearance of reference to such advice and action thereon will result in automatic return of the Business Clearance without action.

§ 737.3–807 Pricing Techniques.

§ 737.3–807–3 Cost or Pricing Data.

(a) *Waiver of Requirement Under 10 U.S.C. 2306(f)* (P.L. 87–653). (1) Pursuant to the authority of 10 U.S.C. 2306 (f), the requirement of § 3,807–3(a) with respect to the submission of cost and pricing data and the certification thereto is waived for prime contracts to the Western Electric Company for materials, supplies and services which are standard Bell System items.

(2) The requirement for certification of cost or pricing data for cost-reimbursement-no-fee contracts to nonprofit educational and other nonprofit institutions is also waived, except that, this waiver does not exempt subcontractor certificate requirements. Contracting Officers will require, by appropriate contractual provision, subcontractor compliance with certificate requirements. Furthermore, this waiver applies only to the certification and does not waive the requirements for submission of cost or pricing data under cost-reimbursement-no-fee contracts.

(b) *Effective Date.* The authorization granted in (a) above remains in effect until 30 June 1976.

§ 737.3–807–5 Review and Evaluation of Subcontractor's Proposals by Field Contract Administration Offices.

(a) In those instances set forth in § 3.801–5(b) (12) and § 3.807–3(e) (3), (4) or (5) wherein Government assistance is deemed necessary to review subcontractor's cost estimates at the subcontractor's plant, the request to the field contract administration officer shall be accompanied by a copy of the review package accomplished by the prime contractor or higher-tier subcontractor, including: (1) the subcontractor's proposal; (2) DD Form 633, if used; (3) other related cost and pricing data provided by the subcontractor; and (4) the results of the prime contractor's or higher-tier subcontractor's cost/price analysis. In instances described in § 3.807–3(e) (3) where the above-described data is not available, such data as is available (in-house estimates, price analysis, etc.) shall be provided.

(b) DSA, DCAS Headquarters, Executive Directorate, Contract Administration, Cameron Station, Alexandria, Virginia 22314 should be notified when review and evaluation of subcontractors' proposals

(1) will require extensive DCAS assistance in connection with the acquisition of a major new weapon system, or

(2) required special or expedited action by a DCAS office and such action is being, or has been, delayed excessively.

§ 737.3–807–6 Refusal to Provide Cost or Pricing Data.

When under § 3.801–2(c) or § 3.807–6 the contracting officer is required to refer the prospective procurement to higher echelons, he will refer it to the head of the procuring activity concerned. If the problem cannot be resolved at that level, the head of the procuring activity will refer the matter with his comments and recommendations to the Chief of Naval Material (MAT 021). Referral will be made as expeditiously as possible inasmuch as award of the procurement shall be suspended until the matter is resolved. This procedure shall also be followed in cases in which a prime contractor is obligated to furnish cost data relating to negotiated purchases from a subcontractor, and the subcontractor refuses to give access to cost data sufficient to permit price negotiations.

§ 737.3–807–10 Subcontracting Considerations in Cost Analysis.

(a) *Requests for Proposals To Require Information on Purchased Materials.* (1) For purposes of this directive, "purchased materials" means raw materials, purchased parts, components, or end item(s) to be delivered under a contract, which are not fabricated or produced by the contractor.

(2) The need for requiring timely submission by potential and existing contractors or information required by negotiators or other procurement personnel to evaluate properly the purchased materials portion of price quotations is emphasized. This information is necessary particularly when competition is lacking or is inadequate to control the prices initially proposed. The prime categories requiring treatment are: (i) new procurements in cases involving a sole source or where competition is limited, (ii) repricing of redeterminable and incentive contracts, and (iii) equitable adjustments under the Changes clause and other clauses having similar provisions for such adjustments.

(3) Whenever it is considered desirable to make use of cost analysis in accordance with 3.807–2(c) and the circumstances set forth in subparagraph (2) above apply, requests for proposals and requests for quotations shall also require the offeror to include the following in-

formation in its proposal or quotation with respect to major purchased materials, giving due consideration to both the relative importance of the item and the dollar amount involved:

(i) Principal materials or components to be purchased by the offeror;

(ii) Proposed or established sources, including size classification (large or small business) of each source;

(iii) Proposed method of purchase (whether competitive or other than competitive) and reasons therefor;

(iv) Basis for award; i.e., low bidder or delivery, etc.;

(v) Copies of suppliers' cost breakdowns and any price analysis made by the contractor if noncompetitive;

(vi) Type of pricing arrangement;

(vii) Comparison with invoice prices of prior procurements, if any;

(viii) Organizational relationship, if any, of proposed supplier to offeror; and

(ix) In the circumstance of follow-on orders, an explanation of any changes in "make-or-buy" decisions substantially affecting the proposed price or creating diversification for the contractor at the expense of the Government.

The foregoing information shall also be requested from contractors in connection with the information to be furnished in support of repricing actions and equitable adjustments. In addition, in the case of services required under a contract or proposed contract, which are not to be performed directly by the contractor or the offeror, as the case may be, the foregoing information shall also be required to the extent applicable. All of the information required above must be developed and consolidated by the offeror or contractor in preparing its proposal or quotation, or the material needed to support a repricing action, or a request for an equitable adjustment; accordingly, the furnishing of this information to the Government on a timely basis will add no substantial burden to the offeror or contractor concerned.

(4) Upon receipt of the above information, negotiators shall proceed with evaluations in accordance with principles set forth in § 3.807–10. A brief description of the method of evaluation utilized and sufficient examples to support the conclusions reached are a required part of business clearances. (See § 737.1–403–51(c)).

§ 737.3–807–53 Substantiation of Obstacles or Residual Inventory Charges in Pricing and Repricing Actions.

Whenever a contractor submits cost data on DD Form 1107 (Change Order Price Analysis) or DD Form 784 (Cost Analysis for Contract Price Redetermination), or by any alternate method, in connection with pricing of change orders or repricing of contracts, charges included therein for obsolete or excess residual inventory shall be substantiated by the submission of appropriate schedules listing the inventory involved. If title to such inventory vests in the Government, the inventory shal be treated in accordance with regulations established for contractor inventory.

§ 737.3–807–55 Equitable Price Reductions for Failure To Meet Contract Requirements.

Action shall be taken to negotiate an equitable price reduction pursuant to a guarantee clause, warranty provision, or failure to meet contract specifications, as soon as possible after the nature and extent of the deficiency has been determined, and any partially corrective action authorized by the Contracting Officer has been completed. Delay in negotiation of such reductions to permit concurrent final pricing of the particular contract or other related contracts shall not be allowed generally since such delay, in most instances, serves no useful purpose. Any significant delay in negotiation results in loss of appreciation of the importance of the defect by both parties, particularly after cognizant personnel leave, or are assigned to other work.

§ 737.3–807–56 Consideration of Income Tax Payments in Defective Pricing Adjustments.

Contractor income tax payments shall not be considered nor included in pricing adjustments under the § 7.104–29 "Price Reduction for Defective Cost or Pricing Data" clauses. When the question arises, contractors should be advised to obtain such tax adjustment through the amended income tax return procedure.

§ 737.3–811 Record of Price Negotiation.

The memorandum required by § 3.811, generally, will be signed only on behalf of the Government. However, whenever it is desirable to have such memorandum verified by the initials of signature of the prospective contractor's negotiator, the following statement shall be included therein:

This memorandum is a summary of negotiations only and does not constitute a contractual obligation. Nothing set forth herein is binding on either the Government or ----------*

§ 737.3–1000 Contractor's Weighted Average Share in Cost Risk (CWAS)

§ 737.3–1000–1 Scope of Part.

This part sets forth, for the Administrative Contracting Officer (ACO), uniform procedures relating to the administration of the CWAS Program.

§ 737.3–1004 Application of CWAS.

(a) Within the Navy, the term "Head of a Procuring Activity" as used in § 3.1004(d) means the parent organization of the ACO. Upon receipt of the determination required by § 3.1004(b) which renders a withdrawal effective, the ACO shall notify the Defense Supply Agency as set forth in § 3.1008.

§ 737.3–1005 Procedures for Determining a Contractor's Weighted Average Share in Cost Risk.

For purposes of determining a CWAS rating, the treatment to be accorded basic ordering agreements, foreign profit centers and intracompany transactions is as follows:

(a) *Basic Ordering Agreement.* Where prices are not established prior to authorizing the Contractor to begin work, all costs incurred prior to the establishment of firm prices shall be assigned a zero factor as representing his share in cost risk. Costs incurred after establishment of a firm pricing agreement shall be assigned the factor applicable to the definite contract awarded. The date of agreement may be considered as the end of the month immediately prior to the date of the agreement.

(b) *Foreign Profit Centers.* A foreign profit center should be treated the same as a domestic profit center. If a profit center, foreign or domestic, receives benefits from higher management level and is assessed with a fair allocation of costs from such levels—even though minimal in amount—the profit center should be included in the computation of the CWAS ratings.

(c) *Intracompany Transactions.* The transferring and the receiving profit centers, may include the costs of intracompany transactions provided that such costs are included in each of the profit center bases used for allocation of indirect costs. However, for intermediate management organizations and the corporate office, the costs of intracompany transactions should be eliminated from the receiving profit centers and included in the transferring profit centers.

§ 737.3–1006 Reporting Procedure.

Six copies of each contractor's letter of application for qualification under the CWAS program shall be sent air mail to Headquarters Naval Material Command (MAT 024) within one working day after receipt by the ACO. (Headquarters Naval Material Command will then transmit copies to each military department and other government agencies concerned for action, as may be appropriate, in accordance with § 3.1008). See § 737.3–1007, § 737.3–1008(b), § 737.3–1051 for additional reporting requirements.

§ 737.3–1007 Determination and Verification.

The ACO shall allow at least 45 calendar days, but not more than 60 days, from the date of the contractor's application before giving CWAS approval. Disapproval may be given any time within the 60 days. In unusual circumstances, if an extension beyond 60 days is necessary, the ACO shall advise the contractor in writing specifying a revised deadline date. Suggested approval and disapproval letters are set forth below. The letter shall not reflect the CWAS rating achieved. A copy of all letters of CWAS disapprovals, with accompanying reasons therefor, shall be provided Headquarters Naval Material Command.

(a) *Approval Letter.*

1. Your CWAS proposal of ---------- submitted computations applicable to the profit center(s) identified for determining your Contractor Weighted Average Share in Cost Risk for your fiscal year ending ---------

2. Your CWAS rating is approved for determination of the reasonableness criteria

*Insert name of the other party to the negotiations.

for settlement of indirect costs generated within _____ during your fiscal year _____.

3. To maintain your CWAS approval, a yearly report reflecting "contract mix" computations shall be submitted to this office. The report is due not later than 105 days after the close of your fiscal year.

(*This paragraph is to be added if applicable*).

4. Profit center(s) _____ (was) (were) found to have a percentage rating which does not meet the requirements for participation in the CWAS program. You are encouraged to resubmit within 105 days after the close of your fiscal year.

Administrative Contracting Officer

cc:
Cognizant DCAA Auditor

(b) *Disapproval Letter.*

1. Your CWAS proposal of _____ applicable to costs for your fiscal year ending _____ has been given a thorough review and analysis. Consideration has been given to the criteria set forth in ASPR 3-1000 for qualification and participation in the program.

2. While approval cannot be tendered at this time, you are encouraged to resubmit at the end of your current fiscal year. Let me remind you that your re-submission must be received within 105 days after the close of your fiscal year.

Administrative Contracting Officer.

cc:
Cognizant DCAA Auditor
NAVMAT

§ 737.3–1008 Maintenance of Records.

(a) All CWAS proposals and related files shall be retained for a period of six years from date of submission.

(b) The ACO, within one working day from the date of a CWAS approval or withdrawal, shall advise Deputy Director (DCAS), Defense Supply Agency (Attn: DCAS–ACC) of such approval or withdrawal by appropriate completion of the following format. An original and one copy for each profit center shall be forwarded. Updated forms will be prepared and submitted upon each change of a profit center's status or for the purpose of updating information. Changes need not be submitted if the contractor elects not to participate in the program in succeeding years.

Subj: Contractor Weighted Average Share in Cost Risk (CWAS)
To: Deputy Director (DCAS)
Defense Supply Agency (Attn: DCAS–ACC)
Cameron Station
Alexandria, Va. 22314

1. (*Complete to extent applicable to identify profit center location within the corporation.*)
Profit Center CWAS Qualified:
Address:
Intermediate Organization:
Subsidiary of Division:

2. CWAS Rating:
Contractor's Fiscal Year Applicable:
Date of End of Contractor's Fiscal Year:
Prior Fiscal Years CWAS Approved:

3. Remarks: (*withdrawals, reinstatements, cost center not applicable, etc., with authority cited.*)

4. Cognizant CA office.
ACO Name/Code:

§ 737.3–1050 Audit Services.

The ACO shall maintain close coordination with the DCAA auditor on CWAS related matters. The DCAA Contract Audit Manual, Chapter 9–314, provides for specific audit advice and assistance to the ACO. In addition to the prescribed audit services, the ACO shall request support from the auditor in the following areas:

(a) Recommendations to support actions to be taken under the provisions of § 3.1004(b) and § 15.201–3(b).

(b) Opinions incident to areas identified in the contractor's operation which may have an impact on future CWAS proposals.

§ 737.3–1051 CWAS Coordinating Group.

A CWAS Coordinating Group in the Office of the Assistant Secretary of Defense (Installations and Logistics) will: (i) respond to questions submitted concerning CWAS, (ii) recommend ASPR changes concerning CWAS to the ASPR Committee, and (iii) evaluate the effectiveness of the application of CWAS. Questions concerning CWAS, together with recommended solutions wherever possible, should be addressed through channels via the Chief of Naval Material to:

CWAS Coordinating Group
Office of the Assistant Secretary of Defense (I&L)
Pentagon, Room 3E–821
Washington, D.C. 20301

Two copies each of any directive issued which concerns CWAS shall also be forwarded to this group.

§ 737.3–1100 Acquisition of Automatic Data Processing Equipment.

§ 737.3–1100–1 Contractor Aquisition of Automatic Data Processing Equipment (ADPE).

§ 737.3–1100–2 Procedures for Obtaining Technical ADP Assistance.

(a) This NPD provides guidance concerning the means by which the ACO (Administrative Contracting Officer) may obtain technical ADP assistance as necessary in performing the review, as required by 3.1100–2, of contractor acquisition of ADPE.

(b) The provisions of § 3.1100–2 shall not be interpreted as relieving the ACO from the responsibility of seeking out possible sources of assistance of his own initiative. Navy field contract administration offices in need of technical ADP assistance shall request such aid directly from other Government activities in the area who may be able to provide it and shall make use of all local resources to the extent feasible.

(c) Where all reasonable efforts fail to secure local ADP assistance, the ACO may submit a request to the next higher echelon in the chain of command which shall be responsible for providing the necessary ADP assistance. However, in the event the higher echelon cannot comply with the request, it shall be forwarded, together with a detailed justification, to the Chief of Naval Material (MAT 014) for appropriate action. A copy of the request shall be forwarded to the Chief of Naval Material (MAT 024). Upon receipt and analysis of the documents, the Chief of Naval Material (MAT 014) will take appropriate measures to assure that technical ADP assistance is provided to the ACO.

§ 737.3–1200 Cost Accounting Standards.

§ 737.3–1203 Prime Contractor Disclosure Statment(s).

(a) *Determination of Secretary That It Is Impractical To Secure Disclosure Statement(s).* The information needed for the Assistant Secretary of the Navy (Installations and Logistics) to waive contractor submission of a disclosure statement, as authorized under § 3.1203 (e), shall be prepared by the Procuring Contracting Officer (PCO). Such information shall be submitted in the form of a draft determination and findings via the Chief of Naval Material (MAT 021). The information shall consist of the following:

(1) A description of the proposed contract, including the contract type, the supplies or services being procured, and the amount of the proposed award;

(2) An unequivocal statement that the proposed contractor refuses to submit a disclosure statement;

(3) The specific reasons why the proposed contractor refuses to submit a disclosure statement;

(4) The net sum of all awards by the Department of Defense to the proposed contractor during the preceding three fiscal years;

(5) A statement that no other source of the supplies or services being procured is available to satisfy the needs of the activity on a timely basis;

(6) A statement of any alternative methods of fulfilling the project or program needs and the procuring activity's reasons for rejecting such alternatives;

(7) A statement of the steps being taken by the procuring activity to establish other sources of supply for future procurements of the supplies or services being procured;

(8) Any other information that may aid the Secretary in determining that it is impractical to secure the disclosure statement; and

(9) Based on the above findings, a proposed determination that it is impractical to secure a disclosure statement.

§ 737.3–1206 Subcontractor Disclosure Statements.

(a) Requests for waiver of a subcontractor's disclosure statement shall be submitted in the same form, contain the same information, and be processed in the same manned as set forth in § 737.3–1203(a) above.

§ 737.3–1211 Waiver of Cost Accounting Standards, Rules, and Regulations.

(a) The information required by ASPR Appendix O in support of a request for waiver of the Cost Accounting Standards clause, under the provisions of § 3.1211 shall be submitted by the PCO through chain of command to the Chief of Naval Material (MAT 021). In order to facilitate forwarding to the Cost Accounting Standards Board, via the Assistant Secretary of the Navy (Installations and Logistics) and the Assistant

Secretary of Defense (Installations and Logistics), this information shall be included in an enclosure separate from the initiating communication, with paragraphs numbered sequentially in the same order as the requirements. The submission shall also include the estimated date of contract award and justification, if any, for the urgency of award if the estimated date of award is less than sixty (60) days from date of submission.

(b) In the case of procurements to be placed with foreign concerns where a Cost Accounting Standards clause waiver is requested, the following information, over and above that required by paragraph (a) of this section, shall be requested of DCAA (see paragraph (d) of this section):

(1) Any accounting requirements imposed on the foreign concern by the foreign government which are incompatible with the Cost Accounting Standards;

(2) Any accounting requirements imposed on the foreign concern by the foreign government which are sufficiently unique that compliance by the concern with the Cost Accounting Standards would not be feasible; and

(3) The cost impact on U.S. Government contracts with the foreign concern if the Cost Accounting Standards were required to be followed by the concern.

(c) If, on the basis of information developed by DCAA in accordance with (b) of this section, it appears that a foreign concern could reasonably comply with the CAS clause, the PCO shall renew efforts to obtain its acceptance of the clause. If, despite renewed efforts, the foreign concern's refusal remains adamant, a further written statement of its position shall be obtained which shall discuss in detail each of the DCAA findings and the rationale for the continued refusal.

(d) The information required under paragraph (b) of this section shall be requested by the PCO. In the event such information has previously been obtained, the PCO shall ascertain that it is still current. Requests should be addressed as follows:

(1) *European Area.*

Message:
Branch Manager
European Branch Office, DCAA
Rhein Main 5-0
Rhein Main Air Force Base, Germany

or

Mail:
Branch Manager
European Branch Office, DCAA
APO New York 09057

Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

New York Region, DCAA
252 7th Avenue (4th Floor)
New York, N.Y. 10001

(2) *Pacific Area (except Vietnam, Thailand and Malaysia).*

Message:
Branch Manager
Pacific Branch, DCAA
Yokohama, Japan

or

Mail:
Branch Manager
Pacific Branch Office, DCAA
Box D
APO San Francisco 96503

Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

San Francisco Region, DCAA
450 Golden Gate Avenue
Box 36116
San Francisco, CA 94102

(3) *Pacific Area (Vietnam, Thailand and Malaysia ONLY).*

Message:
Branch Manager
Saigon Branch Office, DCAA
c/o DIRCON, Box 101
Saigon, Republic of Vietnam

or

Mail:
Branch Manager
Saigon Branch Office, DCAA
c/o DAO-DIRCON-RRVN
Box 101
FPO San Francisco 96626

Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

San Francisco Region, DCAA
450 Golden Gate Avenue
Box 36616
San Francisco, CA 94102

§ 737.3–1250 Navy Cost Accounting Standards (Navy-CAS) Board.

(a) A Navy Cost Accounting Standards (Navy-CAS) Board is established to assure uniformity in administering determinations that practices disclosed in disclosure statements are in non-compliance with applicable cost accounting standards, in the case of contractors assigned to the Navy for contract administration (see DOD Directory of Contract Administration Components (DOD 4105.59H)).

(b) In accordance with § 8.1205(c), each determination of non-compliance which cannot be resolved by the cognizant Navy ACO shall be referred to the procuring activity having cognizance of the ACO. If that activity cannot resolve the matter, it shall be referred to the Navy-CAS Board.

(c) The Navy-CAS Board shall review each determination of non-compliance that is referred to it in accordance with (b) above and advise the ACO of its recommendations.

(d) The Navy-CAS Board shall consist of one permanent representative each from: Headquarters, Naval Material Command (MAT02D, Chairman); Headquarters, Naval Air Systems Command; Headquarters, Naval Electronic Systems Command; Headquarters, Naval Ordnance Systems Command; and Headquarters, Naval Ship Systems Command. Each other Navy Command, Office, and Bureau as well as each other department and Government agency, having a substantive interest in a particular non-compliance matter before the Board, shall be invited to have a representative participate, as an *ad hoc* member, in Board proceedings regarding that matter.

Subpart D—Special Types and Methods of Procurement

§ 737.4–100 Procurement of Research and Development.

§ 737.4–111 Special Use Allowance for Research Facilities Required by Educational Institutions.

(a) Generally a special use allowance for acquisition or construction of research facilities should be limited to that portion of the total acquisition cost of a research facility which is the amount needed for construction in accordance with Government criteria to satisfy the functional requirements of the Government work to be performed at the facility. Any significant balance of cost to meet the special design or other extra requirements of the educational institution should generally be either excluded from allocation to Government contracts or made subject to a normal or lower use allowance as provided in § 4.111(d)(ii).

(b) In addition to other information relevant to consideration a special use allowance as set forth in § 4.111 (c) and (d), requests for approval of a special use allowance should state the total estimated acquisition cost of the proposed facility, the estimated amount or percentage thereof needed in accordance with Government criteria to satisfy the functional requirements for Government work, information as to the comparative need of the Government and the educational institution for the facility, and if more than the amount of percentage of cost needed to satisfy the Government's functional requirements is recommended for special use allowance, the special circumstances justifying such action. Such requests for approval shall be forwarded via the Commander, Naval Facilities Engineering, for review and comment in regard to design, type of construction, adequacy to meet Government requirements and the reasonableness of the estimated total cost and the amount thereof allocable to Government's requirements.

(c) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify (i) that plans and specifications and major changes thereto shall be subject to approval by the Government; (ii) that the work shall be subject to approval by the Government for conformity to approved plans and specifications; and (iii) that the Commander, Naval Facilities Engineering, shall be the authorized representative of the sponsoring procuring activity for such purposes.

(d) Except as otherwise directed or au-

thorized in the approval, the contract may also provide for up to a 15 percent increase in the amount subject to the special use allowance to cover changes in the work or any difference between estimated and actual cost of the work. Any such increase may be made subject to the approval of the sponsoring procuring activity. If more than a 15 percent increase is required, the further approval of the Deputy Chief of Naval Material (Logistic Support) shall be required.

§ 737.4–116 Government Property Under Research and Development Contracts.

§ 737.4–116–4 Transfer of Title to Equipment to Nonprofit Educational or Research Institutions.

(a) Each procuring activity transferring title to equipment in accordance with § 4.116–4 shall furnish a report of such transfer by 30 January each year to the Office of Naval Research (Code 522) under Report Control Symbol DD–I&L (A)–598 (4340). The report shall include the following:

(1) The name and location of each institution to which equipment was transferred during the previous calendar year;

(2) The dollar value (at acquisition cost) of equipment transferred to each institution;

(3) The total dollar value of all such transfers; and

(4) A separate sub-total showing the value of all equipments so transferred having an acquisition cost of less than $200.

§ 737.4–116–50 Transfer of Title Under Research Grants.

4–116.50 Transfer of Title Under Research Grants. See SECNAV Instruction 3900.10A and ONR Instruction 3900.10B.

Subpart E—Interdepartmental and Coordinated Procurement

§ 737.5–600 Procurement of Printing and Related Supplies.

§ 737.5–601 Printing and Related Supplies.

(a) Publications, printing, related equipment, and paper stocks used in procured in accordance with this Subpart; § 737.1–108(b)(vi), NAVSO P–35; § 737.1–201(c)(i), (v) and (vi), Definitions; and § 737.1–454, Responsibilities of the NPPS.

(b) Publications and printing may not be procured as an integral part of a Department of the Navy contract or grant unless authorized by the Congressional Joint Committee on Printing or unless a waiver has been obtained from the Public Printer (Government Printing Office). This does not preclude the procurement of writing, editing, manuscript copy, or illustrative services within a contract or grant; or the inclusion of requirements within a contract for incidental printing, e.g., forms and instructional materials solely for contractor use in responding to the terms of a contract; or the publication of findings by grantees within the terms of their grants, provided that such terms are in accordance with these directives and NAVSO P–35.

(c) Responsibility for initial determination on the necessity for authorizations or waivers, and for dealing with the Congressional Joint Committee on Printing and the Public Printer on matters relating to publications and printing, is vested in the Director, Navy Publications and Printing Service. Components of the Navy Department with requirements for inclusion of publications and printing within a contract or grant shall submit requests for such authorization or waiver through their appropriate publications management organizations. Field requirements shall be submitted in accordance with procedures established by such organizations, to the appropriate Director, Navy Publications and Printing Service Office.

(d) When composition, negatives, or a combination of both will be required within a contract for supplies or services requests for authorization or waiver shall attach a copy of the procurement document (IFB, RFQ, other) provisions specifying that the contractor will be responsible for continuing accuracy and currency of publications content for duration of the contract.

§ 737.5–1100 Coordinated Procurement.

§ 737.5–1102 Responsibilities Under Single Procurement.

(a) When the Department of the Navy has received a procurement assignment under the DOD Commodity Assignment Program, the Commander, Naval Supply Systems Command pursuant to authority delegated by the Chief of Naval Material, will assign procurement responsibilities to a particular procuring activity. The procuring activity assigned procurement responsibility shall be responsible for (1) collecting and coordinating the requirements of the Department of the Navy, or the arrangement therefor and (2) submitting to DOD via the Commander, Naval Supply Systems Command implementing procedures developed in compliance with § 5.1103–1.

§ 737.5–2000 Intra-Navy Procurement Assignments.

§ 737.5–2002 Responsibility of the Naval Supply Systems Command for Common-Use Items Listed in the Catalog of Navy Material.

The Naval Supply Systems Command is responsible for the procurement of all common-use items listed in the General Stores Section of the Catalog of Navy Material.

§ 737.5–2003 Utility Services.

§ 737.5–2003–1 Contracts for Electric Power, Gas, Water, and Other Utilities.

(a) It shall be the policy of the Department of the Navy to procure public utility services from commercial sources where economically feasible. Such services shall be procured at the lowest cost and on the best terms possible.

(b) The Commander, Naval Facilities Engineering Command shall have cognizance over all matters pertaining to the procurement of public utility services and the contracting therefor. Public utility services include, but are not limited to, electricity, gas, water, sewerage, drainage, fire and police protection, street lighting and cleaning, and trash and garbage disposal. Telephone and other wired voice communications are covered by § 737.5–2003–3.

(c) Authority to contract for public utility services shall be obtained by submission of a Business Clearance Memorandum to the Commander, Naval Facilities Engineering Command, in such form as he may prescribe. The Business Clearance Memorandum shall set forth the following information:

(1) Name and location of activity;

(2) Type of public utility service required;

(3) Estimated annual cost and, if available, a billing analysis for the preceding twelve (12) months showing usage and cost factors;

(4) Name and address of contractor;

(5) Copy of contractor's rates, rules, and regulations applicable to the service in question;

(6) A statement concerning the availability of competition;

(7) A requisition citing the appropriation chargeable; and

(8) Such other data pertaining to each type of public utility service as may be prescribed, from time to time, by the Commander, Naval Facilities Engineering Command.

(d) All contracts shall be approved as to legality and form by Counsel for the Naval Facilities Engineering Command Headquarters.

(e) Requests for authority to contract shall be submitted in accordance with procedures established by the Commander, Naval Facilities Engineering Command. These procedures shall be published in NAVSUP Manual, Volume II.

(f) The Commandant, U.S. Marine Corps shall submit to the Commander, Naval Facilities Engineering Command all requests for authority to contract for public utility services required by Marine Corps activities, except that services required by field activities, the annual amount of which does not exceed $2,500, may be procured by the Marine Corps without reference to the Naval Facilities Engineering Command Headquarters.

(g) A copy of each proposed contract for public utility service at any Government-owned facility operated by a Navy contractor, where the cost of such public utility service is to be reimbursed by the Navy, shall be submitted, prior to execution, by the Systems Command concerned to the Commander, Naval Facilities Engineering Command who shall notify the Systems Command concerned of his approval or directions with respect thereto.

(h) The authority herein conferred upon the Commander, Naval Facilities Engineering Command may be redelegated by him.

§ 737.5–2003–2 Utility Services for Contractor-Operated Activities at Government-Owned Facilities.

(a) § 737.5–2003–1(g) sets forth procedures for the review and approval of public utility service contracts at Government-owned, contractor-operated activities whenever the utility charges are reimbursable to the operating contractor. Such utility contracts shall be submitted to the Naval Facilities Engineering Command Headquarters via the cognizant Engineering Field Division as well as via the cognizant Systems Command.

(b) Contracts for the operation of Government-owned facilities by a Navy contractor which call for reimbursement of the contractor's utility expense shall specifically provide for the submission of utility subcontracts to the Naval Facilities Engineering Command Headquarters for comment or approval prior to execution as outlined above.

§ 737.5–2003–3 Telephone Facilities and Services.

(a) Thee three Military Departments have a form of joint "General Contract for Communication Facilities and Services," which will be executed with each one of the operating companies of the Bell System. Each such contract will be executed by an authorized corporate officer of the particular operating company and by three contracting officers, one for the Department of the Army, one for the Department of the Navy, and one for the Department of the Air Force. As a result, each operating company and each Military Department will look to the provisions of only one contract in the area served by each operating company. Each such contract, however, will preserve the flexible and efficient administrative arrangements pursuant to which, in the Department of the Navy, orders for facilities and services under such contracts are placed by Departmental or District officers (Navy and Marine) as appropriate.

(b) There is hereby delegated to the Commander, Naval Facilities Engineering Command and to such other persons as may be designated by him the authority to make and execute on behalf of the Department of the Navy (including the U.S. Marine Corps) all contracts for telephone communication facilities and services to be provided in the United States.

(c) Each such contract shall contain a definition of "Contracting Officers" substantially identical with that set out in the Definitions clause contained in §7.103–1.

(d) Orders under contracts will be placed by authorized representatives of contracting officers as provided herein. Therefore, under such contracts executed by the Commander, Facilities Engineering Command or by a contracting officer of the Naval Facilities Engineering Command, the following shall be considered, pursuant to the Definitions clause of each contract, an "authorized representative of a Contracting Officer acting within the limits of his authority," for the purpose as specified herein:

(1) The Director of Naval Communications, and all officers and civilian employees designated by him, for the purpose of ordering under contracts any of the following communications facilities and services except those included in (d)(3) of this section:

(i) Leased teletype lines of the Naval Communication System, flight control and weather reporting, or other private line teletype systems including TWX communication service;

(ii) All leased telephone lines not an integral part of purely local telephone systems; and

(iii) Keying, control and photo-radio leased lines.

(2) All officers and civilian employees designated by the Commander, Naval Facilities Engineering Command, for the purposes of ordering under contracts any of the following communication facilities and services except those included in (d)(3) of this section:

(i) All facilities and services not included in paragraph (d)(1)(i), (ii), and (iii) of this section, including but not limited to such items as switchboards, instruments, wiring plans, trunk and tie lines, off-premise mileage, individual telephones, non-recurring charges, service connection charges, termination charges, and telephone toll charges.

(ii) Work, whether or not of an engineering, technical or specialized nature, involved in the design, installation, alteration, repair or maintenance of telephone systems and teletypewriter communication facilities, owned in whole or in part by the Government and under the cognizance of the Navy.

(3) The Commandant of the Marine Corps and such officers and civilian employees as may be designated by the Commandant for the purpose of ordering any communication facilities and services required only by the Marine Corps.

(e) With respect to telephone systems owned in whole or in part by the Government and under the cognizance of the Department of the Navy, the Commander, Naval Facilities Engineering Command has cognizance over the design, installation, alteration, repair or maintenance of such systems by Government personnel or provided for by contracts (and orders thereunder) with contractors rather than companies or organizations regularly providing telephone facilities and services, except that the Commandant of the U.S. Marine Corps has cognizance for such purposes with respect to such systems which are under the cognizance of the U.S. Marine Corps.

(f) Nothing in this § 737.5–2003–3 affects procedures for the budgeting, allotting, or fiscal accounting of funds appropriate for telephone facilities and services.

§ 737.5–2004 Real Estate.

See NAVFAC P–73.

(a) *Acquisition of Title.* See BUDOCKS Instruction 11011.23 transmitting DOD Directive 4165.6.

(b) *Acquisition of Leasehold Interests.* See SECNAV Instruction 11011.17A.

§ 737.5–2005 Automotive, Construction, and Materials Handling Equipment.

(a) This § 733.5–2005 assigns responsibilities and establishes basic policies pertaining to all phases of automotive transportation and all types of automotive, construction, and materials handling equipment. It does not cover automotive, construction, and materials handling equipment in war reserve stocks intended for use at advanced bases or in training exercises.

(b) As used throughout this § 737.5–2005, the following terms shall have the meanings set forth below:

(1) *"Automotive vehicles"* means all noncombat, self-propelled vehicles suitable for use on the highway, and all trailers suitable for use in conjunction therewith (It includes trucks, buses, tractors, bus trailers, semi-trailers, all types of passenger vehicles, and all types of power cycles. It does not include bicycles, vehicles designed primarily for use on rails, construction equipment, materials handling equipment, amphibious vehicles, or vehicles (with or without armor) designed for active participation in combat);

(2) *"Construction equipment"* means all mechanical equipment used in the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property (It includes pile drivers, power shovels and cranes, road rollers, tractors, scrapers, plows, derricks, street sweepers, sprinkling carts and the like; and portable boilers, pumps and air compressors. It also includes such stationary machines and mechanical apparatus as rock-crushing plants, concrete batching and mixing plants and the like, used exclusively for work connected with the construction and maintenance of public works);

(3) *"Materials handling equipment"* means all mechanical equipment normally used for materials handling on floors and paved surfaces as fork lift and pallet trucks, warehouse tractors and trailers, stackers, straddle trucks, warehouse cranes, conveyors, and platform trucks; and

(4) *"Specialized types"* includes radio and electronic vans and trucks, ambulances, bomb handling trucks and trailers, aircraft fueling, crash fire and rescue and salvage units and such other specialized types as are developed by the management control bureaus for their specific use.

(c) The Marine Corps shall provide funds for the procurement, and administer the assignment, utilization, and maintenance, of all equipment covered by this NPD which the Marine Corps may require, except for procurement of ambulances. Procurement of Civil Engineer Support Equipment (CESE) and Materials Handling Equipment at Marine Corps Air Stations is the responsibility of the Marine Corps. All other equipment, except equipment peculiar to the Marine Corps, is the responsibility of the Navy.

(d) The Naval Facilities Engineering Command has the following responsibilities for the Navy with respect to auto-

motive vehicles, construction equipment, and standardized automotive components of specialized types (where specifically indicated, these responsibilities apply also to automotive vehicles and construction equipment used by the Marine Corps):

(1) Providing funds for the procurement, and administering the assignment and utilization, of all passenger carrying vehicles in accordance with the military requirements established by the Chief of Naval Operations;

(2) Establishing and promulgating standards for operation and general utilization;

(3) Preparing and promulgating maintenance standards;

(4) Administering public laws relating to:

(i) Commercial type and school bus operations (including Marine Corps);

(ii) Official use of Government-owned and operated motor vehicles including passenger cars (applies to Marine Corps for field status determinations only); and

(iii) The sale and replacement of used automotive vehicles, construction equipment and specialized types.

(5) Maintaining current and complete files and records for all activities, ashore and afloat;

(6) Assigning registration numbers;

(7) Establishing criteria for replacement and retirement;

(8) Developing and promulgating specifications;

(9) Acting upon procurement requests including those of the Marine Corps, transmitting them to the purchasing activity designated by higher authorty;

(10) Establishing standards for qualifications, training, and indoctrination of professional, technical, and supervisory employees concerned with automotive vehicles and construction equipment;

(11) Coordinating requirements and effecting standardization of equipment as practicable;

(12) Through command channels verifying, determming degree of, and assisting in compliance with the technical standards and safety regulations;

(13) Acting as a central clearing agency for the Navy, less the Marine Corps, in exchanging and disposing of automotive and construction equipment; and

(14) Devising standardized cost accounting and reporting requirements in collaboration with the Office of the Comptroller and other interested systems commands and offices.

(e) The Naval Supply Systems Command shall have the responsibilities listed under paragraph (d) (2), (3), (4) (iii), (5), (6), (7), (8), (9), (10), (11), (13), and (14) of this section, with respect to materials handling equipment.

(f) The Bureau of Medicine and Surgery shall have the responsibilities listed below with respect to ambulances and other specialized types of automotive equipment developed for its specific use at all Navy and Marine Corps activities. Specialized types of automotive equipment under cognizance of the Bureau of Medicine and Surgery include mobile X-ray units, mobile dental units and mobile surgical operating units. The responsibility for these specialized types which are developed for advance base components or combat units will be vested in the Systems Command or Office having responsibility therefor.

(1) Providing funds for the procurement, and administering the assignment and utilization, of all such equipment;

(2) Determining allowance lists and requirements for current and future needs;

(3) Determining what equipment is excess to its needs;

(4) Establishing maintenance and operating procedures for medical and dental equipment contained in specialized types.

(g) The Naval Ship Systems Command shall have the responsibility, in collaboration with each cognizant Systems Command, and Office of the Department of the Navy, for recommending to the Chief of Naval Operations allowances, and changes therein, of automotive vehicles and materials handling equipment for all types of vessels. Such allowances and changes shall become effective upon approval by the Chief of Naval Operations.

(h) Each Systems Command, Bureau and Office of the Department of the Navy shall have the responsibilities listed below with respect to automotive vehicles, construction and materials handling equipment for activities under its management control except as indicated in § 737.5–2005 (d), (e), (f) and (g).

(1) Providing funds for the procurement, and administering the assignment and utilization, of all units except passenger carrying vehicles and ambulances;

(2) Submitting requirements for passenger-carrying vehicles to the Naval Facilities Engineering Command;

(3) Providing funds for maintenance and operation;

(4) Determining requirements for current and future needs;

(5) Establishing allowance lists for all its activities in accordance with the military requirements established by the Chief of Naval Operations;

(6) Determining what equipment is excess to its needs;

(7) Developing and promulgating specifications for specialized types and the specialized components of specialized types;

(8) Establishing operating and utilization procedures for specialized types and maintenance procedures for the specialized components of specialized types.

(i) The Commandants of the Districts, the Chief of Naval Air Training and the Commandant of the Marine Corps have coordination control of automotive transportation matters within their respective commands. These commands, subject to the technical guidance of the Naval Facilities Engineering Command Headquarters, shall also be responsible for coordinating all phases of the Department of the Navy's automotive and construction equipment program, as defined in this NPD, between the activities within their commands and the bureaus and offices of the Department of the Navy; for inspecting shore activities and reporting to the respective management bureaus with appropriate recommendations; for transferring of excess equipment; and for effecting standardization of equipment, as practicable, within their own commands.

(j) The Assistant Secretary of the Navy (I and L) has general direction and supervision of policies, procedures and standards in the field of automotive transportation.

§ 737.5–2100 Services of Ships and Crafts.

§ 737.5–2101 Services of Ships and Crafts for Other Than Transportation.

Military Sealift Command (MSC) shall procure or otherwise provide to Navy activities, as requested, the services of ships and crafts for purposes other than transportation such as (i) oceanographic research and survey, including underwater research; (ii) cable laying; (iii) repair facilities and (iv) range instrumentation. Requirements for such services or ships, except those met by ships and crafts organic to the Military Services and those required in the installation phase of a system by the systems contractor, shall be placed upon MSC in a timely manner to permit maximum competition.

§ 737.5–2102 Charter Party Agreements.

The Oceanographer of the Navy, acting through the contracting facilities of the Office of Naval Research, shall be responsible for Navy charter party agreements wherein Navy-owned oceanographic research ships are leased to research institutions for the performance of contract research.

Subpart F—Foreign Purchase

§ 737.6–100 Buy American Act—Supply and Service Contracts.

§ 737.6–103 Exceptions.

§ 737.6–103–2 Nonavailability in the United States.

(a) Each request for approval to purchase a foreign end product under this exception shall be submitted to the Chief of Naval Material (MAT 0212) in the form of a determination. Each such determination shall include (1) a reference to the Buy American Act (41 U.S.C. 10a d) (2) a description of the item being procured, (3) the unit, quantity, and estimated delivery cost, (4) a brief statement establishing the necessity for the procurement and indicating considerations which have been given to the feasibility of foregoing the procurement, (5) a statement establishing the nonavailability of any similar or substitute items of domestic origin, indicating both the required characteristics available only in the foreign item and the deficiencies of the domestic items and (6) a statement describing the relationship of

the requirement to the production of any item on the Master Urgency Planning List.

§ 737.6–103–5 Canadian Supplies.

The following is the Department of the Navy list of Canadian supplies which have been approved by the Secretary of Navy as being of a military character or involved in programs of mutual interest to the United States and Canada as described in § 6.103–5(a):

Group/Class	*Description*
10	Weapons
1135	Fuzing and Firing Devices, Atomic Ordnance
1190	Specialized Test and Handling Equipment, Atomic Ordnance
12	Fire Control Equipment
13	Ammunition and Explosives
14	Guided Missiles
15	Aircraft; Airframe Structural Components
16	Aircraft Components and Accessories
17	Aircraft Launching, Landing and Ground Handling Equipment
19	Ships, Small Craft, Pontoons, and Floating Cocks
20	Ship and Marine Equipment
22	Railway Equipment
23	Motor Vehicles, Trailers, and Cycles
24	Tractors
25	Vehicular Equipment Components
26	Tires and Tubes
28	Engines, Turbines, and Components
29	Engine Accessories
30	Mechanical Power Transmission Equipment
31	Bearings
34	Metalworking Machinery
3695	Miscellaneous Special Industry Machinery
39	Materials Handling Equipment
41	Refrigeration and Air Conditioning Equipment
4210	Fire Fighting Equipment
4240	Safety and Rescue Equipment
43	Pumps and Compressors
4410	Industrial Boilers
4420	Heat Exchangers and Steam Condensers
4470	Nuclear Reactors
4520	Space Heating Equipment and Domestic Water Heaters
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose and Fittings
48	Valves
49	Maintenance and Repair Shop Equipment
5220	Inspection Gages
53 (except 5345 and 5350)	Hardware
54 (except 5440)	Prefabricated Structures
55 (except 5520)	Lumber, Plywood, and Veneer
58	Communication Equipment
59	Electrical and Electronic Equipment Components
61	Electric Wire, and Power Distribution Equipment
6210	Indoor and Outdoor Electric Lighting Fixtures
6220	Electric Vehicular Lights and Fixtures
6320	Shipboard Alarm and Signal Systems
6340	Aircraft Alarm and Signal Systems
66	Instruments and Laboratory Equipment
67 (except 6750)	Photographic Equipment
68	Chemicals and Chemical Products
69	Training Aids and Devices
7440	Automatic Data Processing Systems: Industrial, Scientific, and Office Types
7610	Books and Pamphlets
7650	Drawings and Specifications
80 (except 8020)	Paints, Sealers, and Adhesives
8120	Gas Cylinders
8140	Ammunition Boxes, Packages, and Special Containers
*8305	Textile Fabrics
*8405	Outerwear, Men's
*8410	Outerwear, Women's
*8415	Clothing, Special Purpose
8470	Armor, Personal
9320	Rubber Fabricated Materials
9330	Plastics Fabricated Materials
9350	Refractories and Fire Surfacing Materials
95	Metal Bars, Sheets, and Shapes
96	Ores, Minerals, and Their Primary Products

*Subject to § 6.304–1 and § 737.6–304–1

§ 737.6–104 Procedures.

§ 737.6–104–4 Evaluation of Bids and Proposals.

(a) *Procedure for Submission to Secretary.* Propose : awards submitted for Secretarial decision shall be submitted via the Chief of Naval Material (MAT 0212) with (1) a recommendation supported by relevant facts, including the amount of applicable duty as verified by the Bureau of Customs, and (2) one copy each of the bids or offers to be considered, and (3) an abstract of bids. To ensure that the Navy in no case buys domestic or foreign end products when they are available from Defense inventories, the requirement shall be carefully screened against Department of Defense excess and surplus materials before submission of the proposed award to the Secretary. The results of such screening shall be reported in the statement of facts. Appropriate provision should be made for extending the date of acceptance of bids or offers to permit sufficient time for orderly transmission and Secretarial consideration.

§ 737.6–104–6 Contract Administration.

Any discovery that in the performance of a contract there has been a failure to comply with the provisions of the Buy American Act clause (§ 6.104–5) shall be reported immediately with the name of the contractor, to the Chief of Naval Material, (MAT 024).

§ 737.6–200 Buy American Act—Construction Contracts.

§ 737.6–203 Exceptions.

§ 737.6–203–1 Nonavailability in the United States.

Determinations that supplies may be exempt from the prohibitions of the Buy America Act in accordance with § 18.508 shall be made in the manner, and subject to the requirements, prescribed in § 737.6–103–2.

§ 737.6–204 Procedures.

§ 737.6–204–3 Evaluation of Bids and Proposals.

(a) Bids or proposals requiring a determination in accordance with § 18.–509–3 shall be submitted to the Secretary of the Navy via the Chief of Naval Material (MAT 021) and shall contain the following information:

(1) Description of materials, including unit and quantity;

(2) Estimated cost;

(3) Location of construction project;

(4) Name and address of proposed contractor; and

(5) Basis for determination of impracticability of using domestic materials.

§ 737.6–300 Appropriation Act Restrictions on Procurement of Foreign Supplies.

§ 737.6–304 Procedures.

§ 737.6–304–1 Procurement of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric or Coated Synthetic Fabric, Items Containing Mohair or Cotton, or Specialty Metals.

(a) Request for a Secretarial determination that supplies identified in § 6.304–1 (that are not listed in § 6.105) cannot be procured as and when needed at United States market prices will be forwarded to the Secretary of the Navy via the Chief of Naval Material (MAT 021); except that requests for determinations for specialty metals may be granted by the Head of the Procuring Activity if the total cost of the procurement is not in excess of $ 1,000,000 and by the Deputy Chief of Naval Material (Procurement and Production) if the total cost of the procurement is in excess of $1,000,000. Request for a determination shall contain the following information:

(1) Destription of item or items, including unit and quantity;

(2) Estimated cost;

(3) Country of origin;

(4) Name and address of proposed contractor;

(5) Statement as to necessity for procurement; and

(6) Basis for determination of unreasonableness of domestic prices.

§ 737.6–400 Purchases from Soviet Controlled Areas.

§ 737.6–402 Exceptions.

(a) Determinations made by contracting offices under § 6.402(b)(i) (for purchases not exceeding $2,500) shall be reduced to writing and made a part of the appropriate contract file.

(b) Where Secretarial approval is required by § 6.402(b)(ii) (for purchases exceeding $2,500), requests for approval shall be forwarded to the Secretary of the Navy via the Chief of Naval Material (MAT021) and shall contain full justification, with all pertinent details, for effecting the proposed procurement from a source within a Soviet-controlled area.

§ 737.6–500 Canadian Purchases.

§ 737.6–503 Agreement With Department of Defense Production (Canada).

(a) The agreement with the Canadian Commercial Corporation dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961 and 15 October 1962, shall be incorporated by reference in contracts placed with that Corporation.

(b) *Waiver of Requirement Under 10 U.S.C. 2306(f) (P.L. 87–653).* Pursuant to the requirement of § 3.807–3(a) with respect to the submission of cost or pricing data and the certification thereto is waived for contract awards made to the Canadian Commercial Corporation until 30 June 1976.

§ 737.6–600 Duty and Customs.

§ 737.6–603 Emergency Purchases of War Materials Abroad.

§ 737.6–603–4– Custom Entries and Duty-Free Certificates.

(a) Where the shipment will enter the United States at the Port of New York, the contracting officer shall instruct the contractor or the subcontractor, as the case may be, to forward a copy of the shipping document (in addition to the memorandum copy forwarded to the designated Government representative) to the District Director of Customs at the port of entry. If the shipment moves on a Government bill of lading, sufficient copies of the shipping documents will be furnished to the contractor or subcontractor for this purpose.

(b) Commercial customs brokers, who act as agents on a fee basis for private importers, are not authorized to act as agents for the Government, and appropriations are not available for the payment of custom broker's fees. Any request by a broker for compensation or duty-free entry certificate shall be forwarded immediately, with all pertinent information available, to the Chief of Naval Material.

§ 737.6–603–5 Immediate Release Permits.

The Chief of Naval Material shall have the sole responsibility and authority within the Navy to issue immediate release permits.

§ 737.6–700 Military Assistance Program Procurements.

§ 737.6–702 Determinations and Approvals.

(a) Procurement of items for the Military Assistance Program which are based on the exception in § 6.702(a)(i) shall be made only if the procurement is approved by:

(1) The Deputy Chief of Naval Material (Procurement and Production) if the procurement is estimated to exceed $10,000;

(2) The head of the procuring activity or his immediate deputy, if the amount is estimated not to exceed $10,000;

(3) The principal staff office within the procuring activity concerned, if the amount involved is estimated not to exceed $1,000.

(b) Before granting such approval, or making such a determination, the approving authority shall consider the feasibility of foregoing the requirement or providing a U.S. substitute.

§ 737.6–705 U.S./Australian Offset Agreement Under the Foreign Military Sales (FMS) Program.

§ 737.6–705–1 General.

As a result of discussions between U.S. Department of Defense and Australian Department of Defence, the U.S. has agreed to a combined industry and DOD offset objective of twenty-five percent (25%) of the value of major Australian orders for U.S. military equipment. Major orders have been defined as those of at least $500,000 in value. A blanket type offset not keyed to specifically identified foreign military sales is rather unique. Satisfying this offset objective will be a long range proposition (within a five-year period after the first delivery under the FMS order). Over this period, a variety of different means to accomplish the offset objective will be considered. *However, U.S. contractors benefitting from the Australian FMS actions have the primary responsibility of satisfying the offset requirement.*

§ 737.6–705–2 Background.

The Australian Department of Defence has indicated that, in advance of FMS actions, the U.S. firm expected to perform the contract will be contacted with a view to making arrangements for that U.S. firm to subcontract from Australian sources. FMS actions indicated on DD Form 1513 shall refer to these arrangements. However, if there is no identification or reference to such arrangements, action shall be taken to determine if there are such arrangements and if not, the Australian Department of Defence shall be queried as to whether they intend to undertake such an effort. Each major FMS action will have to be examined carefully to determine exactly what arrangements the Australian Department of Defence has concluded. It is anticipated that these arrangements will represent component purchases from Australian sources for inclusion in the defense system being purchased by the Australian Department of Defence.

§ 737.6–705–3 Contract Clause.

A provision is clearly desirable in the contract that U.S. contractors benefitting substantially from the Australian FMS order will be expected to try to meet the offset objective. The provision would have a two-fold objective: (a) to specifically place upon the U.S. contractor the responsibility for attempting to meet the offset and (b) to provide a requirement for reporting its efforts to achieve this objective. The substance of the following provision shall therefore be included in each FMS contract exceeding $100,000 (unless it is clearly not feasible) where offset procurement from Australia is appropriate:

OFFSET PROCUREMENT

(1) The contractor recognizes that it has responsibility upon receipt of this contract to solicit to the maximum extent practicable in Australia for a minimum of (*percentage*) or (dollar value award). This is in accord with arrangements between the contractor and Australia.

(2) The contractor will report quarterly the following information to the contracting officer:

(1) Solicitations offered to Australian industry (item and value).

(2) Subcontracts or orders placed in Australia (item and value).

(3) Status of delivery under subcontracts or orders placed in Australia.

(3) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for further subcontracting.

In utilization of the above clause, the percentage to be stated or the value designated should not be less than twenty-five percent (25%) of the contract value. A larger percentage may be indicated where the contractor has agreed with the Australian Department of Defence to place more than twenty-five percent (25%) of the contract value with the Australian sources. Obviously, where such arrangements between Australia and the specific U.S. contractor have not occurred, there will be considerable difficuly in achieving the DOD offset objective. The contractor should clearly understand that he has a responsibility to attempt to achieve this offset objective.

§ 737.6–800 Balance of Payments Program—Offshore Procurement.

§ 737.6–805–2 Procurement Limitations.

Pursuant to the provisions of § 6.805–2(b)(1), authority to make the determinations required by § 6.805.2(a) (v) and (xi) for procurements estimated not to exceed $100,000 is delegated by the Chief of Naval Material to the following individuals:

Chief of Naval Research
Chief, Bureau of Medicine and Surgery
Chief of Naval Personnel
Oceanographer of the Navy
Commander, Naval Air Systems Command
Commander, Naval Electronics Systems Command

Commander, Naval Sea Systems Command
Commander, Naval Supply Systems Command

§ 737.6–805–5 Use of Excess United States-Owned Foreign Currencies for Payment of Contracts in Foreign Countries.

(a) DOD Directive 5100.29 directed the military services to implement the policy of utilizing U.S.-owned foreign currencies for payment of contracts in foreign countries. The Secretary of the Navy has designated the Navy Comptroller as responsible for preparing the consolidated Navy report required by the DOD Directive. The NAVCOMPT has issued paragraph 046404 of the Navy Comptroller's Manual directing disbursing ocers to forward reports to the Navy Comptroller.

(b) Contracting officers negotiating contracts for supplies or services in Excess or Near-Excess Currency countries as set forth in NAVCOMPT Manual 042552–2d will become familiar with the general policy of utilizing U.S.-owned foreign excess and near-excess currencies. When the Contracting Officer deterimnes in accordance with the criteria set forth below that it is not feasible to utilize available excess or near-excess currencies he will execute the certificate set forth below. This certificate will be made a part of the contract file. One copy of this certificate will be forwarded to the designated paying office. The certificate will read as follows:

CONTRACT CERTIFICATION

I hereby certify, as required pursuant to Department of Defense Directive 5100.29, dated October 22, 1965, and under the authority delegated to me, that it was not feasible to make payment from foreign currency owned by the United States Government under this contract in the country of ---------- in the amount of $------ for the reason stated below:

(Cite the criterion applicable in the instant case)

Signature

(Name and title of person executing this certification)

CRITERIA

The following criteria shall be used in determining that payment of certain contracts in foreign currencies is not feasible.

1. The Treasury Department is not holding excess or near-excess foreign currencies in the country involved.

2. The contract is awarded in a foreign country where, to the extent provided by a treaty or Executive Agreement, or local laws, payments are required to be made in U.S. currency.

3. The contract provides for payment in U.S. currency to the extent necessary to cover contractors validated direct U.S. currency costs of the United States export content of the procurement involved.

4. The contract does not exceed $500.

5. The contract does not exceed $10,000 and is for a need which is compelling and of such unusual urgency that serious injury to the U.S. Government would likely be incurred if payment in foreign currency were to be insisted upon.

6. Evaluation of the contract proposals has resulted in the determination that payment in foreign currency would increase the costs to the U.S. Government or to DOD appropriations.

§ 737.6–900 Government - to - Government Agreements and Coordination With Overseas Commands.

§ 737.6–902 U.S./Australian Contract Administration Services Agreement.

(a) The U.S./Australian Contract Administration Services Agreement of 17 March 1973 provides for the administration of Department of Defense contracts by the Australian Government where performance of contract administration services in Australia is required. The Agreement sets forth the following:

UNITED STATES-AUSTRALIA

AUSTRALIAN CONTRACT ADMINISTRATION PROCEDURE

Definition. Contract administration encompasses all those necessary actions to be accomplished in the field, for the benefit of the U.S. DOD purchasing office, which are necessary to the performance of the contract or in support of the purchasing office.

Purpose. In general, contract administration includes the following matters:

i. Be responsible for assuring compliance with the terms of the contract;

ii. Serve as a focal point regarding status of delivery, production, quality of material and other pertinent matters;

iii. Advise the U.S. DOD purchasing office, as appropriate, on all pertinent matters related to the administration of the contract.

Procedure. The U.S. DOD purchasing office issuing a contract may request performance of contract administration in Australia. Requests for contract administration shall be directed to the Australian Government, Department of Supply, Attention Assistant Secretary of Sales and Aid Branch, Canberra ACT 2600 Australia, with a copy of each request forwarded to Chief, U.S. DOD Procurement Information Office (PIO), % Department of Supply, Constitution Avenue, Canberra ACT 2600 Australia. Each request shall be accompanied by a copy of the contract and will indicate the specific matters of contract administration the U.S. DOD purchasing office desires to be performed.

Scope. Normally, the following contract administration functions will be performed by the Department of Supply at the request of the U.S. DOD purchasing office:

i. Review and evaluate contractor's price proposals.

ii. Monitor contractor's financial condition so as to assure contract performance is not jeopardized.

iii. Perform production surveillance and report potential slippages in contract delivery schedules.

iv. Assure contractor's compliance with all Australian laws that may affece its performance under the contract.

v. Perform transportation management as necessary.

vi. Review and evaluate preservation, packaging and packing to assure adequate protection to present damage in transit.

vii. Review contractor's engineering as it affects contract performance.

viii. Assist in settlement of terminations for convenience.

ix. Provide oversight function to assure contractor accountability for U.S. Government furnished property.

x. Review and effect changes as necessary to assure plant safety and security.

xi. Perform such other contract administration functions as may be requested and which are within the contract administration functions of the Department of Supply.

xii. Maintain liaison with the U.S. DOD purchasing office and advise as necessary on any matters including those listed above that may affect performance under the contract.

DEPARTMENT OF SUPPLY PROCEDURE. A contract approving officer of the Department of Supply will be responsible for carrying out the contract administration functions described in paragraphs above titled Procedure and Scope. He may call upon other representatives of the Department of Supply possessing special skills or because of their geographic location to assist him in performing contract administration. It will be his responsibility to immediately advise the U.S. DOD purchasing office of any matter that may adversely affect contract performance. For this purpose, it will be his decision whether such advice shall be transoceanic telephone, by telegraphic communication, or by letter.

The U.S. DOD purchasing office may provide U.S. personnel to perform, participate or assist in contract administration. This normally would occur only where the supply or service required by the contract is of such sensitive or critical nature that first hand observation and participation by U.S. personnel is essential.

§ 737.6–93 Coordination With Overseas Commands and Activities Procurements in Europe will be governed by the following:

(a) The Naval Regional Procurement Office, Naples, serves as an area and centralized buying activity for naval activities in Europe, Africa, Iceland, and Middle East, operating forces in European waters, for all activities when purchase is effected in Europe; and such other area activities and operating forces as may be required. The Defense Contract Audit Agency, New York Branch, provides cost and audit information and support.

(b) Naval activities having requirements that can be satisfied only by European sources will normally forward their requisitions to the Naval Regional Procurement Office, Naples. This does not relieve such activities from complying with current Balance of Payments directives.

(c) *Exceptions.* The following does not apply to sub-paragraphs (a) and (b) above:

(1) Procurement of complete vessels or aircraft.

(2) Procurement of equipment requiring servicing by representatives of foreign companies.

(3) Procurements within an activity's authorized purchase authority when material is readily available overseas (outside CONUS).

(4) Procurements of aviation support items.

(5) Other specific exceptions as may be granted by the Naval Supply Systems Command.

(d) Contracting Officers utilizing any of the above exceptions will:

(1) Ascertain the existence and application of any Government-to-Government agreements and, subject to the provisions of § 1.109–4 regarding conflicts with ASPR provisions based on requirements of law, shall comply with such agreements.

(2) Prior to commencement of negotiations with a United Kingdom supplier, contact the Naval Regional Procurement

Office, Naples, Contract Administration Branch, London, England, for (i) a determination of whether the proposed supplier holds any U.S. furnished tooling, (ii) for advice as to the procedures to assure that no rental charges payable to Her Majesty's Government will be included in price charged, and (iii) for information relating to the elimination of research and development charges on certain British manufactured products.

§ 737.6–1000 Exemption of Certain Contracts With Foreign Contractors From the Requirement for an Examination of Records Clause.

§ 737.6–1001 Statutory Requirements.

The report required by § 6.1001(b) of determinations under § 6.1001(a)(ii) shall be prepared by the Chief of Naval Material (MAT 021) and submitted for Secretarial signature.

§ 737.6–1003 Requests for Determinations and Findings.

Requests for determinations and findings under § 6.1001(a) shall be submitted through normal procurement channels to the Chief of Naval Material (MAT 021) for processing.

§ 737.6–1100 Use of United States-Owned Foreign Currency for Payment of Contracts.

§ 737.6–1106 Awards.

§ 737.6–1106–3 Awards Requiring Approval by Higher Authority.

(a) The appropriate official in the Department of the Navy to whom proposed procurements shall be referred as required by § 6.1106–3 is the Comptroller of the Navy (NCB–133). Such referral shall be direct from the contracting officer and shall contain the information required by § 6.1106–3.

Subpart G—Contract Clauses

§ 737.7–100 Clauses for Fixed-Price Supply Contracts.

§ 737.7–104 Clauses To Be Used When Applicable.

§ 737.7–104–11 Excess Profit.

With respect to § 7.104–11(c), see § 737.33–201.

§ 737.7–104–501 Progress Payments.

The clause set forth below is authorized for use in fixed-price supply contracts where progress payments on the basis of completion of the contract are permitted by § 30.5 (see in particular paragraph 501).

(a) *Progress Payments (Oct. 1963).* Payments of the contract price shall be made as follows:

(1) Seventy-five percent (75 percent) (percentage may be varied by the procuring activity) of the contract price shall be paid as progress payments in accordance with the provisions of this paragraph 1. The Contractor, from time to time as the work progresses, but not more frequently than once a week, may submit invoices to the Field Contract Administrator for certification by him as to the percentage of completion of performance of the entire contract. The amount of each such invoice shall be that percentage of the total contract price equal to the percentage of completion of the contract, as so certified by the Field Contract Administrator, such sum to be less any amounts previously billed for progress payments. Progress payments shall be made to the Contractor of seventy-five percent (75 percent) of the net amount of each invoice so submitted and certified. If upon delivery and acceptance of all supplies called for by this contract, seventy-five percent (75 percent) of the total contract price has not been paid under this paragraph 1, any balance of such seventy-five percent (75 percent) shall be paid upon submission of a properly certified invoice.

(2) Twenty-five percent (25 percent) of the contract price of each item shall be paid upon delivery and acceptance thereof upon the submission of properly certified invoices showing the items delivered, the contract price of each, and the statement "twenty-five percent (25 percent) due upon delivery."

(b) Any and all progress payments made hereunder shall be secured, when made, by a lien in favor of the Government upon the supplies contracted for on account of all payments so made and on all material and other property acquired for or allocated to the performance of this contract (except to the extent that the Government, by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property) as against other creditors of the Contractor. If such property is not identified by marking or segregation, the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this clause is paramount to all other liens under the provisions of 10 U.S.C. 7521.

(c) The Contractor, to the extent determined necessary and practicable by the Field Contract Administrator, shall identify by marking or segregation of all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. In any event, the Contractor shall maintain adequate accounting control over such property on its books and records.

(d) In the event that the Contractor shall procure or maintain insurance upon any materials or other property upon which a lien exists in favor of the Government pursuant to the terms of this contract, the policy or policies shall contain a loss payable clause making losses payable to the Secretary of the Navy on order. Any payments hereunder shall inure to the benefit of the Government to the extent of any loss suffered by the Government and to the Contractor as to any remaining balance. The foregoing provisions shall not be deemed to require that the Contractor procure or maintain any such insurance.

(e) The clause of this contract entitled "Payments" is hereby superseded and deleted.

§ 737.7–104–502 Invoicing Instructions for Multiple Destinations.

(a) Generally, a separate billing for each destination is required by disbursing officers to facilitate abstracting public vouchers to receiving activities. Since invoicing instructions that accompany contracts and orders do not clearly state that a bill shall cover supplies designated for one destination only, the following provisions shall be incorporated in the appropriate purchase document as provided below when more than one receiving activity is involved:

(1) Invitation for Bids and Request for Proposals (Standard Form 33): In connection with Paragraph 13 of the Terms and Conditions entitled "Seller Invoices," a separate invoice shall be prepared and submitted in quadruplicate for each activity designated to receive supplies or services.

(2) Negotiated contracts and orders: A separate invoice shall be prepared and submitted in quadruplicate for each activity designated to receive the supplies or services.

(b) In cases where (1) inspection and acceptance are at contractor's plant, and (2) the contractor's costs for individual billing to multiple destinations are considered disproportionate to the cost of the material to be delivered, the contracting officer may deviate from this policy enunciated herein by authorizing a consolidation of invoices at the election of the contractor. In such instances, the contracting officer shall substitute the following clauses in lieu of the clauses prescribed in paragraph (a) of this section:

(i) Invitation for Bids and Request for Proposals (Standard Form 33): In connection with Paragraph 13 of the Terms and Conditions, entitled "Sellers Invoices," the contractor may elect to prepare and submit his invoices in either of the following ways: (*a*) a separate invoice in quadruplicate for each activity designated to receive the supplies or services; or (*b*) a consolidated invoice in quadruplicate covering all shipments delivered hereunder.

(ii) Negotiated contracts and orders: The contractor may elect to prepare and submit his invoices in either or two ways: (*a*) a separate invoice in quadruplicate for each activity designated to receive the supplies and services; or (*b*) a consolidated invoice in quadruplicate covering all shipments delivered hereunder.

§ 737.7–104–504 Certificate of Conformance Option Clause.

The following clause is approved for use in fixed-price supply type contracts, and to the extent applicable to other type contracts, which provide for source inspection under conditions specified in § 14.306(c).

(a) Certificate of Conformance Option (November 1963) At the option of the Government, to be exercised by the au-

thorized representative of the cognizant inspector, the contractor may be required to deliver any or all of the supplies to be furnished under this contract without prior Government inspection and to furnish in lieu of such prior Government inspection a Certificate of Conformance Statement to be attached to, or included on, all copies of the applicable Materiel Inspection and Receiving Report, DD Form 250. One copy of the statement shall be signed by the contractor. The statement shall read substantially as follows:

I hereby certify that on _____ 197__ the _____ shipped
(Company name)
supplies called for by contract number _____ via _____ on _____
(bill of lading or other shipping document identification)
_____, in accordance with applicable requirements for shipment.

I further certify and the contractor warrants that such supplies are of the quality specified in the contract (including any applicable specification) and in the quantity shown in the applicable Materiel-Inspection-Report (DD Form 250).

Name _____
Title _____
Firm _____

_____
Date of Execution

Note that 18 U.S.C. 1001 prescribes criminal penalties for making false representations to the Government.

(b) Notwithstanding any provision of the certificate referred to above, and notwithstanding any provision of the clause herein entitled (insert title of inspection clause), the Government shall have a reasonable time after receipt of the supplies by the Government within which to inspect them. If there are shortages in quantity or defects in material or workmanship, the Government shall so notify the contractor who shall, with all possible speed, correct or replace the short or defective supplies. If this contains a "Guaranty" clause, as to any conflicts between this subparagraph (b) and the "Guaranty" clause, the "Guaranty" clause shall govern.

§ 737.7–104–505 Total System Responsibility.

(a) *General.* In certain instances where end item specifications have been originated by a contractor, or the contractor has agreed to be responsible for the feasibility, accuracy, sufficiency and validity of such specifications, the contractor should assume the risk that end items to be procured will meet or exceed the specified performance requirements. Such instances include, for example.

(1) Where the contractor generates or develops specifications prescribing both performance requirements which an end item must meet as well as the details of the design and fabrication of the end item; or

(2) Where a contractor reviews, refines and substantially revises Government specifications of such end items; or

(3) Where a contractor has had an adequate opportunity to review and to modify Government-originated specifications for such end items and the contractor has agreed or will agree to adopt the specifications as its own;

and where in any of the three foregoing situations the Government, after such generation, development, review, refinement, revision or adoption of the specifications by the contractor, makes no further modifications or makes only trivial, insubstantial or peripheral revisions thereafter to those specifications. Unless the context otherwise indicates, "specifications," as used herein, include performance specifications, detail design drawings, or other technical data prescribing performance, design or manufacturing requirements, or combinations of such documents.

(b) *Policy.* Circumstances suitable for a contractor to assume total system responsibility as described above are frequently present in procurement where a contractor reviews, refines and revises Government specifications; and in other procurements from the original developer and designer of an item. With respect to other situations, however, the Government should not request a contractor to assume such technical and financial risks unless the contractor is afforded an adequate opportunity by one means or another to develop, or to review and modify, the specifications. The words "adequate opportunity" are intended to mean an opportunity which is more than trivial, unsubstantial or peripheral; i.e., an opportunity commensurate with the risk to be assumed. The Total System Responsibility Clause may be adapted to apply to procurements in which less than total system responsibility is to be assumed by a contractor, e.g., responsibility for a componet, assembly, subsystem, etc.

(c) *Clause.* In the procurement circumstances described in pargaraph (a) of this section, a clause substantially as follows may be used:

Total System Responsibility. (a) The Contractor has represented and this contract has been executed on the basis that the Contractor [has developed/has reviewed, refined and substantially revised*] the specifications (which term includes drawings) recited in Section _____ of this contract entitled "_____." Such specification set forth the performance requirements for the Contractor's proposed [description of end item(s) of supplies or services]. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the [end item(s)] to be delivered or performed hereunder will meet or exceed the performance requirements of the said specifications.

(b) The Contractor hereby acknowledges that it has no right to assert against the Government, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this contract (i) based upon impossibility of performance; defective, inaccurate, unfeasible, insufficient or invalid specifications; implied warranties of suitability of such specifications; or (ii) otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.

(c) Notwithstanding the "Changes" clause or any other clause of this contract, the Contractor hereby agrees that no changes to aforesaid specifications which may be necessary to permit achievement of the performance requirements or any other technical requirements not inconsistent with such performance requirements specified herein for the Contractor's proposed [end item(s)] shall entitle the Contractor either to any increase in the [fixed price/target cost, target price or ceiling price*] as set forth in Section _____ of this contract entitled "_____" or to any extension of the delivery times for the [end item(s)] beyond those set forth in Section _____ of this contract entitled "_____"

(d) *Procedures.* (1) *Evaluation of contingency.* Where a solicitation includes the foregoing provision, that solicitation may require offerors to submit alternate prices based upon performance of the proposed contractual provisions including and excluding the foregoing clause. The price differential between such alternate offers, if any, should be evaluated to determine (i) its reasonableness and (ii) whether the differential justifies the inclusion of Total System Responsibility in the contract.

(2) *Related provisions.* The specifications referred to in paragraph (a) of the foregoing clause should be enumerated in the contract schedule, identifying each performance specification and each specification of other types, as applicable.

§ 737.7–105 Additional Clauses.

The clauses set forth in § 7.105 and this NPD shall be used in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7–105–4 Notice of Shipments.

The following provisions shall be used with the Notice of Shipments clause in § 7.105–4 and shall be inserted immediately after the Notice of Shipments clause as provided below.

(a) *Notification to Consignee.* (1) The following clause shall be inserted in all supply contracts where shipments are to be made in carload or truckload lots:

Notice of Shipment to Consignee (Oct. 1963). Whenever a shipment of a carload or truckload lot is destined to a consignee located less than 1,000 air miles from the point of shipment and is tendered to a carrier hereunder (regardless of whether the shipment is transported under a commercial or Government bill of lading), the Contractor shall send a prepaid telegram to the consignee the same day. The telegram shall include the following information: contract or order number; date of shipment; brief description of the commodity and how packed; weight in pounds and number of pieces; Government or commercial bill of lading number; complete routing including car number(s) and initials if by rail, or number of truckloads if by truck; military route order number if applicable; and ultimate destination if to be transshipped. When consignee is located more than 1,000 air miles from the point of shipment and shipments are made on commercial bills of lading with inspection at destination, the Contractor shall on the same day send an airmail letter to the consignee, which contains the information outlined above.

When classified contracts are involved, the foregoing clause will be modified as appropriate to provide that the words "contract item number" will be substituted for the words "brief description of the commodity."

*Use appropriate phrase.

(2) Where shipments are not to be made in carload or truckload lots, the DD Form 250 (Material Inspection and Receiving Report) or the Government bill of lading, as appropriate, will be relied upon as the usual notice of shipment.

(b) *Notification to Cognizant Contract Administration Office.* The following clause shall be insterted in all supply contracts where shipments are made on the basis of destination inspection with progressing and expediting to be performed by the cognizant field contract administration office at origin:

Notice of Shipment to Cognizant Contract Administration Office (Jan. 1966). Whenever a shipment is made under this contract (regardless of whether the shipment is transported under a commercial or Government bill of lading), the Contractor shall notify the cognizant field contract administration office by the most exepdient means. The notification shall include the following information: date of shipment; contract number; item number and quantity shipped; and name of carirer accepting shipment from the contractor. All notifications made by telephone shall be subsequently confirmed in writing.

§ 737.7–150 Clause for Reserve Pending Execution of Release.

The following clause shall be included in all fixed-price contracts requiring a release as a condition precedent to final payment, as prescribed in § 737.32–402 (a):

After payment of eighty per cent (80 percent) of the total contract price, further payments shall be withheld until a reserve of _____ dollars ($_____) shall have been set aside, such reserve to be paid to the contractor at the time of final payment. The contractor and each assignee under an assignment in effect at the time of final payment shall execute and deliver at the time and as a condition precedent to final payment, a release in form and substance satisfactory to and containing such exceptions as may be found appropriate by the Contracting Officer, discharging the Government, its officers, agents and employees of and from liabilities, obligations and claims arising under this contract.

The reserve in each case shall be not less than one per cent (1 percent) and not more than four per cent (4 percent) of the total contract price, but in no event more than one hundred thousand dollars ($100,000). (See § 7.104–21 with respect to limitation on withholding of payments.)

§ 737.7–200 Clauses for Cost-Reimbursement Type Supply Contracts.

§ 737.7–203 Required Clauses.

§ 737.7–203–8 Subcontracts.

The Subcontracts clause included in § 7.203–8 may be modified in accordance with § 7.203–8 by the contracting officer, when he deems it appropriate in the case of an individual contract. However, the clause shall not be modified for general application, affecting more than one contract, without obtaining the approval of the Chief of Naval Material (MAT022).

§ 737.7–204 Clauses To Be Used When Applicable.

§ 737.7–204–50 Invoicing Instructions for Multiple Destinations.

In accordance with the instructions in § 737.7–104–502, include the appropriate provisions set forth therein.

§ 737.7–205 Additional Clauses.

The clauses set forth in § 7.205 and this NPD shall be used, in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7–205–51 Notice of Shipments.

When required by § 737.7–105–4, include a clause as set forth therein.

§ 737.7–300 Clauses for Fixed-Price Research and Development Contracts.

§ 737.7–304 Additional Clauses.

The clauses referenced in § 737.7–304 shall be used, in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7–400 Clauses for Cost-Reimbursement Type Research and Development Contracts.

§ 737.7–402 Required Clauses.

§ 737.7–402–3 Subcontracts.

The Subcontract clause contained in § 7.402–8(a) may be modified in accordance with § 7.402–8(b) by the contracting officer, when he deems it appropriate in the case of an individual contract. However, the clause shall not be modified for general application affecting more than one contract, without obtaining the approval of the Chief of Naval Material (MAT 022).The same requirements as to level of approval shall apply to modification of the other version of the Subcontracts clause provided by § 7.402–8 (c) for contracts without fee with educational institutions, except where a modification is specifically stated in § 7.402–8(c) to be in the discretion of the contracting officer.

§ 737.7–600 Clauses for Construction and Architect-Engineer Contracts.

§737.7–602 Clause To Be Used When Applicable.

The following clause shall be included in contracts and modifications which require, or may require, Civil Works as defined in § 737.1–401–53.

(a) The Commander, Naval Facilities Engineering Command, having cognizance of the construction of all items at privately operated establishments which would constitute Public Works or Public Utilities if constructed at a Shore Establishment of the Navy (such items being hereinafter referred to as Civil Works), is hereby designated as the authorized representative of the _____* with respect to any such Civil Works called for by this contract, said delegation including but not being limited to the performance of the following functions:

(i) Approving the selection and compensation of an architect or engineer;

(ii) Approving the selection and fee of a general building contractor;

(iii) Consent to the placement of any subcontract for Civil Works;

(iv) Approving any plans or specifications;

(v) Approving of major alterations or increased costs within the estimated cost set forth in this contract for Civil Works;

(vi) Inspection, supervision, administration of the terms of the subcontract and acceptance of performance;

(viii) Monitoring compliance with labor standards requirements; and

(viii) Ordering or approving changes relating to the Civil Works.

(b) The _____**, acting for the Commander, Naval Facilities Engineering Command, will have jurisdiction only over the Civil Works design, construction and installation, unless otherwise specifically provided in this contract or unless otherwise determined by mutual agreement between the purchasing office and the Naval Facilities Engineering Command.

§ 737.7–800 Clauses for Letter Contracts.

§ 737.7–802 Required Clauses.

§ 737.7–802–5 Definitization.

7–802.5 Definitization. The type of definitive contract to be inserted in the Definitization Clauses, as used in § 3.408 (d), refers merely to the general type of contract, i.e., fixed-price type contracts § 3.404, cost-reimbursement type contracts § 3.405). The prices proposed at time of conversion and other circumstances surrounding the procurement may then govern the specific type of contract, within the general type specified in the letter contract to be used for the definitive contract.

Subpart H—Termination of Contracts

§ 737.8–700 Clauses.

§ 737.8–750 Special Purpose Clauses.

Pursuant to § 8.700, requests for authority to use special purpose termination clauses shall be made to the Chief of Naval Material (MAT 021). However, ASPR Section VIII termination clauses are not in all cases suitable for facilities contracts. Accordingly, procuring activities are authorized to use appropriate termination clauses in such contracts without further reference to the Headquarters Naval Material Command, provided such clauses are consistent with the policies set forth in Part 8 and Part 13, and have been approved as to form and legality by the Office of the General Counsel.

Subpart I—Patents, Data, and Copyrights

§ 737.9–100 Patents.

§ 737.9–103 Patent Indemnification of Government by Contractors.

§ 737.9–103–1 Patent Indemnification in Facilities Contracts—Commercial Status Predetermined.

A blanket deviation is authorized for use in contracts involving the acquisition of industrial facilities. This deviation permits the Patent Indemnity (Prede-

*Identify activity.

** Insert name and address of cognizant NAVFACENGCOM Division.

termined) clause of § 9.103–1(a) to be modified by the insertion of "(a)" at the beginning thereof and the addition, at the end thereof, of the following new paragraph:

(b) The contractor agrees to insert the provisions of paragraph (a) of this clause, or similar provisions, in all subcontracts or purchase orders for standard commercial articles requiring such subcontractors and vendors to indemnify the Government, and its officers, agents, and employees, against liability, including costs and expenses, for infringement upon any letters patent of the United States. Except with respect to materials, articles, or products designed and built by the Contractor and except with respect to items designed by the Contractor on which the Contractor collects royalties, the Contractor shall not be required to indemnify the Government, or its officers, agents, or employees, under the provisions of said paragraph, unless the Contractor neglected or failed to include provisions, as hereinabove required, in the purchase order or subcontract under which the item or items involved in any patent infringement litigation were purchased.

§ 737.9–107 Patent Rights Under Contracts for Research and Development.

§ 737.9–107–50 Enforcement of Reporting Requirements of Patent Rights Clauses.

(a) *Invention Disclosures, Reports and Related Documents.* The ACO is responsible for obtaining and forwarding to the PCO invention disclosures, copies of subcontracts, reports and related documents required to be furnished by contractors under the Patent Rights clauses. Notification of awards and completion of subcontracts shall be similarly obtained for forwarding to the PCO. Requests for authorization to include, in a subcontract for experimental, developmental or research work, a Patent Rights clause other than that of the prime contract shall be referred to the PCO for recommendation. (See § 9.107–4(g)).

(b) *Reimbursement Restrictions.* Appropriate instructions on this subject for the paying officer are contained in paragraph 046352–2 of the NAVCOMPT Manual.

§ 737.9–109 Follow-up of Patent Rights.

Each procuring activity shall maintain an appropriate system of follow-up in connection with patent rights under its contracts, as required by § 9.109, in order that inventions in which the Government may have an interest may be properly identified, and formal agreements evidencing the Government's rights therein shall be obtained. (See § 737.9–413)

§ 737.9–300 Foreign License and Technical Assistance Agreements.

§ 737.9–301 Technical Information for Foreign Release under Section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) and under the Foreign Assistance Act of 1961 (22 U.S.C. 2356).

See SECNAV Instruction 5710.8A, dated 1 December 1959 (32 CFR Part 744) and International Traffic in Arms regulations (22 CFR 121.01–128.01).

§ 737.9–400 Processing licenses, Assignments, and Infringement Claims.

§ 737.9–401 Reporting of Patent, Trade-Mark, or Copyright Infringements.

Each procuring activity which receives any direct or indirect charge or threat of patent, trade-mark, or copyright infringement, or which has knowledge of such infringement, shall bring this information to the attention of the Chief of Naval Research (Code 300).

§ 737.9–413 Register of Government Interest in Patents.

Licenses, assignments, and other interests of the Government in patents or applications for patents are required to be forwarded to the Commissioner of Patents for recording (see § 9.413). This requirement is performed for the Department of the Navy by the Chief of Naval Research. Therefore, the originals of licenses, assignments, and other documents evidencing interests of the Government in patents or applications for patents shall be sent to the Chief of Naval Research (Code 300).

Subpart J—Bonds, Insurance, and Indemnification

§ 737.10–100 Bonds.

§ 737.10–112 Execution and Administration of Bonds and Consents of Surety.

§ 737.10–112–50 Bonds.

(a) *Examination.* Where bonds are required in support of a contract, the Contracting Officer shall ascertain that the bond tendered is in the penal sum required and that it properly describes the contract in support of which it was given. Purchasing offices having counsel assigned shall be responsible for examining the bonds as to (1) form, (2) the sufficiency of the surety, and (3) the authority of the agent executing the bond. In the case of other purchasing offices, the bond shall be referred to the cognizant procuring activity for purposes of making this examination. One (1) executed copy of the bond is filed with the contract.

(b) *Exceptions.* (1) Annual Bonds are not to be used for construction contracts.

(2) Annual Performance Bonds (Standard Form 35), a cumulative form, shall not be acceptable for contracts of more than one purchasing office.

(c) *Submission.* (1) Annual Bid Bonds (Standard Form 34) may name the Department of the Navy as obligee for any non-construction bids to the Navy and shall be forwarded to the Contract Insurance Section, Procurement Policy Branch (MAT 0212H), Headquarters Naval Material Command, Washington, D.C. 20360 for examination, aproval and custody as a central point of reference.

(2) Annual Performance and Payment Bonds for Master Ship Repair Contracts, a special non-cumulative form, shall be forwarded to the Contract Insurance Section, Procurement Policy Branch (MAT 0212H), Headquarters Naval Material Command, Washington, D.C. 20360 for examination, approval and custody.

§ 737.10–300 Insurance—General.

§ 737.10–301 General.

§ 737.10–301–50 Procedure for Treating Claims by Third Persons Under Navy Contracts Providing for Assumption of Risk by the Government.

(a) The following procedure shall be followed in making all payments pursuant to the contract provisions prescribed in ASPR, under which the Government assumes the risk of liability to third persons. This procedure applies only to the cases of liability to third persons not compensated for by insurance or otherwise.

(b) When a claim is made by a third person for loss of or damage to property, death or bodily injury not compensated for by insurance or otherwise arising out of performance of a contract, the officer in charge shall submit to the procuring activity having cognizance of the contract statements of all pertinent facts, together with his recommendation and the recommendation of the contractor as to the action to be taken with respect to the claim, and the amount, if any, to be paid in discharge thereof. The procuring activity shall promptly forward such statements with such recommendations at it may care to make to the Chief of Naval Material (MAT0212H) for determination, (1) whether the Government has assumed liability for such claim of a third person, and (2) if so, the amount to be paid to such person in discharge of the claim. At the time of submission to the procuring activity, a duplicate copy of such statements and recommendations shall be sent by the officer in charge to the Chief of Naval Material (MAT 0212H). The Chief of Naval Material shall advise the procuring activity having cognizance of the contract of such action as may be required by such determination unless written approval of different action is first obtained from the Chief of Naval Material.

(c) (1) If the Chief of Naval Material determines that the Government has assumed the liability for the claim of a third person arising out of performance of a contract, such third person shall be paid the amount fixed by the Chief of Naval Material unless pursuant to appeal by the contractor, as provided under the Disputes clause, a different amount shall be allowed to the third person.

(2) If the Chief of Naval Material determines that the Government did not assume such liability, no payment by the Government in respect thereof shall be made, unless pursuant to appeal by the contractor as provided under the Disputes clause, a different decision is made.

(d) The officer in charge under a contract shall instruct the contractor to give such officer immediate notice of any suit or action filed against the contractor arising out of the performance of the contract, the cost and expense of which may be reimbursable to the contractor unless the terms of the contract and the risk of which is uninsured or in which

the amount claimed exceeds the amount of insurance coverage the officer in charge shall further direct the contractor to furnish immediately copies of all pertinent papers received by the contractor.

(e) All questions in connection with the matters covered by this directive shall be referred to the Chief of Naval Material, Contract Insurance Section, Procurement Policy Branch (MAT 0212H), or with respect to form and legality, to the Office of General Counsel.

§ 737.10–301–51 Payment of Amounts Due Contractors Upon Final Computation of Insurance Under Government-Type Retrospective Rating Plan.

Upon the final computation of the premium under policies of insurance obtained by the contractor pursuant to a Government-type retrospective rating plan approved by the Chief of Naval Material, covering work under a Navy contract which provides that the cost of such insurance is an item of cost to the Government thereunder, an amount may be found due and owing on account of such premium. In such event the Chief of Naval Material shall inform the procuring activity having cognizance of the contract that such amount is due and owing on account of the premium, and, if the funds which have been allocated to the contract are not sufficient, this amount shall be paid as an item of cost under the contract out of the appropriate funds.

§ 737.10–351 Authority of the Contract Insurance Section, Procurement Policy Branch, Headquarters Naval Material Command.

(a) The Contract Insurance Section (MAT 0212H) shall formulate insurance, bonding and indemnification policies and procedures for application in Department of the Navy procurements and shall supervise their execution pursuant to such administrative instruction as may be issued by the Chief of Naval Material. The Head of the Contract Insurance Section (MAT 0212H) is designated as the duly authorized representative of the Chief of Naval Material for the performance of the functions described in (b) (2) below.

(b) Except to the extent required by directive or regulation to be performed by the Defense Contract Administration Services, DSA:

(1) The Contract Insurance Section (MAT 0212H) is responsible for supervising, requiring, approving or disapproving the procurement of insurance by contractors pursuant to terms of contracts of the Department of the Navy, and to determine the reasonableness of the cost of such insurance. Questions concerning insurance, bonds, the assumption of risks or indemnification shall be referred to the Contract Insurance section (MAT 0212H).

(2) The Chief of Naval Material or his duly authorized representative, is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the Head of a Procuring Activity, the contracting officer, or any other Naval official designated in such a contract:

(i) To require or approve insurance whenever a contract provides that a contractor shall procure such insurance as may be required or approved by the Department, by the Secretary of the Navy, the Head of a Procuring Activity, the contracting officer, or by any other official of the Department;

(ii) To execute, sign or endorse in the name of and by direction of the Secretary of the Navy any and all (A) lost policy releases; (B) proofs of loss; (C) subrogation agreements; (D) endorsements of policies for claims and/or return premiums; (E) payments orders; and (F) insurance drafts made payable to the Secretary of the Navy and not affecting the obligating of appropriations; and

(iii) To advise and recommend to the Secretary of the Navy or other authorized interested officials of the Navy Department regarding (A) insurance drafts affecting the obligating of appropriations, and (B) assignment to assume payment of premiums found to be due after the completion of a contract.

§ 737.10–500 Insurance Under Cost-Reimbursements Type Contracts.

§ 737.10–501 Policy.

§ 737.1§–501–50 Liability of Subcontractors to Third Persons.

The policy of the Department of the Navy is that, in general, it will not assume liability of subcontractors to third persons. However, contracting officers are authorized to extend the principles set forth in § 7.203–22 to cost-plus-fixed-fee subcontracts made with cost-plus-fixed-fee contractors with the Department of the Navy, whenever the particular circumstances are such that in the judgment of the contracting officer and the Contract Insurance Section (MAT 0212H) of the Headquarters Naval Material Command such action will benefit the Government. In such event, the Navy contract shall require the insertion of appropriate provisions in cost-plus-fixed fee subcontracts thereunder.

§ 737.10–503–50 Government Property in Possession of Subcontractors. See § 737.13–101–2.

§ 737.10–552 Leases.

(a) Government-owned personal and real property leased under the authority of 10 U.S.C. 2667 shall be insured except that when more than 75% of the total use of the facilities is for Government work, pertinent information shall be submitted to the Headquarters Naval Material Command, Contract Insurance Section (MAT 0212H) for consideration whether the requirement for insurance shall be waived in favor of the Government's assumption of the risk of loss of or damage to the facilities. Leases may be modified as necessary to accomplish the above.

(b) Where insurance is required under the provisions of this directive, the lessee, at his own expense, shall procure and maintain Fire and Extended Coverage insurance or its equivalent and, where applicable, Boiler and Machinery insurance, in an amount equal the replacement value of the property less depreciation or in any lesser amount determined by the contracting officer with the approval of the Contract Insurance Section (MAT 0212H), and shall maintain such insurance for the period of the lease. The use of co-insurance clause will be permitted but failure of the lessee to comply with the obligations of such clause will not relieve the lessee of its responsibilities under any other terms of the lease. The above forms of insurance are applicable to land facilities; forms of insurance on other types of facilities (floating drydocks, mobile power plants, etc.) will be required and designated by the Contract Insurance Section (MAT 0212H).

(c) The foregoing insurance shall be issued in the names of the lessee and of the United States of America (Department of the Navy) and shall contain a loss payable clause reading as follows:

> Loss, if any, under this policy shall be adjusted with (*Lessee*) and the proceeds, at the election of the Government, shall be payable to the (*Lessee*); any proceeds not paid to the (*Lessee*) shall be payable to the Treasurer of the United States of America.

(d) In addition to the above insurance for the protection of Government-owned property, the lessee, at his own expense, shall insure or otherwise protect his liabilities and those of the Government to employees and their persons.

(e) Each policy of insurance shall contain provision for thirty days prior notice to the Contract Insurance Section (MAT 0212H) in the event of cancellation of the policy. A certified copy of each insurance policy shall be deposited with said Insurance Section.

(f) Existing leases involving significant insurance costs shall, to the extent feasible, be modified to conform to the requirements ASPR.

§ 737.10–700 Indemnification of Contractors and Subcontractors.

§ 737.10–700–1 General.

(a) It is Department of the Navy policy to rely upon the commercial insurance industry to the maximum practicable extent to protect its contractors against risks arising under contracts. In some limited situations, however, it may instead be preferable or necessary to provide a form of Government indemnification—whether in lieu of insurance, in excess of underlying insurance, or under, deductible insurance. Instances where indemnification may be explored are:

(1) Where there is a continuing program, such as the nuclear vessel program, where total insurance premium costs over a period of time could well approximate the dollar coverage afforded;

(2) A war risk in areas where hostilities are involved;

(3) Where the cost of insurance is so excessive it is unreasonable and constitutes a "turn down quotation";

(4) Where the Government risk is rated only on its own isolated experience and is not shared with the risks of others, whether or not the risk is unusually hazardous;

(5) Where an urgent requirement affords insufficient time to receive a well-considered insurance quotation;

(6) Where the degree of risk is either very small or is potentially catastrophic; or

(7) Where indemnification of the deductible portion of insurance coverage will substantially reduce insurance costs.

(b) All matters concerning indemnification shall be referred to the Contract Insurance Section (MAT 0212H) for decision or recommendation sufficiently in advance of contracting unless otherwise specifically authorized.

§ 737.10–701 Indemnification Under Research and Development Contracts.

(a) 10 U.S.C. 2354 provides that:

(a) With the approval of the Secretary of the Military Department concerned, any contract of a Military Department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss or of damage to property; and

(2) control of or assistance in the defense by the United States at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the Department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research and development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(b) The authority to approve the inclusion of any such indemnity provision in research or development contract, together with the authority to approve the amount of any payment under 10 U.S.C. 2354 (c) is delegated to the Chief of Naval Material and to one assistant designated by him for such purpose. The authority to approve the source of the funds out of which any such payment is made, under the last sentence of the above-quoted section, is hereby delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by him for such purpose.

(c) The Chief of Naval Material has designated the Deputy Chief of Naval Material (Procurement and Production) as the assistant to him for the purpose set forth in paragraph (b) of this section.

§ 737.10–702 Indemnification Under Other Than Research and Development Contracts Against Unusually Hazardous Risks and Nuclear Risks Not Considered Unusually Hazardous.

Use of the clause set forth in § 10.702 (b) for indemnification under Public Law 85–804 is authorized in the Department of the Navy by the Secretary of the Navy for contracts embracing specific projects or programs for which such authority is appropriate. Requests for inclusion in such authorization shall be made to the Contract Insurance Section (MAT 0212H) with sufficient narrative justification for submission by that office to SECNAV.

Subpart L—Labor

§ 737.12–100 Basic Labor Policies.

§ 737.12–102 Overtime.

§ 737.12–102–4 Approvals.

(a) *Designation of Officials To Approve Overtime Premiums at Government Expense.* (1) Pursuant to § 12.-02–4(e), the following persons are appointed, without power of redelegation, for the purpose of making determinations under § 12.102–4:

(i) The Heads of Navy Procuring Activities, as defined in § 1.201–7.

(ii) The Vice Commander of each Systems Command and the Deputy Chief of each Navy Bureau and of the Office of Naval Research; Deputy Chief of Staff for Installations and Logistics of the Marine Corps; and the Deputy and Chief of Staff, Military Sealift Command.

(iii) The Deputy or Assistant Commanders of the Systems Commands, Assistant Chiefs of each Bureau and of the Office of Naval Research, the Director of Contracts or equivalent in each Systems Command and in the Office of Naval Research in charge of contracts, the Project or Deputy Project Manager of the Chief of Naval Material designated Project Management Offices, the Assistant Deputy Chief of Staff for Installations and Logistics of the Marine Corps and the Assistant Chiefs of Staff, Military Sealift Command.

(iv) Fleet, Type, and Military Sealift Command Area and Sub-Area Commanders, with respect to procurements involving alteration, repair, and conversions of vessels.

(2) If overtime premiums at Government expense have been approved or are contemplated in a particular procurement for which a business clearance will be prepared and submitted in accordance with § 737.1–403–50, such clearance shall contain a Statement of Justification indicating that necessary approval(s) for such premiums have been obtained. If appropriate, a copy of such approval(s) or determination(s) obtained may be appended to the business clearance.

§ 737.12–102–7 Construction Contracts.

When expediting a construction contract involves additional costs, the Naval Facilities Engineering Command shall be responsible for obtaining the approval of the Assistant Secretary of Defense (Installations and Logistics) required by § 18.111.

§ 737.12–102–50 Exceptions.

The provisions of § 12.102 and § 737.-12–102 are not applicable to ballistic missile programs.

§ 737.12–104 Meeting Manpower Requirements.

(a) In placing large negotiated contracts and in planning delivery schedules, procurement personnel should consider the adequacy of the local labor supply. Classifications of labor market areas are listed in the Department of Labor's "Area Trends in Employment and Unemployment," which is issued to a mailing list. Procuring activities should ensure that their mailing list is kept current and inform the Department of Labor when changes to the list are necessary.

(b) Prospective contractors and subcontractors should provide a reasonable substantiation to procurement personnel of the availability of manpower for contract performance, particularly of critical occupational skills, either on their payroll or within their labor market area. Current and detailed labor market information and employment trends, as necessary to any particular case, should be obtained from the Department of Labor's Bureau of Employment Security, its regional offices, and affiliated State Employment Service Offices. Procurement personnel should make maximum use of the manpower section of pre-award surveys and industrial facility surveys. In the absence of assurance of the availability of occupational skills required for contract performance and necessity for contract placement despite this fact, procurement personnel should inform cognizant production personnel and manpower specialists of the specific manpower deficiencies and the impact thereof on the contract, together with other pertinent facts, so that steps may be taken to render assistance to the contractor.

(c) In the case of critical labor shortage areas, procurement personnel will in all cases obtain detailed information on labor market conditions before placing contracts involving substantial increases in the current employment level of a contractor. There should be specific evidence that the additional manpower of the required occupational skills is available locally without disruption of other defense work in the area.

(d) The same considerations as above should guide contractors in placing subcontracts or supply orders with other firms and procurement personnel should strongly urge that this be done. Small business personnel now engaged in promoting subcontracting should likewise stress such action. Prime contractors should be assisted, as necessary, to subcontract work outside of labor shortage

areas, and also in cases where occupational skill deficiencies are limiting factors for contract performance. Both prime and subcontractors should be advised to inform the local state employment office serving the area in which work on a Government order is to be performed of anticipated manpower requirements for fulfillment of the order.

(e) The preceding manpower considerations should be taken into account on a long-term basis in reaching decisions regarding the location, re-location, expansion or contraction of Government-owned facilities or installations, and in actions taken to broaden or maintain the industrial mobilization base. In addition, such actions, including material allocations, should give consideration to the impact on unemployment levels of labor surplus areas.

(f) Each Navy procuring activity has designated an Industrial Manpower Representative who can provide assistance in taking actions in accordance with this directive, in addition to the Industrial Manpower Assistant of the Headquarters Naval Material Command will take all actions necessary at the national level on matters of manpower supply for Navy production. Such action should be supported by substantiated recommendations when requested.

§ 737.12–104–50 Contractor Defense Training and Manpower Utilization.

(a) The policies and purpose of the Navy on contractor's defense training are:

(1) To encourage industry to expand existing training programs and initiate new or additional training programs in the required key occupations;

(2) To ensure that manpower is trained in the required skills and occupations in adequate numbers, and in the areas where and when needed to meet current and projected Navy production goals; and

(3) To ensure realistic training programs tailored to actual needs.

This policy recognizes that the major responsibility for training workers rests on employers, using their own and other normal training resources. The Navy's responsibility is to provide leadership and assistance so as to ensure that necessary manpower is being trained to meet Navy's defense production requirements and that the procurement and production process stresses efficient utilization of scientific and technical skills in private industry.

(b) When a present or impending shortage of manpower in the requisite occupational skills in the plant and local labor market area of a Navy contractor or source of supply affects or threatens to affect present or planned Navy production, Navy procurement personnel and other cognizant Navy production and manpower officers should urge affected Navy contractors or suppliers to initiate or accelerate training programs. To stimulate contractors and suppliers to evaluate training needs and utilization of their work force, copies of the Check List for Evaluating Defense Training and Utilization of Manpower, set forth in paragraph (f) of this section, should be furnished during the procurement and production process. No attempt should be made to offer detailed guidance on the types or methods of training to be used. If the contractor concludes that training programs are needed, he should be advised that various manpower and training agencies will furnish him advice and technical assistance if he so desires. The initial contact by the contractor with training agencies should be the local public employment office, whose services should also be enlisted where contractor recruitment campaigns are necessary to augment training programs to meet production schedules. The public employment office will assist in recruiting in such manner as to avoid activities which would be disruptive to other important defense work.

(c) In any particular labor market area in which demands for defense training are greater than can be provided by existing training facilities, procurement and other cognizant Navy personnel, to the extent such information comes to their attention, should advise the Chief of Naval Material of such developing situations promptly and as far in advance as practicable. The Chief of Naval Material should also be informed of any significant observed deficiencies in contractor's training programs and manpower utilization, steps being taken to remedy such deficiencies, and resulting improvements. Industrial Manpower Representatives of procuring activities and the Industrial Manpower Assistant (MAT 0533), Headquarters Naval Material Command, upon request, will assist procurement, production and other cognizant officers in taking actions in accordance with this policy.

(d) Long-term trends indicate that military technology is accompanied by an increasing requirement for technical personnel and, in general, contractors will have to institute re-training programs for their skilled work force in order to meet the demands of technological change. Contractors should place emphasis on (1) augmenting the supply of manpower in critical occupations, a list of which is available in public employment offices, and (2) effecting the efficient utilization of such manpower. It is Navy policy to encourage scholarships by contractors to augment the supply of engineering and scientific personnel, in preference to recruiting such personnel from foreign countries. In this respect, contractors should also utilize a recruiting program with training and educational institutions. Recourse by the contractor should also be made to the recruiting and similar services of the local State public employment office, so as to reduce expensive, nonproductive recruiting campaigns and indiscriminate recruiting advertising which stimulates abnormal labor turn-over with a consequent impact on contractor's production schedules, rejection rates, training and recruiting requirements, and costs. It should also be noted that § 15.205–44 provides guidance as to the allowance of training costs under cost-reimbursement contracts.

(e) In the placement of contracts, procurement personnel shall give preference to supplies (1) in labor surplus areas, to the extent permitted by Part 1, Subpart A, and (2) when necessary to preserve occupational skills required for defense production. By judicious utilization of the foregoing, (i) the need for defense training will be mitigated and (ii) the demands for occupational deferments and delays in call of Reservists to active duty will be minimized.

(f) Set forth below is the Check List for Evaluating Defense Training and Utilization of Manpower, referred to in paragraph (b) of this section. The check list is designed to stimulate the defense contractor to evaluate his training and manpower utilization requirements as a basis for appropriate action. It is intended to help management help itself. The list is suggestive and not exhaustive. It will be applicable wholly or in part depending upon such variables as the nature of the contractor's business and size. Procuring activities may reproduce this check list for their own distribution.

CHECK LIST FOR EVALUATING DEFENSE TRAINING AND UTILIZATION OF MANPOWER

Staffing—Do your plans for staffing your organization include:

1. Reliable methods for forecasting your requirements for scientists, engineers, technical, skilled, semi-skilled, and unskilled personnel in terms of a staffing schedule of occupational skills related to the production schedule?

2. Periodic review of your organization structure to determine what changes or improvements in organization will reduce your requirements for professional and skilled manpower?

3. Use of psychological tests in combination with other techniques to select and place your professional and skilled people including those instances where certain aptitudes are a predominant requirement?

4. Placing overall responsibility with specific persons for developing and carrying out training and utilization programs with continuing top-level support?

5. Using all practicable auxiliary sources of engineering and scientific talent such as engineering college teachers, retired engineers, college engineering students on a part-time basis, engineering consulting firms, drafting contract firms, and research organizations?

6. Utilization of all sources of technical aides including graduates of technical institutes, people from within the shops, college students who do not complete engineering courses, technically inclined high school graduates, and college graduates with courses related to engineering?

7. Maximum utilization of women and the physically handicapped in engineering departments and in skilled occupations?

8. Employment practices which ensure maximum utilization of manpower resources without respect to race, color, or creed?

Training—Does your training program provide for:

1. A periodic audit of job demands which is compared with the background and performance of the individual assigned in order to determine gaps in education or experience?

2. An organized training program to improve on the job skills of those employees otherwise qualified to advance to jobs requiring more skill or responsibility?

3. An indoctrination or formal training program for newly-hired or employed persons which is geared to their job and individual needs?

4. Encouragement to your employees to develop through evening classes, part-time day classes, or guided self-study?

5. Opportunity for technical aides to advance into engineering categories through a cooperative program with a professional school?

6. Instruction of supervisory engineers and scientists in job methods, supervisory techniques, and conference leadership?

7. A training program for such additional supervisors as you may need?

8. One or more workers qualified as job instructors?

9. Sufficient apprentices for your long-term requirement?

10. Maximum utilization of community resources for training including the local vocational school?

Utilization of Highest Skills—Do your work plans and job assignments include:

1. An effective staffing ratio between occupational skill categories?

2. Periodic surveys of individual assignments of personnel to determine if they represent the best contribution to the company and afford the individual the best possible opportunity for utilizing his talents?

3. Effective techniques in planning and coordinating research and engineering projects so that there is a maximum of effective effort in relation to the work of other departments?

4. Maximum use of technical aides to relieve engineers and scientists of routine duties so that they are left free to use their professional talent and creative ability, and upgrading of the labor force as a whole?

5. Standardization and simplication of engineering work so that supporting personnel can be used to maximum advantage in performing subprofessional and administrative duties?

6. An inventory of the skills of your employees to help in utilizing their highest potential?

Incentives—Have you recognized the importance of motivating your work force by:

1. Providing opportunity for advancement, stable employment, favorable working conditions, and adequate equipment?

2. An acceptable job evaluation plan which maintains salary differentials between occupational categories and those with less experience or other qualifications?

3. [Reserved]

4. Providing a management development program for supervisory, technical, and professional personnel to develop their potential at a maximum rate?

5. Providing opportunity for attractive careers to all personnel including technical aides who often aspire to professional status?

6. Encouraging participation in civic affairs and professional societies?

Communications—Does your formal and informal system of communications provide for:

1. Participation of your work force in company planning to include engineers and scientists?

2. Coordination of communications under the direction of each departmental executive?

3. A flow of information on management, production, and engineering matters up, down, and across organizational lines on a systematic basis?

4. Advance information to your professional staff on matters which affect their work, personal security, and future in the company?

5. Stimulation of your work force to think about and suggest methods for improving their training and utilization in your company?

§ 737.12–800 Equal Opportunity.

§ 737.12–808 General Enforcement.

§ 737.12–808–3 Pre-Award Compliance Check of Non-Exempt Contracts.

The following statement shall be included in each post-negotiation Business Clearance Memorandum or memorandum in lieu thereof submitted in accordance with § 737.1–403–50(c):

Request for pre-award compliance check of non-exempt contracts as required by § 12.-803–3. _____*

Subpart M—Government Property

§ 737.13–100 General.

§ 737.13–102 Responsibility and Liability for Government Property.

§ 737.13–101–1 Responsibility of Prime Contractors for Government Property.

(a) *Procedures To Be Followed in the Event of Loss of or Damage to Government Property.*

§ 737.13–102 Liability of Subcontractors for Government Property.

The Policy of the Department of the Navy is that, in general, it will not take the risk of loss with respect to Government property while in possession of subcontractors. However, contracting officers are authorized to extend the principles set forth in § 7.203–21(g) to cost-plus-fixed-fee subcontracts made with cost-plus-fixed-fee contractors with the Department of the Navy, whenever the particular circumstances are such that in the judgment of the contracting officer and the Contract Insurance Section, Headquarters Naval Material Command, such action will benefit the Government. In such event, the Navy contract shall require the insertion of appropriate provisions in cost-plus-fixed-fee subcontracts thereunder.

§ 737.13–103 Furnishing Military Property.

§ 737.13–103–51 Accounting Data in Contracts Involving Navy Stores Account Material in Contractor's Plants.

See NAVCOMPT Manual, Vol. 3, and NAV SUP Manual, Vol. 2.

§ 737.13–200 Material.

§ 737.13–200 Government - Furnished Petroleum Products.

(a) *Definition.* For the purpose of this directive, the term "petroleum products" means all liquid petroleum fuels, oils, and lubricants required for the development, production or testing of aircraft, aircraft engines, aircraft propellers, drones and support equipment, except items coded non-standard in Federal Supply Catalog C–9100–IL.

(b) *General Policy.* Determination as to whether petroleum products are to be provided to the contractor as Government-furnished property shall be based on an analysis of which is feasible, more economical and otherwise in the best interests of the Government.

(c) *Determinations.* Prior to the award of any Contract or contract modification that will require the use of petroleum products, the Contracting Officer shall make a written determination whether such products shall be GFP (Government-Furnished Property) or CFP (Contractor-Furnished Property), indicating those to be GFP and those to be CFP. The determination shall be supported by a written justification which includes the information required by paragraph (d) below and evidence of the Navy Fuel Supply Office's concurrence therewith.

(d) *Considerations.* The items treated in subparagraphs (1) through (3) below, as well as other appropriate considerations, shall be included in the written justification supporting the determination. Supporting data, other than contractor usage data, if applicable, may be used as support for more than one determination provided such data is not more than twelve (12) months old. Oral inquiries and replies shall be confirmed in writing.

(1) *Quantity.* For each type of aviation gasoline or jet fuel, oils and lubricants, the contractor's total annual usage requirements under all existing contracts shall be determined. Anticipated annual usage requirements shall be projected for the next three fiscal years including anticipated contract awards.

(2) *Costs.* Comparison of the cost of furnishing GFP with the price offered for the contractor-furnished petroleum must be on a fair and equitable basis. Navy laid down prices do not include related services such as plane fueling and defueling, purging of fuel tanks, and use of special purpose equipment. When a contractor's unit price includes related services, these added costs, if any, must be added to the Navy laid down unit price. In addition, unit prices for Government-furnished petroleum must, in appropriate instances, include costs of administration (personnel), disposal, and the amortization of leasing facilities. In instances where there is a significant price differential in favor of GFP, this may be offset by appropriate reductions in profit allocation or other contractor costs to favor use of petroleum products on a contractor-furnished basis.

(3) *Facilities.* The availability and costs of storage (Government-owned, contractor-owned, leased, etc.) facilities, handling facilities or direct delivery from the fuel supplier to the plane or engine shall be ascertained and considered. Additional facilities shall not be provided or authorized unless there is a reasonable expectation that the cost of new facilities, particularly tank storage and distribution lines, will be offset by savings through Government-furnished petroleum products within five years. Short-term leases for storage and handling facilities may offer an alternative method of providing facilities if a net saving through GFP will result.

(e) *Navy Fuel Supply Office.* The Navy

Fuel Supply Office (NFSO), Cameron Station, Alexandria, Va., is responsible for the inventory control and distribution of liquid petroleum fuels, oils and lubricants to naval activities. Subsequent to a determination to provide certain petroleum products as Government-furnished petroleum, the Contracting Officer shall submit complete information on a contractor's requirements to NFSO. Requirements shall be submitted in accordance with instructions prescribed by the Navy Fuel Supply Office. That office will determine whether requirements shall be furnished by cross-servicing agreements, shipments from Navy storage or by new procurement. In the event that a petroleum item cannot be made available at the time, or in the quantity desired, or at the item price stated in the requisition, NFSO will take no further action on affected items until the Contracting Officer authorizes appropriate amendment to the requisition. Unit prices for requisition purposes are published in the Standard Supplement to the Navy Stock List of Fuels, Lubricants, and Petroleum Products; except for bulk fuel prices which are published as required by Navy Fuel Supply Office Instruction 4265.4.

(f) *Contract Modifications.* In making the determination prescribed in paragraph (c) of this section, consideration shall be given to all existing contracts with a particular contractor in which petroleum products are being used. Where there is a determination to ultilize Government-furnished petroleum products, it will be necessary to establish a suitable change point which will not disrupt operations or affect delivery schedules. Contract modifications shall be negotiated by the office procuring the end equipment at the earliest practicable time to provide Government-furnished petroleum products on all items which met the considerations stated in paragraph (d) above, and requirements for the same grade and type of items shall be consolidated accordingly.

§ 737.13–600 Administration of Government Production and Research Property.

§ 737.13–651 Research and Development Facilities.

(a) 10 U.S.C. 2353 provides that, subject to certain conditions set forth therein, a contract of a Military Department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor of research, developmental, or test facilities and equipment that the Secretary of the Department concerned determines to be necessary for the performance of the contract. DOD Directive 4275.5 of 14 November 1966 (SUBJ: Industrial Facility Expansion and Replacement) provides that facilities projects having an estimated cost in excess of $1,000,000 of new monies are to be submitted to the Director of Defense (Research and Development) for approval. In order to ensure uniform procedures for the review and approval of all facilities projects, research and development facilities projects shall be reviewed and approved in accordance with the procedures for industrial facilities projects as specified in NAVMAT Instruction 4860.13A (Industrial Facilities Program).

(b) Where non-severables are to be installed on property not owned by the government, appropriate clauses shall be added in accordance with the provisions of U.S.C. 2353.

(c) Facilities may be provided for either directly in the research and development contract concerned, or in a separate facilities contract which refers to the research and development contract concerned. In the former case, the facilities will, after construction or installation, be transferred to a separate facilities contract, if such separate contract is required by the provisions of § 13.402.

§ 737.13–651–1 Requirement for Review by Navy Research Facilities Review Board of Change in Capacity of Government - Owned - Contractor-Operated Research and Development Facilities.

See SECNAV Instruction 5420.10 (ONR: 108).

§ 737.16–652 Facilities.

(a) *Policy for the Provision of Industrial Facilities.* See NAVMAT Instruction 4860.13A (Industrial Facilities Program).

(b) *Protection of Government's Interest in Facilities.* (1) Every contracting officer in negotiating or in making a supply contract shall make sure that any payments for the purchase of, or to aid in the acquisition of, facilities which are not of the type commonly classified as expendable, are separately and clearly set forth and not buried or otherwise hidden in a lump price. No payments under any contracts shall be made on account of facilities, in excess of proper depreciation, unless the interest of the Government in such facilities is recognized and protected by the contract.

(2) Just what constitutes such protection of the interest of the Government will vary in each individual case and will depend upon the nature of the facilities. Usually it will be necessary to assure the Government of the privilege of having the facility used in the performance of Government contracts, free of any charge for the use of the part of the facility paid for by the Government and also to have some agreement as to the disposition of the interest of the Government in the facility. Provision should be made that the Contractor:

(i) Maintain the facility in good condition;

(ii) Attach no lien nor convey to another all or any portion of the facility;

(iii) Make no material alteration in the nature of the facility;

(iv) Give priority to Government orders; and

(v) Not include in any supply price any depreciation or amortization of the part of the facility paid for by the Government.

All procurement officers must be sure in making a contract, the fulfillment of which may require the use of a facility covered by an agreement to the effect that no depreciation or amortization of such facility shall be included in the price, that such agreement is unmistakably adhered to and that depreciation and amortization of such facility are definitely excluded from the price.

(c) *Research and Development Facilities.* See § 737.13–651.

§ 737.13–700 Contract Clauses.

§ 737.13–702 Government Property Clause for Fixed-Price Contracts.

§ 737.13–702–50 Deviations for Fixed-Price (and Cost-Reimbursement) Contracts.

(a) In many cases the interest of the Government requires the furnishing to contractors of material, the relatively low value of which renders impracticable the administrative burden of using the clauses in § 13.701.

(b) Accordingly, Systems Commands, Bureaus and Offices having inventory control of material may furnish such material, subject to the availability of material in the supply system, to prime contractors without using either of the contract clauses set forth in § 13.701, subject to the following conditions:

(1) Title to all material furnished shall remain in the Government;

(2) The maximum dollar value of material furnished under the authority of this directive in connection with any one transaction shall not exceed $5,000;

(3) The material furnished is to be incorporated into the end product being procured under the contract, or is to be consumed directly in the performance of such contract. (Any material furnished not so incorporated or consumed will be returned to the Government (at the contractor's expense) in the same condition as received, reasonable wear and tear excepted. An appropriate refund or adjustment will be made for any material so returned);

(4) The contractor warrants that the material cannot be obtained from commercial sources in sufficient time to meet the delivery requirement of the contract; and

(5) The contractor agrees to pay to the Government either (i) the book price of the material furnished, plus the cost of handling and packing (shipment to be made on Commercial Collect Bill of Lading); or (ii) the price at which the material would be available to the contractor, F.O.B. supplier, if obtained from commercial sources, whichever is the greater.

(c) Form NAVEXOS 3493 (Rev 9–61), properly executed, shall be submitted by the contractor to the appropriate Systems Command, Bureau of Office prior to the furnishing of any material.

(d) The Field Contract Administrator, prior to giving his approval to the request, shall make such examination as he considers necessary to confirm that the contractor would be able to obtain the material from commercial sources at

the unit price(s) shown in Column 9 on the request.

Subpart O—Contract Cost Principles and Procedures

§ 737.15–100 Applicability.

§ 737.15–107 Advance Understandings on Particular Cost Items.

(a) See § 737.1–405–51 for Navy-wide advance understandings on particular cost items.

(b) See § 737.3–705(a) for prior approval required for advance understandings by contracting officers where overhead rates are negotiated.

§ 737.15–150 Negotiated Overhead Rates.

See § 737.3–700.

§ 737.15–200 Principles and Procedures for use in Cost-Reimbursement Type Supply and Research Contracts with Commercial Organizations.

§ 737.15–201 Basic Considerations.

§ 737.15–201–3 Definition of Reasonableness.

(a) Application of "Contractor Weighted Average Share in Cost Risk" (CWAS). When an ACO is evaluating a CWAS rating between 50 and 64 points inclusive (§ 15.201–3(b)(1)(ii)), the ACO's consideration should include, but not be limited to the following:

(1) Actual CWAS rating. A CWAS rating of 64 points would receive more favorable consideration than a CWAS rating of 50 points.

(2) Analysis of contractor's "contract mix" trend. This would indicate the current trend of increased or decreased cost participation and responsibility. A review of outstanding proposals and quotas would also indicate the contractor's potential contract mix.

(3) Review current contractor performance evaluation.

(4) Status of system, reviews would indicate the extent of government review of contractor procedures, and resulting approvals/consent and confidence.

(5) That 35 points of a profit center rating result from competitive firm fixed-price, competitive fixed-price with escalation contracts, and commercial sales.

Once a determination is made that a contractor is CWAS qualified, the rating carries the same weight as a CWAS-qualified contractor with a rating of 65 or more points.

§ 737.15–205 Selected Costs.

§ 737.15–205–35 Research and Development Costs.

(a) *General.* (1) This section sets forth responsibility and procedures for negotiation of advance agreements covering independent research and development costs as defined in § 15.205–35, § 15.107 and DOD Instruction 4105.52 dated 28 June 1960. § 15.205–35 requires advance agreements with contractors receiving payments of $2 million or more under DOD contracts. Contractors receiving payments less than $2 million are not required to negotiate advance agreements, however, allowable IR&D costs shall be computed by a formula prescribed by § 15.205–35(d)(2).

(2) Advance agreements shall be negotiated with any contractor meeting the criteria set forth in § 15.205–35. The Tri-Service negotiation will be sponsored by the cognizant departmental central office as established in a Defense Procurement Circular published annually.

(3) When an advance agreement is appropriate and the contractor is doing business with more than one military department, the joint negotiation procedures prescribed in paragraph (b) shall apply. When an advance agreement covering independent research and development has been negotiated, whether resulting from joint negotiation or centralized negotiation, it will be applicable to and binding upon all negotiated Navy contracts which provide for the recognition of independent research and development costs, subject to any existing pertinent special contract provisions.

(b) *Procedure with Respect to Joint Negotiations.* (1) The Coordinated Negotiations Staff: (MAT 02D), Headquarters Naval Material Command, shall:

(i) Represent the Navy in selecting the contractors for joint negotiations;

(ii) Agree to assignment of contractors to a single department (called the sponsoring department), for purposes of negotiating advance agreements; and

(iii) Conduct the negotiation of advance agreements with those contractors assigned to the Department of the Navy for sponsored joint negotiations.

(2) With regard to Navy sponsored contractors, the Coordinated Negotiation Staff will assure that any necessary technical review of the contractor's independent research and development program is accomplished. The results of this review will be given due consideration in the negotiation of advance agreements to the extent that technical and scientific factors are appropriate in establishing the amount of Government support to the contractor's program. It will be the responsibility of the Coordinated Negotiation Staff to obtain from the contractor cost and financial information, and other pertinent facts having a bearing on the review of the contractor's program and the negotiation of an advance agreement.

(c) *Procedure with Respect to Technical Evaluation.* § 15.205–35(d)(1)(C) provides that Companies which meet the $2 million dollar threshold shall submit technical and financial information to support their proposed IR&D program in accordance with guidance furnished by the Armed Services Research Specialists Committee (ASRSC). SECNAVINST 3900.40 dated 26 August 1972, designated the Chief of Naval Research as the Navy IR&D Program Manager. The Office of Naval Research coordinated technical report findings are submitted to MAT 02D in support of the negotiation advance agreements.

(d) *Confirmation of Agreement.* All advance agreements for independent research and development negotiated by the Navy shall be confirmed in writing by the Head, Coordinated Negotiation Staff (See § 737.1–405–51) with the contractor and this contractor and this confirmation shall indicate the extent of support, including the maximum dollar amount, and the basis of application to be accorded the contractor's independent research and development program. Copies of the negotiation report are made available to all interested activities.

§ 737.15–205–50 Navy IR&D Hearing Panel.

(a) Pursuant to Section 203(b) of Public Law 91–441 and § 15.205–35(d)(1)(H) and § 15.205–3(d)(2)(A)(viii), respectively, there is hereby established the Navy IR&D Hearing Panel. It shall consist of one representative designated by the Assistant Secretary of the Navy (Installations and Logistics) who shall be Chairman, one representative designated by the Assistant Secretary of the Navy (Research and Development), and one representative designated by the General Counsel. Alternates may be designated to act in the absence of the members.

(b) The Panel shall be responsible for hearing and deciding all appeals taken by contractors pursuant to § 15.205–35(d)(1)(H) and § 15.205–3(d)(2)(A)(viii) from decisions made by contracting officers to reduce independent research and development (IR&D) and bid and proposal (B&P) payments pursuant to § 15.205–35(d)(1)(G) and § 15.205–3(d)(2)(A)(vii).

(c) Such decisions of contracting officers shall advise the contractor of his right to appeal to the Panel. Notice of intent to appeal shall be addressed to the Panel, and shall be submitted by the contractor within 30 days after receipt of the contracting officer's decision to the Chief of Naval Material, Coordinated Negotiation Staff (MAT 02D). The Head of the Coordinated Negotiation Staff shall forward the contractor's appeal and such additional documents and information as the contractor may submit, together with his position thereon and such other information as he deems pertinent, to the Chairman of the Panel for disposition.

(d) The decision of a majority of the Panel shall constitute the final and conclusive determination of the Department of the Navy. The Panel may establish such additional procedures for processing appeals as are consistent with the foregoing.

Subpart P—Procurement Forms

a§ 737.16–200 Forms for Negotiated Procurement.

§ 737.16–250 Cost Incurred on Contract (DD Form 1177).

(a) DD Form 1177 (Cost Incurred on Contract is a part of the Cost and Economic Information System designed to furnish historical cost information, performance information, and certain other data to assist the parties to a contract in reaching prices equitable to both parties. It is authorized for use only

in major procurements for airframes, target drones, guided missiles, engines, fire control equipment, major electronic equipment, and other major equipment or components. Its use is further limited to those programs where:

(1) Effective price competition does not exist as the result of (i) a sole source or limited source situation, or (ii) a substantial Government investment in facilities, special tooling, development, or preparation for production.

(2) Additional mobilization capacity is being developed with Government assistance and cost with respect to such items as facilities, special tooling, engineering, preparation for production, financing, etc., are necessary for planning purpose, price comparisons or the negotiation of reasonable prices with the new mobilization source for the first production order to follow-on orders.

(b) The form shall be submitted quarterly by the contractor within 30 days after the close of each calendar quarter during the period of contract performance. The cost information to be included in the form shall be that recorded in the contractor's books (as well as such other information as plantwide rates, number of completed units, etc.)

(c) Cost elements and related amounts reported on DD Form 1177 shall conform as closely as practicable to that furnished by the contractor in cost break-down for pricing purposes. Where cost elements normally reported separately for pricing purposes are combined into major cost categories on DD Form 1177, a reconciliation shall be furnished in the business clearance requesting DD Form 1177 reporting by relating cost elements reported on DD Form 1177 with the corresponding cost elements used in cost breakdowns for pricing purposes.

(d) When the contract requires submission of DD Form 1177 reports a minimum of six (6) copies shall be submitted quarterly by the contractor to the cognizant inspector or field contract administrator designated in the contract. He shall review and endorse each report. The endorsement shall include a statement as to the completeness and accuracy of the information present (except for verification of reported costs) together with an explanation of any deviations or omissions from reporting requirements contained in the contract and indication of the action taken for contractor's compliance on current and subsequent reports. Distribution of the reports shall be as follows:

(1) Two copies to the cognizant procuring activity;

(2) One copy to the Procurement Control and Clearance Division (MAT 022); Headquarters Naval Material Command;

(3) One copy to the field contract administrator designated in the contract;

(4) One copy to the cognizant auditor;

(5) One copy to the cognizant Area Supervisory Inspector (if requested).

(e) To the extent that audit of costs is authorized by the terms of the contract, other than provisions applying to use of DD Form 1177, *the cognizant auditor shall verify the accuracy of cost data reported* on DD Form 1177 by comparison with costs reported on the contractor's books of account and submit, within 30 days after receipt of the contractor's report, five (5) copies of his findings to the cognizant contract administration office designated in the contract for endorsement and distribution to the same activities as the basic report. The auditor's findings for each quarterly report shall include:

(1) Disclosure of any significant differences between costs reported on DD Form 1177 and costs stated on the contractor's books of accounts together with recommendations for resolution of differences.

(2) Notification of any significant cost representations by the contractor which are considered by the cognizant military auditor to be unreasonable or of doubtful propriety.

(3) Notification of any significant accounting changes affecting cost elements.

Periodically, the accuracy of the contractor's cost accumulations will be confirmed by selective test procedures in sufficient depth to detect significant errors in reporting. Any discrepancies found will be commented on in the next regularly due report of the auditor. At contract completion or redetermination, a final report setting forth the result of audit in summary form shall be furnished the inspector concurrently with the submission of the advisory report prepared for pricing purposes or the contract Audit Closing Statement, as the case may be. The summary of audit findings shall include a brief reconciliation between the amounts reported on DD Form 1177, the amounts shown in the contractor's final cost statement or price proposal, and the costs allowed or accepted by the auditor.

§ 737.16–500 Special Contract and Order Forms.

§ 737.16–501 Negotiated Utility Service Conract Forms.

§ 737.16–501–1 Estimated Annual Cost $2,500 or Less (Unregulated) and $10,000 or Less (Regulated).

(a) *When Written Contract Is Not Required.* ASPS No. 5, paragraph S5–201 describes the conditions under which the use of a written contract is not required in the procurement of utility services. In addition thereto, but subject to all the other conditions and requirements of S5–201, the Commander, Naval Facilities Engineering Command is authorized to procure unregulated public utility services without written contract where the anticipated annual charges will not exceed $2,500 and regulated public utility services without written contract where the anticipated annual charge will not exceed $10,000 and where a connection or termination charge does not exceed $1,000 or $2,500, respectively. This authority may be delegated by the Commander, Naval Facilities Engineering Command as he deems necessary. In all instances where utility services are procured without the use of a written contract, payment therefor will be made on the basis of monthly statements submitted in conformity with applicable regulations, including ASPS No. 5, paragraph S5–202.

§ 737.16–501–2 Estimated Annual Cost Over $2,500 (Unregulated) and Over $10,000 (Regulated).

See § 737.16–501–50.

§ 737.16–501–50 Forms and Clauses for Written Contracts.

Whenever utility services are to be procured by written contract, ASPS No. 5, paragraph S5–203 shall be followed, except as otherwise provided in § 5.803 (authorizing the use of purchase orders under GSA contracts).

§ 737.16–800 Miscellaneous Forms.

§ 737.16–812 Release and Assignment Forms.

§ 737.16–812–50 Standard Release Forms.

(a) The form of release set forth in § 16.812(b) shall be used as the standard form of release to be obtained from contractors under cost-reimbursement type contracts, except facilities contracts, within § 737.32–402(a). The form of release set forth in paragraph (c) of this section shall be used as the standard form of release to be obtained from contractors under fixed-price types of contracts providing for an adjustable price within § 737.32–402. The form of release set forth in paragraph (d) of this section shall be used as the standard form of release to be obtained from contractors under facilities contracts within § 737.32–402(a), after acquisition, construction, installation and completion of the facilities. The form of release set forth in § 16.812(c) shall be used as the standard form of release to be obtained from assignees under cost-reimbursement type contracts, except facilities contracts. The form of release set forth in paragraph (e) of this section shall be used as the standard form of release to be obtained from assignees under fixed-price and facilities contracts within § 737.32–402(a) under assignments which are in effect at the time of final payment. Each of the prescribed forms may be modified to include such of the exceptions authorized by § 737.32–402(b) and § 737.32–402(c) as may be found by the contracting officer to be appropriate under the contract concerned.

(b) Each release shall be executed in quadruplicate, and shall be distributed as follows: on executed copy to the contractor or assignee, as the case may be: one executed copy to the contracting officer; and the executed original and one executed copy to the disbusing officer, who will forward the original to the General Accounting Office. The approval of the contracting officer shall be indicated on all copies of releases containing any of the exceptions provided in § 737.32–402(b) and § 737.32–402(c).

(c) The following form is for contractor's release under fixed-price type contracts providing for an adjustable price as described in § 737.32–402(a):

CONTRACTOR'S RELEASE UNDER CONTRACT

KNOW ALL MEN BY THESE PRESENTS: In consideration of the premise and the sum of _____ ($_____) lawful money of the United States of America (hereinafter called the "Government") _____ ($_____) of which has already been paid and _____ ($_____) of which is to be paid by the Government under the above mentioned contract, the undersigned Contractor does, and by the receipt of said sum shall, for itself, its successors and assigns, remise, release and forever discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of said contract.

IN WITNESS WHEREOF, this release has been duly executed this _____ day of _____, 19__.

_____
_____
(Witness)

_____
(Contractor)
By: _____
Title: _____

NOTE.—In the case of a corporation, witnesses are not required but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ Secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release 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.

[CORPORATE SEAL] _____

(d) The following form is for contractor's release under facilities contracts:

CONTRACTOR'S RELEASE UNDER CONTRACT

WHEREAS, the United States of America, hereinafter called the "Government," and _____, a corporation organized and existing under and by virtue of the laws of the _____ and doing business at _____ hereinafter called the "Contractor," entered into Contract _____, dated _____ under which the Contractor undertook to acquire, construct, install and complete certain facilities at _____; and

WHEREAS, said contract requires that the Contractor shall deliver a release in form and substance satisfactory to the Government before final payment to the Contractor under said contract for the acquisition, construction, installation and completion of said facilities; and

WHEREAS, said facilities have been acquired, constructed, installed and completed, and the Contractor has requested said final payment; and

WHEREAS, other provisions of said contract are to continue in full force and effect;

NOW, THEREFORE, in consideration of the premises and the sum of ($_____), _____ ($_____) of which has already been paid and _____ ($_____) of which is lawful money of the United States of America, to be paid by the Government under said contract, the Contractor does, and by the receipt of said sum shall, for itself, its successors and assigns, remise, release, and forever discharge the Government, its officers, agents and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity arising under or by virtue of, or on any manner connected with, the acquisition, construction, installation and completion of said facilities.

IN WITNESS WHEREOF, this release has been duly executed this _____ day of _____, 19__.

_____
_____ (Contractor)
(Witnesses) By: _____
Title: _____

NOTE.—In the case of a corporation, witnesses are not required but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ Secretary of the corporation named as Contractor in the foregoing release; that the _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release 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.

[CORPORATE SEAL] _____

(e) The following form is for assignee's release under fixed-price and facilities contracts:

ASSIGNEE'S RELEASE UNDER CONTRACT _____

KNOW ALL MEN BY THESE PRESENTS: In consideration of the premises and the sum of _____ ($ _____) lawful money of the United States of America (hereinafter called the "Government"), _____ ($_____) of which already has been paid and _____ ($_____) of which is to be paid by the Government under the above mentioned contract, the undersigned _____, Assignee of _____. Contractor under said contract, does and by the receipt of said sum shall for itself, its successors and assigns, remise, release and forever discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of said contract and assignment.

IN WITNESS WHEREOF, this release has been duly executed this _____ day of _____, 19__.

_____
_____
(Witnesses)

_____
(Assignee)
By: _____
Title: _____

NOTE—In the case of a corporation, witnesses are not required by the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ Secretary of the corporation named as Assignee in the foregoing release; that _____ who signed said release on behalf of the Assignee was then _____ of said corporation; that said release 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.

[CORPORATE SEAL] _____

§ 737.16–812–51 Modifications in Assignment Form When Executed by Contractors Located in California.

(a) § 15.812(d) approves for use a form for Contractor's Assignment of Refunds, Rebates, and Credits required by paragraph (f) of the Allowable Cost, Fixed Fee, and Payment clause set forth in § 7.203–4. When the form is to be executed by contractors performing contracts in California, the form set forth in § 16.812(d) shall be revised as provided below.

(1) The paragraph numbered "1" shall be revised to read as follows:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA (hereinafter called the Government) all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder (except those for refunds or rebates of, or credits for, taxes paid to the State of California or any political subdivision thereof).

(2) The following paragraph shall be added immediately following the paragraph numbered "3":

Subpart Q—Extraordinary Contractual Actions To Facilitate the National Defense

§ 737.17–200 Requests for Contractual Adjustment.

§ 737.17–201 Authority of the Secretary.

§ 737.17–201–50 The Secretary of the Navy.

The Secretary of the Navy has retained all authority set forth in Part 17, Subpart B, not delegated in § 737.17–201, § 737.17–202, § 737.17–203 and § 737.301–51.

§ 737.17–201–51 The Chief of Naval Material.

The Chief of Naval Material is authorized to amplify or implement this Section by appropriate directive or instructions not inconsistent with this Section.

§ 737.17–202 The Navy Contract Adjustment Board.

There is hereby established in the Headquarters Naval Material Command the Navy Contract Adjustment Board. The Board shall consist of a chairman and not less than two nor more than six members, all of whom will be appointed by the Chief of Naval Material. Alternates may be appointed by the Chief of Naval Material to act in the absence of members. The Board shall be organized in the manner set forth in § 17.202–1, and the Board shall exercise the authority and discharge the duties set forth in Part 17 as related to Contract Adjustment Boards. The Board shall be the successor to the former Navy Contract Adjustment Board established under the authority of Title II of the First War Powers Act and Executive Order 10210, and, to the extent of the Board's authority, the Board may take action on any matter upon which the former Navy Contract Adjustment

Board might properly have acted prior to 30 June 1958. The Board shall be responsible for making, on behalf of the Navy, such reports as may be required by the Office of the Secretary of Defense concerning actions under the Act of 28 August 1958 and Executive Order 10789. All matters of interpretation and questions of law arising in connection with requests submitted to the Navy Contract Adjustment Board shall be decided by the Office of the General Counsel, which Office shall provide the Board with all necessary legal advice and assistance.

§ 737.17–203 Authority of Other Officers and Officials.

(a) *Authority.* The officers and officials designated in (b) below shall exercise the authority and discharge the duties set forth in Part 17 as related to officers and officials having authority under § 17.203.

(b) *Delegations.* The designees under paragraph (a) of this section are as follows:

Commander of each Systems Command;
Chief of Naval Research;
Aviation Supply Officer, Philadelphia;
Commander, Military Sealift Command;
Commandant of the United States Marine Corps;

(c) *Redelegations.* The authority hereby delegated may be redelegated, with or without the authority to make successive redelegations, and under appropriate terms, conditions, and limitations, and subject to the following restrictions:

(1) The authority set forth in § 17.203 (a)(i) to deny requests for adjustment may not be redelegated below the Director of the procuring activity, or the head of a field purchasing activity.

(2) The authority set forth in § 17.203 (a)(ii) and (iii), may not be redelegated below the Director of the Contracts Division or the Director of the Purchasing Division of a procuring activity.

(d) *Copies of Redelegation.* Two copies of each redelegation of authority as authorized above, shall be forwarded to the Navy Contract Adjustment Board.

(e) *Approval of Counsel.* Each exercise of the authority set forth in § 17.203(a) by officers and officials listed in § 17.203 (b)(ii) and § 737.17–203(b) shall have the prior approval of Counsel for the procuring activity involved.

§ 737.17–208 Processing Cases.

§ 737.17–208–1 Investigation.

(a) The cognizant procuring activity shall take the following action in connection with contractors' requests where it is considered necessary to establish financial or cost facts:

(1) Obtain a formal advisory audit report from the cognizant Government auditor (through the appropriate liaison office of the Comptroller of the Navy (Contract Audit Division); i.e., the Navy Area Audit Office having cognizance of the geographical area in which the procuring activity is located);

(2) Specify in the request for audit the purpose for which the audit report will be used, making reference to the pertinent aspect of the contractor's request for relief and furnished to the Navy Area Audit Office, with the request, two copies of the pertinent financial or cost data submitted by the contractor; and

(3) Forward the advisory audit report to the Board as part of the case file in those cases submitted to the Navy Contract Adjustment Board under § 17.208–3.

§ 737.17–208–2 Disposition Below Secretarial Level.

Where a contractor's request for contractual adjustment is denied below Secretarial level, the contractor shall be furnished a letter explaining the reasons for the denial. See § 737.17–208–5(b).

§ 737.17–208–3 Cases Referred to the Navy Contract Adjustment Board.

Procuring activities shall provide the Navy Contract Adjustment Board with five (5) copies of any case referred to the Board for decision under the provisions of Public Law 85–804.

(a) *Records.* See § 737.17–208–5(c).

§ 737.17–208–5 Maintenance of Records and Reporting under Part 17, Subpart B.

This paragraph summarizes the requirements for records and reports by the procuring activities under Part 17, Subpart B, and § 737.17–200, which are to be forwarded to the Headquarters Naval Material Command (Navy Contract Adjustment Board), in addition to the submission of cases under § 17.208–3:

(a) When the cognizant procuring activity receives a request for contractual adjustment under Part 17, Subpart B, the preliminary record required by § 17.207–3 is to be prepared and forwarded immediately. Each procuring activity shall number serially each request as received by it, beginning with number "1". This number shall be inserted in the preliminary record after the name of the activity (see § 17.401(vii)).

(b) When action is completed upon a request by issuance of a contractual document or a letter of denial, there shall be attached together and forwarded immediately, the documents required by §217.208–2(b), § 17.208–4(b), and § 737.17–208–2 as follows:

(1) Two copies of the Memorandum of Decision;

(2) One copy of the contractual document implementing the decision, or the letter of denial, as appropriate; and

(3) One copy of the final record in the case.

Items (i), (ii) and (iii) above shall bear the serial number assigned to the request in accordance with subparagraph (b) above.

(c) When action is completed upon a request by the contractor's withdrawal of its request, there shall be prepared and forwarded immediately, one copy of the final record required by § 17.280–2 (b) bearing the serial number assigned in accordance with paragraph (b) of this section.

(d) The procuring activities shall furnish to the Board such other records or information as it may request concerning requests for adjustment under Part 17, Subpart B.

§ 737.17–208–6 Interdepartmental Coordination.

The procuring activity responsible for processing a contractor's request for contractual adjustment under a Navy procurement shall be responsible for establishing liaison and joint action with other Military Department and other departments and agencies of the Government except that the Navy Contract Adjustment Board shall have such responsibility after any such case is submitted to it. The cognizant procuring activity shall be responsible for all other interdepartmental coordination under § 17.208–6, except that a finding that a contractor is essential to the national defense for performance of Navy contracts or as a source of supply to the Navy may be made only by the Navy Contract Adjustment Board. Where a procuring activity desires to recommend such a finding, its recommendation shall be submitted to the Board by a letter in the form set forth in § 17.208–3 but containing only such of the listed data as may be sufficient for this purpose.

§ 737.17–300 Residual Powers.

§ 737.17–301 Delegation of Authority.

§ 737.17–301–51 Transfer of Sale of Government Property to Contractors and Subcontractors.

(a) *Delegation.* In accordance with § 17.301, there is hereby delegated to each officer and official listed in § 17.203 (b)(ii), without authority to redelegate, authority to approve, authorize and direct the transfer or sale of Government property having an estimated value not in excess of $50,000 to any Navy contractor or subcontractor or vendor of such contractor, when in his judgment:

(1) Such transfer or sale is necessary or desirable to facilitate the performance of the Navy contracts involved;

(2) It is not feasible to accomplish the transfer or sale under the provisions of Part 13 or § 737.13–100; and

(3) Under all the circumstances, the transfer or sale will facilitate the national defense.

(b) *Prior Approval.* Before making any such transfer the procuring activity concerned must secure the prior approval of the Systems Command or Inventory Control Point having inventory control of the property involved.

(c) *Limitations as to Property Involved.* The authority delegated hereby shall not extend to:

(1) Property which has been declared excess to the needs of the Department of Defense, or has been reported for screening, unless such property has been withdrawn in accordance with NAVSUPINST 4500.12;

(2) Property listed in NAVSUPINST 4500.12; and

(iii) Property subject to a mandatory allocation order, unless the transfer involved is in compliance therewith.

(d) *Payment.* The prices at which the material will be sold shall be determined in the same manner as they are determined under § 737.13–702–50(a)(v). The provisions for reimbursement or payment to the Government and the other accounting requirements set forth in NAVSUP Manual, Vol. II, Par. 25360, shall apply to each such transfer.

(e) *Records.* One copy of the Memorandum for Approval required by § 17.303 shall be forwarded to the Chief of Naval Material, when executed, with two additional copies for the Navy Contract Adjustment Board.

Subpart S—Transportation

§ 737.19–200 Planning and Solicitation.

§ 737.19–204 Consignment and Marking Instructions.

Consignment data in contracts shall be in accordance with the consignment instructions in the Terminal Facilities Guide, United States Navy, Marine Corps, and Coast Guard (NAVSUP Pub. 445, MCO P4600.9). Improper consignments result in unnecessary expenditure of transportation funds because of switching and other charges and delayed delivery of material.

§ 737.19–204–1 Invoicing Instructions for Classified Contracts.

To establish a uniform procedure for the preparation of invoices relating to classified contracts, procuring activities shall add the following paragraph to the invoicing instructions pertaining to such contracts:

In order to prevent disclosure of classified information, invoices submitted under this contract shall be so prepared that the supplies or service covered thereby can be identified only by reference to the contract. For example, the invoice may state "Contract N_____, Item 2, 100 @ $1.00–$100.00." The security classification shown on the contract shall not appear on the invoices.

§ 737.19–207 Mode of Transportation.

(a) *The Contract as Awarded.* Contracts and purchase orders normally shall not specify a particular method of transportation or a particular carrier for the delivery of contract items. If the contracting officer considers it necessary for the Navy to control the method of transportation (e.g., so as to expedite the movement of contract items or otherwise to fulfill special Navy requirements), the procurement shall generally be made on the basis of delivery f.o.b. origin, and this is a valid reason for departing from the policy of § 19.104. However, when special types of transportation equipment or limited facilities for the delivery and receipt of material at destination permit the use of only one mode of transportation, such special delivery requirements may be included in f.o.b. destination purchase documents without prior referral to appropriate MTMTS (Military Traffic Management and Terminal Service Area Command).

(b) *Contract Modification: f.o.b. Destination of f.o.b. Origin.* Where it becomes necessary to control the method of transportation under an f.o.b. destination contract, and numerous changes are likely to be made, time permitting, the contracting officer shall issue a contract modification changing the place of delivery to f.o.b. origin and shall make an appropriate downward adjustment in the contract price.

(c) *Modification of f.o.b. Destination Contracts to Specify Transportation Method.* Ordinarily changes in destination or advancement of delivery date under f.o.b. destination contracts will be made by contract modifications which set forth the new destination or delivery date and adjust the contract price as necessary to reflect any increase or decrease in cost to the contractor. If it is also necessary to specify a particular method of transportation, it is imperative that contracting officers consult the appropriate MTMTS office (see § 737.19–301 and NAVSUP Manual, Vol. V) for advice relative to the method of transportation, which shall be stated in the contract modification.

(d) *Dispatch and Oral Instructions to Contractors.* If a shipment is extremely urgent and time does not permit prior modification of the contract to include the new destination or delivery date and method of delivery, the contracting officer (or the cognizant Field Contract Administrator, as directed or authorized by the contracting officer) may issue dispatch shipping instructions to the contractor to effect timely delivery of contract items. If time does not permit dispatch instructions, oral instructions may be given, but they shall be immediately confirmed in writing. As soon as possible, dispatch and oral instructions shall be incorporated in a contract modification, prepared in accordance with paragraph (c) of this section. Advice of military traffic management officers should be obtained prior to the issuance of dispatch or oral shipping instruction to the contractor in order that the most expeditious and economical method of transportation will be specified. Contracting officers should not specify methods of shipment without such prior consultation with MTMTS office. The basic policy and the authority in the selection of the method of transportation are stated in NAVSUP Manual, Vol. V.

(e) *Late Deliveries.* All actions taken under this § 737.19–207 shall be consistent with Part 8, Subpart F, Termination for Default and Section XXV, Production Surveillance and Reporting. Where it is evident that the contractor will be delinquent in making delivery, the procedures specified herein shall be carefully administered to ensure that the Government does not pay for premium transportation used to meet delivery dates where delivery would otherwise be late.

§ 737.19–207–1 Transportation and Delivery Requirements for Classified Procurements.

Procurements classified as Confidential or higher shall be purchased on f.o.b. origin basis when the size, bulk of quantity to be transported will require the employment of commercial transportation services. Under such circumstances these procurements shall provide for transportation at Government expense (normally on U.S. Government bills of lading). Routing instructions, when required, will be obtained from the appropriate military sources (see § 737.19–301). These are the only sources permitted to authorize commercial transportation within the Navy. Exception is made with respect to shipments via those media which shipping officers (as defined in NAVSUP Manual Par. 51056) have been delegated authority to route. Representatives may obtain assistance and advice relative to the particular mode of transportation to be employed from the appropriate military traffic management sources. See also DOD Information Security Program Regulation (DOD 5200.1–R) and Department of the Navy Supplement (OP NAVINST 5510.1D).

§ 737.19–300 Evaluation of Bids and Proposals.

§ 737.19–301 Transportation Rates and Related Costs.

§ 737.19–301–1. Sources of Transportation Rates and Related Costs.

(a) Requests originating in the Naval Systems Commands for assistance on the following will be addressed to the Transportation Management Specialists assigned to the respective Systems Command:

(1) Freight rates and related transportation and handling costs.

(2) Transportation evaluations of invitations for bids and requests for proposals.

(3) Transportation evaluations of specific procurement actions or documents.

(4) All other items of transportation management concern. After review and technical interpretation, Naval Systems Command Transportation Management Specialists will, as necessary, address requests for freight rates and related costs to the sources indicated in paragraphs (b), (c), and (d) of this section.

(b) Requests for freight rates, routing, ocean transportation rates, CONUS port handling charges and related commercial costs or other information pertaining to procurement evaluations or shipment of material expected to move from a CONUS point to another CONUS point or an overseas destination (including consideration of services available from commercial carriers, the Military Airlift Command (MAC) and the Military Sealift Command (MSC) will be addressed to the cognizant Military Traffic Management and Terminal Service Area Commander as indicated in Chapter 108 of the Military Traffic Management Regulation (NAVSUPINST 4600.70, MCO P4600.14). The term "CONUS port handling charges" includes accessorial service charges such as wharfage, heavy lift, handling and unloading.

(c) Requests by Navy contracting officers for ocean transportation rates,

overseas port handling charges and related information pertaining to procurement evaluations or shipment of material expected to move between overseas points or from an overseas point to CONUS will be addressed to the Navy Supply Systems Command (Transportation Systems Division). Marine Corps contracting officers shall obtain such information from the Commandant of the Marine Corps (Code LFS-2). The term "overseas port handling charges" as used above, includes accessorial service charges such as wharfage, heavy lift, handling and unloading.

(d) Requests by Navy and Marine Corps contracting officers for overseas freight rates and related costs pertaining to procurement evaluations or shipment of material expected to move between overseas points by land or commercial air will be addressed to the overseas Military Commander exercising assigned common user military operated land transportation responsibility as directed by the overseas Theater Commander concerned. This service is provided by the Army except as may be otherwise directed by the Theater Commander (Joint Service Instruction OPNAV 4640.3).

Subpart T—Administrative Matters

§ 737.20–700 Assignment of Contract Administration.

§ 737.20–702 Responsibilities.

§ 737.20–702–3 Contract Administration Office.

(a) The contract administration office shall perform all assigned contract administration functions listed in § 1.406 to the fullest extent of its capabilities and refer functions beyond its capability to its parent headquarters for performance.

(b) When feasible, the contract administration office shall perform such other contract administration functions not listed in § 1.406 as may be requested by the purchasing office. If resources are not available to perform such functions, the contract administration office shall so advise its parent headquarters and the purchasing office making the request.

§ 737.20–702–4 Project Manager or Procuring Activity.

(a) Appropriate agreements shall be reached between the project manager or procuring activity and the applicable NAVPRO (Naval Plant Representative Office) or SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) with respect to the functions of each relative to major defense system contract where the NAVPRO or SUPSHIP is to perform functions not listed in § 1.406(c). Those functions normally performed by NAVPROs and SUPSHIPs, as listed in § 1.406(c), shall not be included in the agreement unless withheld, supplemented, modified or clarified.

(b) The objective of the agreement is to establish a clear understanding as to which Government element is responsible for administering specific aspects of the contract. The existence of a clear understanding will minimize the possibility that duplication may occur or that a responsible element may be by-passed in providing Government direction to the contractor. Within the capability of NAVPROs and SUPSHIPSs, project managers or procuring activities shall delegate maximum authority to them to perform such functions as participation in preliminary design reviews and critical design reviews, surveillance and monitoring of development risk, standardization control, interface control, approving contract changes, trade-off studies, approval of certain Class I engineering changes, approval of specifications, etc. These functions should be included in the agreements.

§ 737.20–702–5 Monitoring Contractor's Costs.

(a) Within each NAVPRO (Naval Plant Representative Office) and SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) administering contracts with contractors expected to have sales to the Government in excess of $5,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts, an individual or organizational element shall be designated responsible for:

(1) developing and maintaining an annual written plan and schedule for the performance of industrial reviews of the contractor's operations to assure that the continuous should cast responsibility assigned by § 737.1.406–50(b)(4) is being fully implemented. This annual plan is to provide coverage for each major industrial function of the contractor over a period of 2–3 years and identify the organizational units of the NAVPRO/SUPSHIP assigned this surveillance responsibility. In the development of the should cost surveillance plan, consideration should be given to the annual plan of operations audits (functional area reviews) developed by the Defense Contract Audit Agency (DCAA) filed audit office, and to the extent possible, there should be an integration of the industrial review programs of organizational units of the NAVPRO/SUPSHIP with the operations audits programs of the DCAA office.

(2) coordinating the performance of the continuous should cost efforts of the organizational units of the NAVPRO/SUPSHIP;

(3) coordinating the continuous should cost efforts of the NAVPRO/SUPSHIP with those of the DCAA auditor and any other activity assisting the NAVPRO/SUPSHIP;

(4) assuring that the contractor takes appropriate action to correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts;

(5) issuing cost avoidance notices to the contractor advising of specific costs that will not be allowed if incurred;

(6) coordinating NAVPRO/SUPSHIP actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts; and

(7) assisting NAVPRO/SUPSHIP, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related financial data and obtaining the assistance of the procuring contracting officer when such access is being denied or impaired.

(b) When developing the plan required by (a)(1), the reviews, functions, and audit effort of the NAVPRO/SUPSHIP and DCAA personnel required in the following contract costs related areas shall be considered and integrated into the overall NAVPRO/SUPSHIP should cost surveillance plan:

(1) review of the contractor's management and operations as prescribed by contracts, ASPR, NPD, or other applicable regulations;

(2) participation in reviews of the contractor's operational (functional area reviews) conducted by the DCAA auditor in accordance with the Defense Contract Audit Manual (DCAAM 7640.1);

(3) negotiation of Forward Pricing Rate Agreements;

(4) review and evaluation of contractors' overhead in conjunction with negotiation or audit determination of final overhead rates;

(5) negotiation of prices for: changes; orders under basic ordering agreements; and orders under contracts for provisioned and other items;

(6) cost/price evaluation of contractor's proposals for procuring contracting officer;

(7) determination of allowability of costs under cost-reimbursement type contracts during performance and upon completion;

(8) administration of progress payments;

(9) review and evaluation of cost and funds reports;

(10) representation on evaluation and demonstration reviews, and maintaining surveillance, in connection with applicable C/SCSC (Cost/Schedule Control System Criteria) requirements; and

(11) assure contractor compliance with promulgations of the Cost Accounting Standards Board.

(12) evaluation of any potential impact of prospective major contracts on contractor's cost, schedule, and technical performance under existing contracts, and advising procuring contracting officers of findings.

(c) An official review of the NAVPRO/SUPSHIP implementation of the continuous should cost plan shall be conducted by the parent command at least annually. Whenever feasible, the review shall be performed concurrently and in conjunction with other reviews or inspections performed by the parent command.

(d) Where appropriate, the NAVPRO or SUPSHIP should establish a Continuous Should Cost or Business Review Staff; reporting to the Officer-in-Charge (who is the Principal Administrative Contracting Officer), to perform the functions listed in paragraph (a) of this section.

(e) The plan required by paragraph (a)() of this section must be tailored to the contractor and NAVPRO/SUPSHIP concerned, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of the work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. Further, the plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken.

§ 737.20–702–6 Responsibilities of NAVPROs and SUPSHIPs for Allowability of Costs Under Cost-Reimbursement Type Contracts.

(a) The cognizant NAVPRO (Naval Plant Representative Office) or SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair), assisted by the DCAA (Defense Contract Audit Agency) auditor, has final responsibility for determining whether costs incurred under cost-reimbursement type contracts are reasonable, allocable, and otherwise allowable.

(b) § 3.809(c) designates the auditor as the authorized representative of the contracting officer for examining contract costs for the purpose of determining allowable direct and indirect costs under Part 15, Contract Cost Principles and Procedures, except for negotiated overhead rates (§ 3.700). During performance of the contract, the auditor processes vouchers for provisional payment subject to final audit. At completion of the contract, the auditor forwards the completion voucher to the NAVPRO/SUPSHIP accompanied by the final audit report which summarizes all costs incurred and considered allowable from the inception to the completion of the contract. The NAVPRO/SUPSHIP shall approve the final voucher for the final payment after assuring that the contractor has fully complied with all provisions of the contract.

(c) The auditor issues DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, with a copy to the NAVPRO/SUPSHIP, with respect to costs claimed but not considered allowable. The auditor is required to discuss controversial disallowances with the NAVPRO/SUPSHIP, prior to issuing the DCAA Form 1. § 1.406(c)(iv) requires that the contract administration office determine, upon written appeal by the contractor, the allowability of costs suspended or disapproved by the auditor.

(d) During the period of contract performance, the NAVPRO/SUPSHIP is responsible for the performance of contract administration functions listed in § 1.406 and § 737.1–406–50. In the day-to-day performance of these functions, NAVPRO/SUPSHIP personnel should be alert to inefficient and uneconomical policies and practices being followed by the contractor that can result in the incurrence of unnecessary costs. If sufficient informaton is available to indicate that a contractor's practice is causing unnecessary contract costs, the NAVPRO/SUPSHIP shall direct the issuance of the DCAA Form 1 by the auditor for the suspension or disapproval of costs incurred, as provided by § 3.809(c)(i). Where the NAVPRO/SUPSHIP believes that unnecessary costs are being incurred by a contractor, and requires audit assistance, available information should be coordinated with the auditor, and the NAVPRO/SUPSHIP should request specific audit coverage of the functional area involved.

§ 737.20–706 Designation of the Disbursing Office.

§ 737.20–706–50 Defense Contract Administration Services Disbursing Offices.

When contracts are assigned to an office of Defense Contract Administration Services for administration, the cognizant Defense Contract Administration Services Regional Office (DCASR) shall be designated as the paying office. However, when only source inspection is to be performed by a Defense Contract Administration Services Office for procurements of $2,500.00 or less, as authorized by § 20.703–1, the appropriate paying office listed in § 737.20–706–51 or § 737.20–706–52 below shall be designated.

§ 737.20–706–51 Other Military Department Disbursing Offices.

Contracts citing appropriations or funds of the Departments of the Army or the Air Force or of other DOD agencies will designate the appropriate finance offices of those Departments as specified in the applicable MIPRs. Contracts chargeable to the appropriations or funds of more than one Military Department will designate a disbursing or financing office of each Department involved to disburse the appropriations of the Department, except that when such contracts are for research and development, a disbursing office of the procuring Department may be designated to make all payments.

§ 737.20–706–52 Navy Disbursing Offices.

(a) *General.* All contracts citing Navy appropriations which are not assigned to a Defense Contract Administration Services Regional Office for administration shall designate the appropriate Navy disbursing office to make payments against Navy appropriations. Except as otherwise provided in paragraphs (b) through (h) of this section; one of the disbursing offices listed herein shall be designated. In contracts providing for inspection and acceptance of items by the Navy at the contractor's plant, the Navy regional finance center (NRFC) serving the area in which the contractor's plant is located shall be designated as the paying office in the contract. In contracts providing for inspection and acceptance at a point other than the contractor's plant, the Navy regional finance center serving the area in which the receiving activity is located shall be designated as the paying office in the contract; except that if the contract provides for inspection and acceptance at more than one destination point or at a destination point outside the continental United States, the Navy regional finance center serving the area in which the principal office of the contractor (the office to which delivery of the check is to be made) is located shall be designated as the paying office in the contract. See NavCompt Manual, par. 046300. Exceptions to the foregoing are made in the case of certain orders issued by bureaus, systems commands and inventory control points as provided for in NavCompt Manual, par. 064006–3.

Disbursing office	*Area served*
NRFC Washington, D.C	District of Columbia, Maryland and counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, King George, Loudon, Page, Prince William, Rappahannock, Shenandoah, Stafford, Warren and Westmoreland, and the cities of Alexandria and Fairfax in Virginia.
NRFC Norfolk, Va	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, except the areas served by the NRFC, Washington, D.C.; West Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, and Mississippi.
NRFC Great Lakes, Ill	North Dakota, South Dakota, Wyoming, Nebraska, Colorado, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Arkansas, Louisiana, Oklahoma and Texas.
NRFC San Diego, Calif	Southern part of California including the Counties of Santa Barbara, Kern and San Bernardino and all counties south thereof, Arizona and New Mexico and Clark County, Nevada.
NRFC San Francisco, Calif	Northern part of California, including counties of San Luis Obispo, Kings, Tulare, Invo and all counties north thereof, Utah, Nevada (except Clark County), Washington, Oregon, Montana, Idaho and Alaska.
NRFC Pearl Harbor, Hawaii	Hawaii.

(b) *Contracts Citing the Appropriation 17X4912, Navy Industrial Fund.* Except as provided in paragraph (c) of this section ,when the contract is chargeable to the Navy Industrial Fund, the disbursing office will be the applicable Navy Industrial Fund activity if so cited on the requisition. Otherwise, the appropriate disbursing office listed in paragraph (a) of this section will be designated.

(c) *Contracts for Petroleum Products.* (1) Except for the Military Sealift Command, Navy Industrial Fund activities regularly paying their own dealers: Bills will designate payment by their own disbursing office. Orders for petroleum for Military Sealift Command vessels will provide for payment by the disbursing office of the Military Sealift Command activity to which the ship is assigned, except that orders for petroleum products used as bunkers on government owned tankers administratively assigned to the Military Sealift Command and operated under a cost-plus-a-fixed-fee contract will provide for payment by the Commander, Military Sealift Command, Washington, D.C. when the charge is against a Navy Industrial Fund activity not regularly paying its own dealers' bills or against any other Navy appropriation, orders will provide for payment by the appropriate office specified in paragraph (c) (2) of this section.

(2) Except as otherwise provided by amendment to the general provisions for petroleum products, the following paying procedures apply to all deliveries:

(i) The ordering activity will designate NRFC San Francisco as the paying office if delivery is made within Arizona, New Mexico, California, Oregon, Washington, Montana, Idaho, Nevada, Utah, Wyoming or Colorado, or, if the home office of the contractor is located in any such state and deliveries are made in those states, including deliveries outside those states under the same delivery orders.

(ii) The ordering activity will designate NRFC Washington as the paying office for all other deliveries, including into-plane deliveries, as provided in Naval Supply Systems Command Manual, par. 22417–4.

(3) Only one paying office will be designated on each order.

(d) *Contracts for Solid Fuels.* When coal is procured under contracts specifying delivery direct from designated mines, NRFC Washington will be designated the paying office except when charge is to the Navy Industrial Fund and the disbursing office serving the Navy Industrial Fund activity is designated in the requisition. When coal is procured from retatil distributors the disbursing office will be selected in accordance with (a) and (b) above or (g) below as appropriate.

(e) *Ship's Store Stock.* An east coast and a west coast disbursing office have been assigned the function of payment of dealer's bills for all ship's store items which are listed in the Ship's Store Afloat Stock Catalog. NRFC Brooklyn is the east coast office and NRFC San Francisco is the west coast office.

(f) *Overseas Navy Commissary Store Merchandise.* Fast Pay or Certificate of Conformance purchases of commissary store merchandise to be shipped via a continental United States transhipping activity will specify payment by NRFC Norfolk when shipment is via an east coast transhipping activity and NRFC San Francisco when shipment is via a west coast transhipping activity.

(g) *Contracts with Contractors outside the United States.* Invoices for into-plane deliveries under contracts will be forwarded directly to NRFC Washington. Except when payment is to be made by a DCASR in accordance with § 737.20–706–50 or by a Navy disbursing office in Canada, contracts providing for payment in Canadian dollars will designate NRFC Washington as the paying office. In all other cases, contracts with contractors outside the United States will designate the disbursing office serving the receiving activity to make payment.

(h) *Superintendent of Documents.* All orders on the Superintendent of Documents will designate NRFC Washington as the paying office and billings will be submitted directly to that office as provided in NavCompt Manual, par. 046301–2c.

§ 737.20–900 Corporate Administrative Contracting Officer (CACO).

§ 737.20–901 General.

(a) Part 20, Subpart H, provides policy and procedures for the assignment of a Corporate Administrative Contracting Officer (CACO) and the duties and responsibilities of a CACO. A CACO will be established when the corporate structure is such that multi-divisional policy and procedures require ACO review and approval and where the corporation retains the authority for decision-making in these areas.

(b) Recommendations for appointment of a CACO shall be submitted by a Contract Administration Office (CAO) via appropriate channels to the Chief of Naval Material for those applicable contractors assigned to Navy under the Plant Cognizance Program. The Chief of Naval Material will coordinate the recommendations with the Army, Air Force or Defense Supply Agency/CAS, as applicable. If the decision is for the Navy to assume the CACO responsibilities, the Chief of Naval Material will notify the parent organization of the CAO so that immediate action may be taken by that organization to select and appoint, in writing, an individual as the CACO. A copy of the appointment letter shall be provided Headquarters, Defense Supply Agency, Attention DCAS–J, for listing of the CACO in the DOD Directory of Contract Administration Services Components (DOD 4105.59–H). The parent organization shall also advise the contractor of the designation.

(c) Regardless of the DOD component affiliation of the CACO, participation in the CACO program is required for CAOs at lower organizational segments of the contractor. Accordingly, affected Navy CAOs will designate an ACO as the Divisional ACO (DACO) for participation in the CACO program.

§ 737.20–904 Duties and Responsibilities of Corporate ACO.

(a) The duties and responsibilities of the CACO are set forth in Part 20, Subpart H. Performance of such duties and responsibilities may include, among others:

(1) The review of contractor corporate policies and procedures, particularly as they relate to the incurrence of costs and the allocation thereof to government contracts or to costs generated at the corporate level and allocated to divisions, profit centers, etc. Items subject to such review may include, for example:

(i) corporate home office expenses and divisional allocation;

(ii) travel and per diem;

(iii) relocation expenses;

(iv) compensation program, including wages and salaries, overtime, pension plans, severance pay, bonus or incentive plans;

(v) leasing policies;

(vi) insurance programs;

(vii) advance understandings on particular cost items;

(viii) determining the adequacy of corporate Disclosure Statements under the Cost Accounting Standards;

(ix) requesting the appointment of Divisional ACOs;

(x) IR&D expenses policy;

(xi) processing and executing novation agreements;

(xii) patent and royalty;

(xiii) lease versus purchase of ADP Equipment Analysis;

(xiv) Contractor's Weighted Average Share (CWAS) rating;

(xv) termination policy;

(xvi) compliance with cost accounting standards and disclosed practices;

(xvii) negotiating and entering into forward pricing rate agreements for home office expenses;

(xviii) property and disposal policy; and

(xix) departmental tri-service negotiations, as requested.

(2) Providing to the DACOs pertinent reports of CACO review, negotiations and approvals or disapprovals. The rate and allocations so reported are not subject to further negotiation or audit determination at the DACO level.

(3) Conducting meetings as needed, normally not less frequently than on an annual basis; such meetings to be attended by interested CAO personnel, DACOs, contracting officers at interested purchasing offices, and Defense Contract Audit Agency personnel for discussion and resolution of contractual matters that have inter-divisional implications. When appropriate, representatives of other government organizations shall be invited. However, the total number of conferees should be kept to a practical minimum. A summary report of each meeting shall be furnished to the conference participants within 30 days after the close of the conference.

(4) Maintaining such communication with DACOs as necessary to provide

pertinent information as to corporate development and acquiring knowledge of DACO problems and developments having corporation-wide impact.

(5) In accomplishing the above or other official duties, CACOs will be performing at the corporate level appropriate ACO authorities and responsibilities as set forth in § 1.406. In so doing, the CACO shall not duplicate audit functions set forth in § 737.1–407. Normally, a CAC (Corporate Audit Coordinator) is assigned by DCAA to the corporate level. In such instances, the CACO shall:

(i) Coordinate with the CAC in presenting and resolving with the contractor, corporate-wide problems of mutual interest;

(ii) Attend CAC conferences and disseminating the results of such conferences to DACO;

(iii) Invite the CAC to attend appropriate CACO meetings;

(iv) Inform the CAC of all major actions, policies, and/or agreements resulting from the CACO program.

§ 737.20–905 Responsibilities of Divisional ACO (DACO).

A Divisional ACO shall follow a policy of full disclosure and support to the CACO program. DACOs shall provide the CACO with:

(1) Copies of any reports requested or considered pertinent for CACO consideration or action.

(2) Complete information concerning any local problem areas which:

(i) May also exist within the CACO complex, or

(ii) Cannot be solved locally.

§ 737.20–906 Agreements.

A written agreement between the CACO and each DACO shall be prepared by the CACO. The agreements shall identify and specify each function to be performed by the CACO and the DACO. Agreements shall be executed within 90 days after the CACO is established.

Subpart U—Procurement Management Reporting System

§ 737.21–100 Individual Procurement Action Report (DD Form 350)

§ 737.21–101 Preparation of DD Form 350.

§ 737.21–101–1 Coding.

The following coding shall be used for the DD Form 350 Items indicated:

(a) *Item 1B, General.* Entries in this block serve to identify procurement actions executed by field contract administration offices or the section, branch or division responsible for procurement awards executed by certain Headquarters purchase organizations.

(1) *Field Contract Administration Office Procurement Actions Only.* Enter alpha code "F" in Item 1B for all procurement actions executed by a field contract administration office listed in the DOD Directory of Contract Administration Services Components (DOD 4105.59–H).

(2) *Headquarters, Naval Sea Systems Command, Naval Air Systems Command and Naval Electronic Systems Command Procurement Actions Only.* Enter a one-digit alpha or numeric code to identify the NAVSEA 02, NAVAIR 02 or NAV ELEX 02 Section, Branch or Division responsible for the procurement action being reported. The three affected commands will select their own codes and determine the extent of the breakdown, i.e., whether to report Divisions only or to report Branches and Sections. These three commands shall submit a list of the Divisions, Branches and Sections and related codes, and all subsequent additions and deletions, to the Chief of Naval Material (MAT 0214).

(b) *Item 2B, Department.* Enter a single capital letter to identify "Department" in accordance with the following table:

N—Navy
M—Marine Corps
A—Army
F—Air Force
P—Government Printing Office
G—General Services Administration
D—Office of the Secretary of Defense and Defense Agencies other than the Defense Supply Agency
S—Defense Supply Agency
X—All others

(c) *Item 2E.* Enter one of the following alpha codes for Kind of Procurement Action Codes 4, 6, and 8:

(1) Code P—Action fully priced at time of issuance.

(2) Code N—Action not fully priced at time of issuance, and contractor not obligated to total performance for a maximum dollar amount.

(3) Code C—Action not fully priced at time of issuance, but contractor obligated to total performance for a maximum dollar amount.

(4) Code S—Action fully priced superseding a not fully priced action.

(d) *Item 22, Date of this Action and Item 23, Estimated Completion Date.* Enter alpha-numeric codes to indicate month and *calendar* year. Codes and examples are:

Months:			*Calendar Years*
A—Jan	E—May	I—Sep	6—1976
B—Feb	F—Jun	J—Oct	5—1975
C—Mar	G—Jul	K—Nov	4—1974
D—Apr	H—Aug	L—Dec	

Example: Date of this Action, 22 August 1974, would be coded H/4/22

Example: Estimated Completion Date, May 1976, would be coded E/6

(e) *Item 24A, Procurement Administrative Leadtime.* Enter the number of elapsed calendar days from the date the Procurement Request was received in Contracts in a form that it could be processed until the date the award was made. Example: The Procurement Request was received on 10 January 1974, and the award was made on 2 July 1974. The entry in Item 24A would be "173" for the elapsed calendar days. Entry in Item 24A applies only to Definitive Contracts, i.e., those that are shown as Code 3 in Item 14 on DD Form 350.

(f) Report Control Symbol DD–I&L (M) 1014 applies.

Subpart V—Service Contracts

§ 737.22–200 Procurement of Expert or Consultant Services.

§ 737.22–200–1 Scope of Part.

Additional Navy procedures governing the procurement of personal services of experts or consultants, or organizations thereof, under authority of 5 U.S.C. 3109 (formerly 5 U.S.C. 55a) are set forth in the Federal Personnel Manual, Chapter 304 and Appendix C thereto (CMMI 304–C).

§ 737.22–203 Policy.

In the case of task type contracts, where personal services are not involved, there is not need to invoke the exceptional authority of 5 U.S.C. 3109 even though the services of experts and consultants are utilized. Accordingly, 5 U.S.C. 3109 should not be used as authority for such task type contracts.

Subpart W—Subcontracting Policies and Procedures

§ 737.23–100 Review of Contractors' Procurement Systems.

§ 737.23–101 Review Criteria.

§ 737.23–101–1 Review of Contractors' Procurement Systems.

(a) *Scope.* This NPD supplements ASPR guidance concerning the criteria for performing an initial CPSR (Contractor Procurement System Review); deciding upon the need for subsequent reviews; and determining the composition of the CPSR team. In addition, requirements are established for evaluating the efforts of the NAVPRO (Naval Plant Representative Office) or the SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) in maintaining surveillance of the contractor's procurement system.

(b) *Expanded Criteria for Conducting CPSRs.* Initial CPSRs shall be conducted when required by § 23.101 and, in addition, in those situations where it is expected that the contractor under the cognizance of a NAVPRO or SUPSHIP will have sales to the Government during the next twelve-month period in excess of $5,000,000 on non-competitive (as to price) negotiated contracts (including modifications to competitively awarded contracts) whether these include firm fixed-price contracts, fixed-price contracts with escalation, or other contract types.

(c) *Subsequent Reviews.* Where the annual evaluation of the need to perform a subsequent CPSR (§ 23.101(b)) results in a decision by the NAVPRO or SUPSHIP that none is necessary, a written determination to the effect, including the rationale therefor, shall be made. A copy of the determination and findings shall be furnished to the higher headquarters activity within the command responsible for establishing CPSR schedules.

(d) *CPSR Teams.* Navy CPSR teams shall include, on a full or part-time basis as appropriate, personnel with background and skills in purchasing, financing, estimating, engineering, quality assurance, production and material control,

and other expertise considered necessary by the team captain. ASPR S1–202.1 provides additional guidance concerning the review team.

(e) *Review of NAVPR 3/SUPSHIP Subcontracting Surveillance Program.*

(1) Before completion of a review (whether initial or subsequent) of the contractor's procurement system, the CPSR team shall, except as noted in (2) below, perform a review of the NAVPRO or SUPSHIP subcontracting surveillance program (see § 737.23–108–1). This review shall entail an evaluation of the following aspects of the program:

(i) Adequacy of the written surveillance plan;

(ii) Extent to which the surveillance efforts of the organizational units and the resident auditor are being coordinated;

(iii) Timeliness of follow-up action to determine the corrective measures being taken by the contractor;

(iv) Degree to which supporting contract administration is being effectively utilized;

(v) Adequacy of the procedures being followed to maintain complete visibility of the status of critical subcontractors; and

(vi) Results attributable to the surveillance program, e.g., effective implementation of Government recommendations by the contractor, continued progress in detecting and resolving problems, contractor emphasis on problem prevention and adoption of preventive measures.

(2) When necessitated by time limitations, the review of the surveillance program may be curtailed provided such a review was accomplished by higher headquarters during the preceding six months.

(3) The CPSR team shall provide on-the-spot guidance to the NAVPRO or SUPSHIP if the CPSR indicates a need for an increase or reduced level of surveillance as the case may be (§ 737.23–108–1(c)) or a need for additional attention to specific areas.

(4) A summary of the findings resulting from the review of the surveillance program shall be included in the CPSR report, together with recommendations for improvement and a conclusion as to the overall adequacy of the program. Where the surveillance review was curtailed in accordance with paragraph (e)(2) of this section, the document containing the findings of the earlier review shall be referenced.

§ 737.23–108 Surveillance of the Contractor's Approved Procurement System.

§ 737.23–108–1 Surveillance of Subcontracting Operations.

(a) *General.* Subcontract costs represent a large percentage of the total cost of defense procurements. Also, a close relationship exists between sound subcontracting practices and the achievement of prime contract objectives. To determine the effectiveness of subcontracting operations, the NAVPRO (Naval Plant Representative) and the SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) shall establish and maintain a suitably selective and flexible program providing for the continuous, comprehensive surveillance of the contractor's procurement system.

(b) *Definition.* As used in this NPD, a contractor's procurement system refers to the collective policies, procedures, methods, practices and operations utilized by the contractor to purchase, rent, lease, or otherwise obtain material or services required for contract performance. It includes such functions as determinations and definition of requirements, solicitation and selection of sources, preparation and award of subcontracts and intra-company transactions, and all phases of the administration of subcontracts and intra-company transactions, including their close-out and settlement.

(c) *Purpose of Surveillance.* (1) The purpose of maintaining surveillance of subcontracting operations is to determine how effectively they are contributing to prime contract cost, schedule and technical performance requirements; to ascertain what improvements are necessary in the contractor's procurement system; and to assure that preventive or corrective action is taken in a timely manner. To accomplish this purpose, surveillance efforts shall be directed to those contractor procurement practices which significantly affect cost, schedule, or technical performance.

(2) Care shall be exercised to assure that surveillance is not maintained or extended beyond the level necessary to protect the interests of the Government. Specifically, surveillance shall not be conducted to investigate matters of minor significance, to obtain statistical data simply for the purpose of maintaining statistics, or solely for the purpose of determining compliance with applicable regulations. Prompt action shall be taken to modify or reduce surveillance as changing circumstances warrant or as may be commensurate with a results-oriented surveillance program. As in all contract administration matters, it is essential that contract administration personnel be fully observant of the prime contract terms and conditions in order to avoid actions which exceed contractual requirements and to assure that any directions, suggestions or requests addressed to the contractor are consistent with the contract provisions.

(d) *Applicability.* The subcontracting operations of contractors under NAVPRO/SUPSHIP cognizance shall be kept under continuous surveillance regardless of the approval status of the contractor's procurement system.

(e) *Responsibilities for Surveillance.* The surveillance responsibilities of the respective organizational units of the NAVPRO or SUPSHIP shall be clearly defined and their efforts coordinated to obtain best results. Within each contract administration office an individual shall be designated who will be responsible for:

(1) Developing and maintaining a surveillance plan;

(2) Coordinating the surveillance efforts of the organizational units and the contract auditor, taking care to avoid duplication of the functions involved;

(3) Assuring that the contractor takes necessary corrective action; and

(4) Coordinating and controlling the use of supporting contract administration by other contract administration offices when required.

(f) *Surveillance Plan.* Since procurement operations permeate the entire organization of the contractor, surveillance in one sense is an awareness by NAVPRO or SUPSHIP personnel of how engineering, production and quality problems relate to procurement problems. To be fully effective, the surveillance program must be continuous, comprehensive and flexible. Under a flexible approach, the nature and extent of surveillance will vary with the applicable circumstances. For example, a greater degree of surveillance shall be maintained for development and initial production effort than for follow-on production, and cost-type contracts shall be monitored more closely than fixed-price contracts. The following policies and procedures shall apply in formulating the surveillance plan:

(1) A written plan, providing for continuous surveillance of subcontracting operations shall be developed by each NAVPRO and SUPSHIP. The plan shall be based on the guidance concerning subcontracting evaluations provided herein, in addition to that contained in Part 23, ASPR Supplement No. 1 and the DOD Manual for Contractor Procurement System Reviews.

(2) The surveillance plan shall encompass all aspects of the contractor's procurement system and all operations which impact the contractor's procurement, including but not limited to determination and definition of requirements, purchasing, estimating, financing, progress payments, reimbursement of costs, engineering, qualification approval, priorities and allocations, schedules and delivery dates, expediting, transportation, quality assurance, reliability, maintainability, test requirements, production, material control, Government property, provisioining, repair parts, plans, technical manuals, industrial security, make-or-buy decisions, small business, labor surplus and minority business enterprise programs. Particular emphasis should be given to flowdown of prime contract provisions and, where applicable, the requirements of P.L. 87–653, "Truth-in-Negotiations" Act.

(3) The surveillance plan shall be tailored to the contractor concerned, taking into account the extent of competition obtained, the contractor's operating methods, the nature of the work being done, procurement cycle stage, types of contracts involved, degree of technical and financial risk, criticality of delivery, security classification, and performance history. The plan shall provide for frequent, selective observations of day-to-day operations related to requirements determination, cost/price analysis, award and subcontract ad-

ministration. Further, the plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Early involvement at the pre-contract stage is especially important when the proposed subcontract requires Government consent prior to placement.

(4) The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for following up, as necessary, to effect recommended improvements; and, when warranted by the findings, for rescinding approval of the contractor's procurement system.

(g) *Significant Areas for Surveillance.* Surveillance of subcontracting operations shall be conducted to assure that subcontract:

(1) Drawings, plans and specifications properly reflect contract requirements including those related to performance, quality, maintainability and reliability;

(2) Quantities ordered are realistic and reflect effective material control and usage;

(3) Awards are made on a competitive basis whenever feasible;

(4) Delivery or performance schedules permit the contractor to keep his prime contract work on schedule;

(5) Cost/price analysis and negotiation result in fair and reasonable prices; and

(6) Administration provides the prime contractor reasonable visibility of the subcontractor's cost, schedule and technical performance.

An overall objective in connection with the surveillance of subcontracting operations is to assure that the prime contractor performs a thorough review and evaluation of subcontractor cost and pricing data, technical representations and delivery schedules.

(h) *Attendance at Contractor Meetings.* NAVPRO and SUPSHIP personnel shall be encouraged to attend, on a selective basis, contractor procurement meetings, bid openings, program reviews, material review board sessions, subcontractor briefings, make-or-buy reviews and the like.

(i) *Critical Subcontractors.* Critical subcontractors, that is, those performing significant design work, building complex systems, holding high dollar value awards, or working on long leadtime items, shall be identified for special management attention. This identification shall be accomplished as early as possible and in coordination with the prime contractor. The degree of involvement by the prime contractor in progressing critical subcontracts including technical liaison and assessment of risk shall be of primary concern.

(j) *Selection of Subcontractor.* The contractor's source selection methods particularly with respect to the selection of critical subcontractors must be thoroughly reviewed. The review of critical subcontractor selections should begin as early in the procurement cycle as possible and include the prime contractor's advance procurement plan, request for proposal and formal contractual document. Emphasis shall be placed during the review on conformity with Department of Defense acquisition policies as outlined in DOD Directive 5000.1.

(k) *Subcontractor Performance.* Frequent examination shall be made of the contractor's records concerning subcontractor cost, schedule and technical performance putting stress on those regarding critical subcontracts. When appropriate, the contract administration office having cognizance over the subcontractor may be requested to provide supplementary information as a means of verifying the information obtained from the contractor's records.

Subpart X—Disposition of Personal Property in Possession of Contractors

§ 737.24–200 Methods of Disposal.

§ 737.24–205 Screening of Contractor Inventory.

§ 737.24–205–7 Procurement of Packing, Crating and Handling (PC&H) Services.

(a) Where a contract does not require the contractor to provide packing, crating and handling services on excess Government property, or where such PC&H services occasion any cost to the contractor for which he will not otherwise be compensated, the contract administration office shall obtain PC&H services from the contractor in possession by contract modification if the contract provides for such a modification. Otherwise, such PC&H services shall be procured from the contractor in possession or other contractor as follows:

(1) If the estimated price is $2,500 or less, the ACO shall purchase the services in accordance with Part 3, Subpart F, or

(2) If the estimated price of purchasing such services is in excess of $2,500, the ACO shall request the nearest Navy filed purchasing (NAVSUP Publication 467), to effect the procurement. For Marine Corps contracts, the cognizant PCO shall be requested to effect the procurement.

Subpart Z—Contract Modifications

§ 737.26–100 Modification.

§ 737.26–101 Pricing of Contract Modifications.

(a) *Policy.* Contract modifications, as defined in § 1.201–2 and § 26.101, made to fixed price type contracts shall be fully priced and otherwise fully definitive at the time of issuance wherever possible.

(b) *Criteria and Procedures for the Creation of Contractual Obligations that are not Fully Priced.* In those cases where it is not possible to fully price new contractual obligations of the type referred to in paragraph (a) of this section, with the exception of those modifications falling within the criteria set forth in paragraph (c) of this section, no such modification should be issued unless it is sufficiently definitive that the Contractor is willing to and does obligate himself to total performance within a stated period of time for a maximum dollar amount which bear a reasonable relationship to the work to be performed. In addition to the foregoing, all such modifications that are issued shall contain a milestone schedule which culminates in a mutually agreed date upon which complete definitization will occur. Such date shall be at most within 180 days after the issuance of the modification, or upon completion of 40% of the work to be performed, whichever occurs earlier. In the latter case, the modification shall require the Contractor to provide reasonable notice to the Government with respect to the progress of the work in terms of percentage of completion. Only rarely should more time be required for complete definitization. It may be granted only by the head of the activity authorized to issue the modification upon a written finding setting forth the circumstances which necessitate the granting of additional time.

(c) *Limitation of Authority.* Modifications to fixed price type contracts that do not fully comply with paragraph (b) of this section shall not be issued unless specifically approved by the Chief of Naval Material in each instance, subject to the following exceptions:

(1) Contractual instruments for work which it is estimated will cost the Government less than $10,000 (net value);

(2) Modifications to major new ship construction or conversion program contracts, if the delay incident to obtaining the approval of the Chief of Naval Material would be likely to create a significant ship delivery schedule slippage, and if the work to be performed is expected to cost the Government less than $50,000 (net value); *provided, however,* That any such modification shall be personally approved by the cognizant Supervisor of Shipbuilding, Conversion and Repair. In every case, the requirements of other existing law and regulation pertaining to the obligation of the Government by contract shall be fulfilled.

(d) *Documentation.* Whenever a modification that is not fully priced is to be issued, a memorandum signed by the head of the activity otherwise authorized to issue the modification shall be prepared for the contract file. The memorandum shall set forth the facts which necessitate issuance of such a modification.

§ 737.26–102 Execution of a Contract Modification Releasing Excess Funds.

(a) *Delegation of Authority.* Subject to the limitations prescribed in (b) below, authority is hereby delegated to Administrative Contracting Officers to execute contract modifications providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements in those applicable Navy contracts assigned for administration.

(b) *Limitations.* This delegation applies only to that portion of:

(1) Navy cost-type contracts where Navy funds are involved;

(2) Navy fixed-price type contracts where Navy funds are obligated or committed pursuant to provisioning procedures, or, where Navy funds for engineer-

ing services and related support are involved.

(c) *General.* It is recognized that some restorations to the contract funds may have to be made by the Procuring Contracting Officer from time to time since identification of excess funds is based in part on estimates. However, the intent of this NPD is to delegate certain additional responsibilities to Administrative Contracting Officers in the administration of Navy appropriated funds.

(d) *Procedures.* (1) The Administrative Contracting Officer shall, subject to the limitations prescribed in (b) of this section, execute a bilateral contract modification reducing the dollar balance of the contract when:

(i) The contractor reports excess funds to the Administrative Contracting Officer, in accordance with the Limitation of Cost clause in his contract;

(ii) The contract is physically completed (ASPR S2–301.1) and funds in excess to known requirements are available (if final payments has been made on a physically completed contract, any excess obligated funds may be de-obligated unilaterally), or

(iii) Information with respect to excess funds is otherwise available (e.g., identified on contractually required reports).

If more than one appropriation is involved, the excess amount for each appropriation shall be identified. The Administrative Contracting Officer is authorized to include statements of funding contingencies reserved by either party for further Government obligation and to effect a *net* reduction of the dollar balance of obligated Navy funds.

(2) Normally, the Administrative Contracting Officer will execute the contract modification without consulting the Procuring Contracting Officer. However, in exceptional situations, the Administrative Contracting Officer may confer with the Procuring Contracting Officer prior to issuance of the contract modification.

(e) *Documentation.* The Administrative Contracting Officer shall document the contract file with data in support of his determination that funds are considered excess.

§ 737.26–103 Administration of Contract Provisions for Adjustment of Payment and Limitation on Paym Payment and Limitation on Payments.

(a) *Submission of Quarterly Statements.* The NAVPRO/SUPSHIP (Naval Plant Representative Office or Supervisor of Shipbuilding, Conversion and Repair) is responsible for maintaining controls for the purpose of assuring that contractors submit the quarterly statements required by the Limitations on Payments paragraphs of Incentive Price Revision clauses (§ 7.108) and Price Redetermination clauses (§ 7.109) to the PCO (Procuring Contracting Officer), with a copy to the designated paying activity/activities. If the contractor fails to submit the statement, the NAV PRO/SUPSHIP shall notify the contracting officer, the designated paying activity/activities and the cognizant DCAA contract auditor of the delay and the reasons therefor. Payments shall be suspended by the paying activity/activities if the statement is not submitted when due.

(b) *Review of Quarterly Statements.* (1) Unless the NAVPRO/SUPSHIP or auditor has cause to doubt or question the accuracy of statements furnished in accordance with the limitation on payments provisions, such statements shall ordinarily be relied upon, and prompt payments under the contract shall be made pending review. Arrangements shall be made by the NAVPRO/SUPSHIP for joint reviews with the auditor of quarterly statements. The frequency and scope of such reviews shall be dependent on the dollar amounts involved and the extent of any indicated divergence between interim billing prices and the actual cost of delivered items. At least one comprehensive review shall be made annually. Among other things, review procedures shall establish that costs attributed to delivered items have been excluded from the costs set forth as the basis for unliquidated progress payments on Contractor's Request for Progress Payment (DD Form 1195)

(2) In certain cases, the NAVPRO/SUPSHIP may have reason to question the accuracy of statements furnished in accordance with the limitation on payment provisions and the amounts involved may be significant. Unless the contractor provides a satisfactory explanation of correction, together with any indicated refund, the NAVPRO/SUP SHIP should notify the paying activity/activities to withhold payments under the contract in an amount deemed sufficient to cover additional refunds that would have resulted from correct quarterly statements.

(c) *Refunds and Adjustments.* (1) *Ascertainment and Collections.* The amount of any monies due from contractors to the Government shall be ascertained promptly and collected expeditiously. The NAVPRO/SUPSHIP shall establish appropriate controls to expedite prompt collection. Any necessary supplemental agreements to provide for refunds or adjustments shall be prepared expeditiously and executed without delay.

(2) *Voluntary Refunds or Payment Adjustments.* The making of voluntary refunds by the contractor in anticipation of retroactive price reductions shall be encouraged. No proposed voluntary refund shall be refused or delayed, and all such be accepted without prejudice to final pricing.

(3) *Billing or Interim Price Adjustments.* Where it is apparent that the interim contract prices are, and will continue to be, excessive, the NAVPRO/SUPSHIP shall recommend to the PCO that billing prices covering future deliveries be modified, and shall notify the Chief of Naval Material (MAT 022) of the recommendation. However, if reductions in billing prices are proposed by the contractor, they shall be made effective immediately without prejudice to further adjustments. Similarly, mutually agreed billing prices shall be made effective immediately. Billings voluntarily reduced by contractors shall, if otherwise proper, be paid at the reduced amounts without awaiting contract modification.

(4) *Refunds or Payment Adjustments—Final Pricing Proposal.* Where the contractor's price proposal under price redetermination or incentive contracts indicates that a significant refund will be due, the NAVPRO/SUPSHIP shall promptly secure an appropriate voluntary or mutually acceptable refund from the contractor.

(5) *Supporting Documentation for Refunds and Adjustments.* In connection with (i) voluntary refunds, (ii) minimum refunds proposed by contractors in connection with final pricing proposals, and (iii) refunds incident to quarterly statements, contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. The making, acceptance and deposit of refunds will not be delayed pending any necessary accounting adjustments.

§ 737.26–200 Negotiation and Execution of Supplemental Agreements Issued Pursuant to the Changes Clause.

§ 737.26–209 Responsibility for Negotiation and Execution of Equitable Adjustments.

(a) *Delegation of Authority.* In accordance with § 1.406(c)(ix) and subject to the requirements of § 737.1–403–50 and § 737.1–403–51, Administrative Contracting Officers are authorized, except as provided in paragraph (c) of this section, to negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes Clause.

(b) *Retention of Negotiation and Execution Authority.* When negotiation and execution of the supplemental agreement are retained by the procuring activity, the decision for such retention shall be approved at a level higher than the Procuring Contracting Officer, Retention of negotiation and execution authority shall be specified in the letter accompanying the contract assigned for administration.

(c) *Limitations.* The delegation authorized in (a) above does not apply:

(1) To letter contracts;

(2) When the equitable adjustment affects any contract provision other than price, except for changes in delivery schedule or contract warranties specifically authorized by the Procuring Contracting Officer;

(3) When, in individual cases, a letter accompanying a contract assigned for administration withholds such delegation.

(d) *Responsibilities.* (1) The Procuring Contracting Officer shall cite funding information for the change order when the change order is not initially priced.

(2) If negotiations introduce factors that indicate the change order should be modified, the Administrative Contracting Officer, in addition to compliance with Part 26, Subparts B and C, shall

return the change order with comments and recommendations to the Procuring Contracting Officer for action.

(e) *Applicability.* This NPD does not supersede or restrict any authority to act as contracting officer or authorized representative of a contracting officer which may have been or will be duly delegated to persons in Contract Administration Offices by the Heads of Navy Procuring Activities and their designees.

Subpart EE—Contract Financing

§ 737.31–200 Guaranteed Loans.

§ 737.31–201 Defense Contract Financing Regulations.

See Appendix E of ASPR.

§ 737.31–202 Guaranteed Loans; Navy Implementation.

(a) Section 30.5 establishes basic contract financing policy for the Department of Defense to assure uniformity in policies, procedures and forms, and to provide for the application of the management principle of internal check and balance.

(b) The Assistant Secretary of the Navy (FM) who is responsible for the Comptroller function, has been delegated all authority conferred upon the Department of the Navy by Sec. 301 of the Defense Production Act of 1950 and by Sec. 302 of Executive Order 10480. The Assistant Secretary of the Navy (FM) has redelegated this authority to the Director of Contract Financing (NCD–4), Office of Navy Comptroller.

(c) To facilitate close cooperation, the Head of each Procuring Activity shall appoint a representative who will act in liaison with the Office of the Comptroller of the Navy and notify that Office of any default or failure of performance under contracts for which a guaranteed loan has been approved.

(d) Upon written request of the Comptroller of the Navy to the principal Navy contracting officer concerned, these contracting officers shall promptly furnish information and certification with respect to contracts of applicants for guaranteed loans in the form and manner prescribed by the Office of the Comptroller. A copy of each such request shall be sent to the Chief of Naval.

(e) To promote close cooperation between the procurement and financing functions, the Headquarters Naval Material Command and the Office of the Comptroller of the Navy shall collaborate in the development and promulgation of policies and proceedings relating to the Guaranteed Loan Program. In cases where the Navy Comptroller's evaluation of the application for guaranteed indicates substantial doubts as to the soundness of the proposed loan or credit, to such extent that he would be disposed to decline the application because of the estimated financial risks, the problem will be taken up with the Chief of Naval Material with a view to resolving the question of the essentiality of the procurement relation to the financial factors. In the event of a disagreement, the matter will be referred to the responsible cognizant Assistant Secretaries for resolution.

§ 737.31–300 Advance Payments.

§ 737.31–301 Defense Contract Financing Regulations.

See § 30.5.

§ 737.31–302 Cognizance and Procedures for Advance Payments.

(a) Section 30.5 sets forth the regulations governing the exercise of authority with respect to advance payments granted by Public Law 85–804 and Executive Order No. 10789 issued thereunder.

(b) All delegations of authority with respect to advance payments under 10 USC–2307 conferred upon the Secretary of the Navy have been delegated to the Assistant Secretary of the Navy (FM), who is responsible for the comptroller function. This authority has been redelegated to the Director of Contract Financing (NCD–4), Office of Navy Comptroller.

(c) Requests by contractors for advance payments shall be submitted to the Comptroller of the Navy via the Chief of Naval Material (MAT 020). The Assistant Secretary of the Navy (FM) or his delegated alternate will make the necessary determinations and findings with respect to advance payments.

§ 737.31–400 Progress Payment.

§ 737.31–401 Defense Contract Financing Regulations.

See § 30.5.

§ 737.31–402 Procedures for Progress Payments.

(a) Progress payments shall be based on costs in accordance with § 30.5 except for those types of contracts excluded by § 30.5.

(b) Requests for unusual progress payment pursuant to § 30.5 shall be forwarded via the Chief of Naval Material (MAT 02).

Subpart FF—Fiscal

§ 737.32–100 General.

§ 737.32–101 Comprehensive Procedures.

See NAVCOMPT Manual.

§ 737.32–102 Ascertainment and Collection of Debts Owed by Contractors; Deferred Payments.

See NAVCOMPT Manual, par 043202 and § 30.5.

§ 737.32–200 Obligation of Funds.

§ 737.32–201 Establishment of Obligations Under Available Funds.

(a) NAVCOMPT manual, Volumes 2, 3, and 6 implement section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200), which established the prerequisites to the recording and reporting of an obligation. Particular attention is invited to the special provisions contained in the NAVCOMPT Manual relating to spare parts, special tools, or other equipment included in a contract in an estimated lump-sum amount.

(b) An obligation will be recorded against applicable appropriations or funds only when supported by documentary evidence properly signed before expiration of the period during which the appropriation or fund is available for obligation. Contracts, agreements, orders requiring acceptance, amendments for new procurement, and similar documents requiring two signatures to be valid obligations, must have both signatures affixed prior to expiration for obligation of the appropriation or fund involved. Signatures to such obligating documents will be dated the day that they are affixed to the document. Such signatures will not be given as "as of" date. The date of the last required signature determines the date of the obligation for recording purposes. If such obligating document requires the signature of the contractor and the contracting officer and is signed by the contracting officer subsequent to singing by the contractor, the signature of the contractor need not be dated, provided the following statement is affixed on each original signature page directly below or adjacent to the signature of the contracting officer: "Signed by Contracting Officer on_____, subsequent to signing by the contractor."

(c) Conformed copies of all obligating documents shall be furnished for the recording of obligations. These copies need not be signed by either party, nor need they set forth in full the names of the individuals signing, their official titles, or the names of the contractors and the procuring activities concerned. In lieu therof, notations or stamps may be applied, such as "Signed on behalf of Contractor" and "Signed on behalf of Government." However, all such conformed copies shall either set forth fully the dates of the signatures on behalf of both parties or will clearly identify the party last signing and set forth fully the date of that signature.

§ 737.32–202 Obligation of Transportation Costs in Purchase Documents.

SOURCE: NAVCOMPT Manual 032100

(a) The cost of transportation of material to first destination is usually charged to the Navy Management Fund with subsequent reimbursement by the appropriation involved. However, if the purchase contract provides that the cost of transportation either is to be included in the purchase price or is to be paid by the supplier subject to reimbursement by the Navy (i.e., the amount of the obligation established by the purchase contract includes the cost of transportation), the transportation cost will be charged to the same accounting data which is charged for the cost of the material. When the purchase contract includes the cost of transportation the estimated transportation cost must be considered together with the cost of the material or the contracting officer may be guilty of overobligating the amount of funds cited in the requisition, or other purchase authorization, in violation of Section 3679, Revised Statutes (31 U.S.C. 665).

(b) Contracting officers are responsible and will ascertain that actual or estimated transportation costs chargeable to the purchase funds of the Navy will not, in conjunction with the purchase price, result in an overobligation. When the supplier is to be reimbursed for transportation costs, the contracting officer shall include an estimate of such costs in the contract under the appropriation data, as follows:

For obligation purposes only, the transportation costs chargeable to the funds indicated above are estimated not to exceed $-------

These estimated transportation costs will not be included in the total posted in the "Amount" blank on the face of the purchase document; however, the words "PLUS TRANS" will be inserted within the "Amount" blank to alert interested personnel to this additional obligation.

(c) Accordingly, no purchase document shall provide for reimbusable transportation costs where initial destination is unknown.

§ 737.32–203 Providing Adequate Procurement Lead Time Before Deadline Dates for Final Obligation of Funds.

See § 737.1–350–2.

§ 737.32–300 Disbursing and Accounting Requirements.

§ 737.32–301 Designation of the Disbursing Office.

See § 737.20–706.

§ 737.32–302 Submission of Invoices.

§ 737.32–302–1 Progress Payment Billings and Billings Under Cost-Type Contracts.

Cost-type contracts should provide that billings will be submitted directly to the auditor (DOD Contract Audit Manual, par. 8–201). Contracts providing for progress payments should provide that progress payment billings will be submitted to the administrative contracting officer at the office administering the contract.

§ 737.32–302–2 Disbursing by Defense Contract Administration Services Regions (DCASR).

Except as provided in § 737.32–302–1, contracts which designate a DCASR as the paying office shall provide for the contractor's invoices to be submitted directly to the DCASR.

§ 737.32–302–3 Disbursing by Navy Disbursing Offices.

(a) *Acceptance at Contractor's Plant.* Where acceptance is at origin, contracts which designate a Navy regional finance center or other Navy activity as the paying office shall provide for the contractor's invoices accompanied by the paying office copies of the related Material Inspection and Receiving Reports (DD Forms 250) to be submitted directly to the paying office.

(b) *Acceptance at Destination.* Where acceptance is at destination, contracts which designate a Navy regional finance center or other Navy activity as the paying office shall provide for the contractor's invoice to be submitted to the consignee.

§ 737.32–303 Invoicing Instructions for Multiple Destination.

See § 737.7–104–502.

§ 737.32–304 Accounting With Appropriation Data.

Every contract shall be inscribed with the accounting code numbers (appearing in the purchase request) under which payments on the contract or order are to be made. Under no circumstances shall any contract or order be made without the full designation therein of the accounting code numbers under which the payments thereon are to be made, since the monetary obligation created thereby must be immediately established within the limitation of available appropriated funds or under some statutory authority to enter into such a contract in advance of an actual appropriation. Accounting code numbers are assigned to purchase documents to facilitate the analysis of financial transactions. Applicable accounting data shall also be shown on any change order or amendment to a contract where such change order or amendment either (i) revises the accounting data for any item, or (ii) increases or decreases the total amount of a contract. Such accounting data shall be shown either (i) in the proper spaces in the preprinted format on the purchase document, or (ii) as in the following illustrated format, in the order and with the heading abbreviation shown:

Appn and Subhead	17X4911.2310
OC	026
BCN	54002
SN	3
AAA	000151
TC	7R
PAA	000000
CC	560851212345

The numbers shown in the above format *are sample numbers only;* those shown on the purchase request must be used. When an element is not present, this fact should be indicated by a zero filling in the appropriate column or opposite the applicable abbreviations used correspond to the headings listed under "accounting and appropriation data" on DD Form 1155 (as overprinted for Navy Accounting data) and represent the following: Appropriation and subhead, object class, bureau control number, suballotment number, authorization accounting activity, type code, property accounting activity and cost code.

§ 737.32–400 Payment to Contractors.

§ 737.32–402 Releases as Condition Precedent to Final Payment.

(a) All fixed-price types of contracts which provide, in addition to payment of a fixed price for the articles and services covered thereby (whether stated as a single amount or as separate amounts), for (i) adjustment of the fixed price for labor or material escalation, (ii) separate reimbursement of premiums for and related cost of overtime or shift work, or (iii) indemnity by the Government against third-party liabilities of the contractor, and all cost-reimbursement contracts, shall provide that the contractor and any assignee shall, as a condition precedent to the final payment under the contract, execute a release of all claims against the Government, its officers, agents and employees under or arising from the contract (see § 737.7–150). Each of such contracts shall further provide for the withholding until final payment of such amount or amounts as in the opinion of the contracting officer will be adequate to obtain execution of the release to which the Government is entitled (see § 737.7–150) for fixed-price contracts, but in the case of cost-reimbursement type contracts not less than the amounts set forth in § 7.203–4).

(b) In the case of a fixed-price contract within paragraph (a) of this section, the release shall discharge the Government, its officers, agents and employees, of and from all claims under or arising from the contract (see § 737.16–812–50), except if requested by the contractor and if found by the contracting officer to be appropriate, any one or more of the following:

(1) Claims for reimbursement of payment made after the date of the execution of the release on account of premiums for and related costs of overtime or shift work or both under the contract, if such payments are required by a Federal statute, an executive order or a mandatory directive order of any department or agency of the Government relating to hours of employment or compensation for services.

(2) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the contractor, and on such terms and conditions consistent herewith as the contracting officer may prescribe;

(3) Claims based on the liabilities of the contractor to third parties as to which the contractor is to be indemnified by the Government under express contract provisions; and

(4) Claims for reimbursement of expenses (other than expenses of the contractor by reason of its indemnification of the Government against patent liability) incurred by the contractor under the provisions of the contract relating to patents.

(c) In the case of cost-reimbursement type contracts (see paragraph (f) (ii) of the clauses set forth in § 7.203–4 (a) and (b)), the releases shall discharge the Government, its officers, agents and employees of and from all claims under or arising from the contract, except, if requested by the contractor, such claims as set forth in § 16.812 (b) and (c). If the contract is within the War Projects Insurance Rating Plan and the National Defense Projects Rating Plan, each such release shall except the rights and obligations of the Government and the contractor under any agreement theretofore or thereafter made for the purpose of providing for the adjustment as between the Government and the insurance carrier of premiums under the Rating Plan as applied to the contract.

(d) Nothing in this NPD precludes the inclusion in contracts other than those

within (a) above, of an appropriate provision requiring a release as a condition precedent to final payment by the Government.

§ 737.32–403 Reporting Under the Vinson-Trammell Act as Condition Precedent to Final Payment.

See § 737.33–201(f) and § 737.33–202–2(iii).

§ 737.32–404 Administration of Contract Provisions for Adjustment of Payments and Limitation on Payments.

See § 737.26–103.

Subpart GG—Renegotiation and Vinson-Trammell Acts

§ 737.33–200 Vinson-Trammell Act (10 U.S.C. 2382 and 7300).

§ 737.33–201 Application, Exemptions, and Reporting Requirements.*

(a) (1) The profit limitation provisions of the Vinson-Trammell Act are codified in 10 U.S.C. 2382 and 7300, which are referred to in this § 737.33–201 as "the Act." In general terms, as indicated in § 7.104–11, the Act applies to any contract or subcontract, which exceeds or may exceed $10,000 in amount, for the construction or manufacture of any complete aircraft or naval vessel, or any portion thereof. The Act imposes a profit limitation of 10% with respect to such vessel contracts and 12% with respect to such aircraft contracts and provides further that the method of ascertaining the amount of excess profit (which is to be paid into the Treasury) shall be determined by the Secretary of the Treasury, in agreement with the Secretary of the Navy, and made available to the public. The current regulations, implementing those provisions with respect to naval vessels and naval aircraft, are set forth in Treasury Decision 4906 (XVIII Cum. Bull. 1939–2,404). These regulations contain the text of Section 3 of the Act, define the terms used therein, explain the scope of that Section and certain exemptions thereof, furnish detailed rules for computing costs and profits and for determining liability, and prescribe the reports which must be filed.

(2) The Act provides that the profit limitation provisions thereof do not apply to "a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control" if the Secretary of the Navy designates the contract or subcontract for exemption. Authority to grant or deny exemptions of contracts and subcontracts from such profit limitation provisions, pursuant to the above-quoted language, is delegated by the Secretary of the Navy to the Chief, the Vice Chief, and the Deputy Chief of Naval Material (Procurement and Production). This delegation is subject to the following limitations set forth in SECNAV letter (OGC: WW:ads) of 3 June 1946.

(b) Such exemptions shall be granted for specific contracts or procurements only, and not for classes of equipment as such, and shall be granted only for contracts or procurements covering research, experimental or development work, or an initial production order. No exemption shall be granted except upon application by the contractor concerned, made prior to or at the time of entering into the contract, accompanied by a recommendation by the Chief of the cognizant contracting Bureau, or his representative, setting forth the following:

(1) A description of the equipment covered by the proposed contract and a statement that it is scientific equipment of the kind specified in the exemption provisions of the Act, stating which category the particular equipment falls under;

(2) A statement that the proposed contract calls for research, experimental or development work, or for an initial production order; and

(3) A recommendation by the Bureau that the exemption be granted.

(c) Each application for exemption shall be addressed to the Commander of the cognizant Systems Command by the contractor or subcontractor concerned and, if recommended for approval, shall be forwarded by the Commander of such Systems Command, or his representative, to the Deputy Chief of Naval Material (Procurement and Production) accompanied by the recommendation as prescribed above. In the event that an application for such exemption is approved, the clause set forth in § 7.104–11(c) should be inserted in the applicable contract.

(1) The Act applies to any contract for the construction or manufacture of new (i.e., previously non-existent) aircraft or naval vessels, or any portion thereof. The statutory designation of the particular appropriation charged by the contract (for example, "Aircraft and Related Procurement" or "Shipbuilding and Conversion" would generally be indicative of the fact that such a contract was for new construction or manufacture and therefore subject to the provisions of the Act. However, the appropriation test is not conclusive. The charging of a construction appropriation would not mean that the Act applied if the procurement was, in fact, not for the construction or manufacture of new aircraft or naval vessels, or portions thereof; conversely, charging an appropriation other than a construction appropriation could result in the Act being applicable if the procurement was, in fact, for the construction or manufacture of new aircraft or naval vessels, or portions thereof.

(2) General statements of the applicability of the Act, reflected in court decisions, in opinions of the Attorney General and of the Comptroller General, and in rulings of the Treasury Department, are set forth in paragraph (c)(2)(i) through (iii) of this section, for information purposes only.

(i) *Procurement of Equipment.* The Act applies to contracts and subcontracts for the construction or manufacture of items of equipment customarily furnished as portions of complete naval vessels or aircraft at the time such vessels or aircraft are constructed or manufactured. Hence, a contract or subcontract to manufacture shells, torpedo heads, or ammunition for the specific purpose of outfitting new naval vessels would be within the Act.

(ii) *Procurement of Material.* The Act applies to contracts and subcontracts for the construction or manufacture of material to be used in the construction or manufacture of complete naval vessels or aircraft, or any portion thereof, even though such material requires further fabrication or processing before it can be used in the completed vessels or aircraft, or in any component thereof. Hence, a contract or subcontract for the production of steel plates to become a component part of a complete naval vessel then being constructed would be within the scope of the Act.

(iii) *Procurement of Replacements.* Since the Act applies only to contracts for the construction or manufacture of complete naval vessels or aircraft, or any portion thereof, it has been held that the Act has no application to contracts for the furnishing of (*a*) spare parts or (*b*) replacements needed in making repairs to *existing* vessels.

(3) Where, at the time of entering into a contract for the procurement of items of equipment or material for use in or in connection with naval vessels or aircraft, the contracting officer cannot determine that any ascertainable part or portion thereof is to be used in the construction or manufacture of any new aircraft or naval vessel, or any portion thereof, the clause set forth in § 7.104–11(a) shall not be included in the contract.

(4) The Act requires that, with respect to each contract or subcontract coming within the provisions thereof, the contractor or subcontractor concerned shall make a report to the Secretary of the Navy following completion of such contract or subcontract. Section 3(e) of the Act provides that the original of such report shall be submitted to the Secretary of the Navy within 90 days after completion of each contract or subcontract to which the Act applies. The required reports must be filed by contractors and subcontractors concerned within the stated period with respect to all contracts and subcontracts covered by the Act; accordingly, disbursing officers shall withhold final payment upon such prime contracts until advised that the required report has been filed, and, in addition, the voucher for final payment (to be

*Note: Contracting and disbursing officers are advised that the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended and extended, suspends the operation of the Vinson-Trammell profit limitations in any case in which a contract is subject to the Renegotiation Act. However, because the Renegotiation Act is temporary legislation and upon discontinuation thereof the Vinson-Trammell profit limitations would again come into operation, the clause prescribed in § 7.104–11 must nevertheless be included in the contract.

transmitted to the General Accounting Office by the disbursing officer) should be supported by a showing that the required report has been filed. Concerning those cases under existing contracts which contain a self-executing clause (which makes the purchase subject to the profit limitation provisions of the Act only if the Act is in fact applicable), the required reports must be filed by contractors concerned within the stated period and prior to final payment of the contract price unless the contractor has demonstrated to the satisfaction of the contracting officer (whether or not supported by a ruling of the Treasury Department) that the Act does not apply to the particular contract.

§ 737.33–202 Processing of Reports.

(a) Contractors and subcontractors performing contracts to which the Vinson-Trammell Act applies are required to file a report with the Secretary of the department concerned within 90 days after completion of the contract.

(b) The following procedures govern the administration of the above reports within the Navy:

(1) Upon receipt in the Secretary's mail room these reports shall be forwarded to the Procurement Control and Clearance Division (MAT 022), Headquarters Naval Material Command.

(2) The Procurement Control and Clearance Division (MAT 022), shall duplicate the reports, keep the original in its master file, and distribute copies to the cognizant contracting bureau and to other procuring activities which may have contracts with the company concerned.

(3) Section 737.33–201(f) requires disbursing officers to withhold final payment on prime contracts until advised that the required report has been filed. Accordingly, upon receipt of the duplicate report, the contracting officer having cognizance of the prime contract concerned shall advise the disbursing officer that this condition precedent to final payments has been fulfilled.

H. B. Robertson, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

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PART IV

CONSUMER PRODUCT SAFETY COMMISSION

■

BICYCLES, TOYS, AND OTHER CHILDREN'S ARTICLES

Test Methods For Simulating Use and Abuse; Proposed Banning of Certain Articles

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER C—FEDERAL HAZARDOUS SUBSTANCES ACT REGULATIONS

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES, ADMINISTRATION AND ENFORCEMENT REGULATIONS

Test Methods for Simulating Use and Abuse of Toys, Games, and Other Articles Intended for Use by Children

The purpose of this document is to promulgate regulations (16 CFR 1500.50 through 1500.53) establishing test methods to simulate the normal and reasonably foreseeable use, damage, or abuse to which toys, games, and other articles intended for use by children may be subjected. These regulations establish test methods for articles intended for three age groups, specifically, 18 months of age and less, over 18 months but not over 36 months of age, and over 36 months but not over 96 months of age. The tests prescribed for the articles are impact, bite, flexure, torque, tension, and compression tests.

The purpose of each of the tests is set forth below. The impact test for children up to 18 months is intended to simulate a child dropping a toy while standing in a crib or striking a toy on a solid structure. The impact test for children over 18 months and under 96 months is intended to simulate a child knocking a toy from a table to the floor. The flexure test is intended to simulate a child bending a toy back and forth. The bite test is intended to distinguish between brittle and pliable materials which may splinter or shatter when bitten. The torque test is intended to simulate the twisting action a child uses for detaching components. The tension test is intended to simulate the pulling action a child uses for detaching components. The compression test is intended to simulate a child applying a portion of his body weight to a toy such as in leaning or stepping on the toy.

The regulations promulgated below do not in and of themselves ban toys, games, and other articles intended for use by children. Rather, they provide test methods to be used whenever referenced in banning regulations in 16 CFR, Subchapter C. Such banning regulations may define particular mechanical hazards and utilize these use and abuse test methods when appropriate.

Background

In the Federal Register of December 8, 1972 (37 FR 26120), the Food and Drug Administration, pursuant to sections 2(f)(1)(D), (q)(1)(A), (s), and 3(e)(1) of the Federal Hazardous Substances Act, proposed test methods for simulating normal use or reasonably foreseeable damage of abuse of toys, games, and other articles intended for use by children (21 CFR 191.20 through 191.23).

Effective May 14, 1973, section 30(a) of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1231; 15 U.S.C. 2079(a)) transferred functions under the Federal Hazardous Substances Act to the Consumer Product Safety Commission.

Subsequently, on September 27, 1973 (38 FR 270 12), the Consumer Product Safety Commission revised and transferred the regulations under the Federal Hazardous Substances Act (21 CFR Part 191 became 16 CFR Part 1500). Accordingly, the regulations proposed as 21 CFR 191.20 through 191.23 are acted upon below as 16 CFR 1500.50 through 1500.53.

Response to Proposals

In response to the proposal of December 8, 1972, approximately 40 comments were received from interested parties, including the Association of General Merchandise Chains (AGMC), Juvenile Products Manufacturers Association (JPMA), National Association of Doll Manufacturers (NADM), Stuffed Toy Manufacturers Association (STMA), Toy Manufacturers of America (TMA), consumers, consumer interest groups, individual manufacturers, local government agencies, and a retailer.

Four of the comments supported the proposal as published. The principal issues raised in the remainder of the comments and the Commission's conclusions thereon are as follows:

1. *General*—a. *Generic hazards.* Many of the comments suggest that criteria for evaluating and defining generic hazards (such as sharp edges, small parts, etc.) be incorporated into the test procedures prior to their promulgation. The Commission recognizes the need for criteria that would promote a uniform approach to defining generic hazards presented by children's articles. Such criteria are currently under development. Because these test methods provide significant guidance to interested parties in evaluating an article for the presence of a hidden potential hazard, the Commission finds it should not delay their promulgation until definitive hazard criteria have been developed.

b. *Age labeling.* Several comments suggest that the requirements in proposed 21 CFR 191.20(b) be changed to permit age labeling in terms of years instead of months. In the subject regulation (promulgated below as 16 CFR 1500.50(b)), labeling, including age labeling, is a factor to be considered in determining the stringency of test methods in the regulations that will be applied to a particular article; however, there is no requirement for age labeling. Manufacturers may voluntarily label their products in terms of months or years. In the absence of voluntary age labeling, an article will be subject to the most stringent applicable tests.

c. *Age groups.* One comment contends that the age group 36 to 96 months encompasses a span too wide to be effectively covered by a single set of test methods and therefore should be divided into two separate groups spanning 3 to 5 and 5 to 8 years. Stating that children in the latter age group are mature enough not to abuse certain articles, the commenter suggests that articles intended for use by children in the 5 to 8 years age group be exempt from the impact, bite, and compression tests.

Factors considered in determining the three age groups specified in the proposal and adopted below included types of articles normally used by particular age groups and the types of injuries incurred during use and abuse of such articles. After evaluating these factors, the Commission finds that the proposed age groups and the scope of the testing methods to be applied to articles intended for use by the respective age groups are appropriate.

d. *Unassembled toys.* Two manufacturers and a retailer suggest that unassembled toys be tested only when they are in an assembled state.

General adoption of this suggestion would not offer adequate protection for children. A potential hazard may be presented by a component of an article while the article is in an unassembled state, and the hazard may not be evident or susceptible to exposure once the article is in the assembled state. The suggestion does have merit in cases where an article is reasonably intended to be assembled by an adult prior to being given to a child. In that situation, a child would not ordinarily be exposed to hazards presented only in the preassembly state. The Commission concludes that articles reasonably intended to be assembled by adults and prominently labeled to indicate that assembly by an adult is required should be tested only in the assembled state. In determining whether a toy or other article is reasonably intended to be assembled by an adult prior to use, various objective factors such as marketing practices, the customary patterns of usage of a product by children, and the labeling on the toy and/or its packaging will be considered. The regulation (16 CFR 1500.50(b)(4) below) has been changed accordingly.

A manufacturer comments that toy games for children over 3 years of age are often built to have "fly-apart" pieces and should not be tested in an assembled state.

Since a child will normally come in contact with such toys in both their assembled and unassembled states, provision must be made for simulating use and abuse conditions in both instances. Individual pieces in an assembled state might present a hazard not present in the unassembled state. Adoption of the suggestion would therefore be inconsistent with the purpose of this promulgation. The regulation (16 CFR 1500.50(b)(5) below) has, however, been clarified.

e. *Crib attachments.* Several commenters contend that certain articles intended for infants, such as cribs and crib attachements, are not subject to the same abuse as toys. The association suggests that the test procedures be administered only to toys and that "toy" be defined in the regulations.

The Commission considers it unnecessary in this case to draw a distinction between "toys" and "other articles in-

tended for use by children," since both categories are within the scope of these regulations. However, as previously indicated, these regulations are only applicable when specifically referenced in banning regulations. The fact that crib attachments are normally secured to a fixed structural component does not necessarily reduce their exposure to abuse conditions simulated by the test methods. Further, it should be noted that some crib attachments may be put into cribs without being secured and therefore used and abused by an infant in the same manner as articles not intended for fixed positioning.

f. *Preconditioning.* TMA and a manufacturer suggest that the lack of a prescribed standardized preconditioning atmosphere will result in a variable that may contribute to inconsistent test results. They also suggest that if an article is intended to be used under other than normal conditions, the article should be subjected to a simulation of those conditions prior to testing.

The Commission finds that adding a provision regarding standardized preconditioning is consistent with the purpose of these regulations. Accordingly, 16 CFR 1500.50(b)(3) below specifies a conditioning period of 4 hours in an environment of 73°±3° F. (23°±2° C.) at a relative humidity of 20–70 percent. Further, toy testing must commence within five minutes after the toy has been removed from the preconditioned atmosphere. For purposes of enforcement the Commission intends to test toys under the most severe combinations of these temperature and humidity conditions. The suggestion regarding toys used under other than normal conditions does not warrant adding provisions therefor at this time, since the Commission is not aware of problems presented by toys used under other than normal conditions. If hazards are evidenced by a particular children's article for which the testing approach promulgated below is deemed inappropriate, different methods, including standardized conditioning, may be prescribed for such articles in specific banning regulations.

g. *Test equipment.* Regarding proposed 21 CFR 191.21(e)(2)(i), 191.22(e)(2)(i), and 191.23(e)(2)(i), a toy manufacturer suggests that the test equipment for the torque test be stipulated as a simple torque wrench because many manufacturers do not have complicated laboratory equipment available for test purposes. In addition, TMA suggest that the least expensive commercially available piece of equipment be specified wherever possible as appropriate test equipment.

The Commission recognizes that varied devices can be employed to effectively perform the same function in the simulation of use and abuse as prescribed. Accordingly, testing apparatus specifications throughout the regulations below have been revised to be performance oriented with limited design requirements.

h. *Measurements.* Throughout the regulations the English system of measurement is followed by metric approximations. For purposes of compliance with the various test methods in the regulation, the English system shall be used. The metric approximations are included for convenience and information only.

2. *Definitions*—a. *Tub toy.* Seven toy firms and TMA comment that the proposed definition of "tub toy" (21 CFR 191.20(c)(2)) is too subjective for uniform interpretation.

Reference to "tub toy" has been deleted from the regulations promulgated below because the Commission's experience indicates that the severity of any potential hazard presented by a toy with anticipated use in water does not increase due to that exposure. Accordingly, the reference to "soap solution" has also been deleted.

b. *Mouth toys.* A toy manufacturer suggests that the proposed definition of "mouth toy" (21 CFR 191.20(c)(3)) be changed by adding the word "primarily," making it read "a toy primarily intended to be placed in or in contact with a child's mouth."

The Commission finds that the definition as proposed appropriately reflects the intended scope for the purpose of the regulations. Adding the word "primarily" would not clarify or aid the definition and might imply exclusion of certain articles. Accordingly, the definition (16 CFR 1500.50(c)(2) below) has not been changed.

Two toy firms and TMA request that inflatable toys be exempted from the mouth toy category because the primary play value of an inflatable toy is obtained only when the article is completely inflated. The effect of the exemption would be to exclude certain articles intended only for momentary use in or in contact with a child's mouth.

The Commission finds that since a hazard may be presented during momentary as well as continual use of an article, inflatable toys should not be excluded from the definition of "mouth toy."

c. *Saline solution.* Regarding the proposed definition of "saline solution" (21 CFR 191.20(c)(5)) and the proposed conditioning procedure of soaking mouth toys in saline solution (paragraph (e)(1)(iii) of 21 CFR 191.21, 191.22, and 191.23), TMA and several toy firms suggest that the mineral saline solution be changed to 5 percent to more closely approximate the salt content of saliva.

The intent of the saline solution requirement was to simulate saliva. A saline solution, however, lacks many of the components of saliva. The Commission finds that a true laboratory approximation of saliva would require the preparation of a complex and prohibitively expensive solution. Also, the Commission is unaware of any data indicating that saliva would have a significant effect on mouth toys. Accordingly, the saline solution requirements have been deleted.

3. *Impact tests*—a. *Crib and playpen attachments.* Regarding the proposed impact test procedure for articles intended for children 18 months of age or less (21 CFR 191.21(b)(3)), three manufacturers suggest that attachments to cribs and playpens be exempt from the test because such articles usually weigh more than one pound, are attached to a substantial structure, and are therefore not subject to floor impacts.

The purpose of the impact test is not limited to simulating repeated drops of a toy by a child standing in a crib. The test is intended to simulate various conditions of reasonably foreseeable damage or abuse, including an article's being battered by an infant against crib rails and slats, high chair trays, and other proximate structures and articles. Since the fact that crib attachments are usually attached to a structural component does not preclude their exposure to various conditions of abuse, the Commission finds that the suggested exemption should not be granted. Accordingly, the regulation (16 CFR 1500.51(b)(3) below) has not been changed.

b. *Ride-on toys.* TMA and individual toy manufacturers object to having ride-on toys subject to the proposed impact test requirements (21 CFR 191.21(b), 191.22(b), and 191.23(b)) because such toys are too large and heavy to be hand-carried by children.

The Commission finds the suggested exclusion unnecessary since the exemption criteria (discussed in the following paragraph c) of the regulations promulgated below now provide a more reasonable test method for impact for large and heavy ride-on toys.

c. *Exemption criteria.* Regarding the proposed impact tests (21 CFR 191.21(b), 191.22(b), and 191.23(b)), TMA and a number of manufacturers suggest that the exemption criteria (weight) be expanded to include size. They suggest that articles with a base area more than 175 square inches or a volume more than 3 cubic feet be subject to a tipping test instead of an impact test.

The Commission concludes that a tipping test for large and bulky toys is appropriate but that one of the specific measurements offered in the comments should be modified to reflect currently available anthropometric data. These data indicate that an article with a base area of 400 square inches is sufficiently bulky to make its being carried by a child at any significant height unlikely. Such an article would therefore be less subject to destructive impacts as a result of being dropped. Accordingly, a tipping test to simulate impact has been added to the regulations for articles with a base area more than 400 square inches or a volume more than 3 cubic feet (16 CFR 1500.51(b)(4)(iii), 1500.52(b)(4)(iii), 1500.53(b)(4)(iii)). These toys are tested for impact by tipping them over 3 times by pushing the samples slowly past their centers of balance onto an impact medium.

A number of manufacturers contend that the proposed weight criteria for the three impact tests (3, 4, and 10 pounds, respectively) are excessive. Strength data on children obtained from the National Bureau of Standards support the validity of the proposed values which, therefore, have been retained in the regulations below (16 CFR 1500.51(b)(1), 1500.52(b)(1), and 1500.53(b)(1)).

d. *Testing procedure.* Regarding the proposed procedure under the impact test for testing toys intended for use by children over 18 but not over 36 months of age (21 CFR 191.22(b)(3)), a consumer interest group suggests that the severity of the test be increased by changing the number of impacts from 4 to 10. They contend that the manual coordination of children in this age group has not fully developed and that their toys are still subject to a large number of impacts.

The Commission concludes that in the absence of sufficient data to indicate otherwise, the proposed subject impact test (four drops from a height of 3 feet), in conjunction with the other applicable test methods, is an appropriate simulation of the reasonably foreseeable damage or abuse of those articles. Accordingly, the regulation (16 CFR 1500.52(b)(3) below) has not been changed.

4. *Bite test*—a. *Scope.* A manufacturer comments that a bite test (proposed 21 CFR 191.23(c)) is inappropriate for articles intended for use by children over 3 years of age since such children are unlikely to bite on toy intentionally.

Applicability of the bite test to articles intended for use by children over 36 but not over 96 months of age is limited to those articles within the definition of "mouth toy." The Commission, on the basis of a study entitled "Manual and Oral Strengths of American White and Negro Children, Ages 3–6 Years," by Dr. Wilton M. Krogman, has determined that children over 3 years of age can subject such articles to inordinate compressive forces with their molar teeth. The motivation to do so may stem from various factors. Accordingly, the regulation (16 CFR 1500.53(c) below) has not been changed. (The study by Dr. Krogman, dated September 1, 1971, was sponsored by the Closure Committee of the Glass Container Manufacturers Institute, Inc., and a copy may be seen in the Office of the Secretary, CPSC, Room 1025, 1750 K Street NW, Washington, D.C.).

b. *Suggested chewing test substitution.* One comment suggests that a chewing test be substituted for the bite test since hazards may be exposed after a toy is subjected to chewing.

The Commission recognizes that a test simulating a child's chewing activity may be necessary in formulating an all-inclusive approach to simulating normal use and reasonably foreseeable damage or abuse. Accordingly, the Commission is considering the development of a test method simulating chewing action. Such a method would supplement the bite test.

c. *Test equipment.* A toy manufacturer points out various design problems with the proposed bite test apparatus (21 CFR 191.21(c)(2), 191.22(c)(2), and 191.23(c)(2)). TMA and three toy manufacturers suggest that the radius of the apparatus' contact edges be increased from 0.0156 to 0.031 inch.

Certain revisions with respect to the subject apparatus have been made in response to the comments and as a result of investigations conducted by the Commission. A diagram of a more workable version of the apparatus appears below as figure 1 in 16 CFR 1500.51 and is intended to serve only as a suggested means of administering the prescribed bite test. The tooth contour or geometry generally ranges, at the contacting surfaces, from a sharp edge at the front to a flat surface at the back, with irregularities existing throughout the range. On the basis of information supplied by the National Bureau of Standards, the proposed contact edge radius of 0.0156 inch is acceptable as an approximation of a child's teeth. The radius, however, has been changed to 0.020 inch to minimize costly machining that could be required to achieve the 0.0156-inch specification. The Commission finds that since the original radius was an approximation, the change from 0.0156 to 0.020 inch does not significantly affect the level of protection. The regulations (16 CFR 1500.51(c)(2), 1500.52(c)(2), and 1500.53(c)(2) below) have been so changed.

d. *Testing procedure.* A comment suggests that the proposed testing procedure for the bite test (21 CFR 191.21(c)(3), 191.22(c)(3), and 191.23(c)(3)) be clarified by changing the instruction that the toy shall be placed in the loading device in any reasonable position "utilizing not more than 180 degrees" to "utilizing less than 180 degrees."

The suggestion is acceptable and the regulations (paragraph (c)(3) of 16 CFR 1500.51, 1500.52, and 1500.53 below) have been so changed.

Five manufacturers suggest that the point-of-force application in the bite tests be specified for the purpose of promoting consistency of test results.

The suggestion is consistent with the purpose of these regulations and, accordingly, the bite tests (paragraph (c)(3) of 16 CFR 1500.51, 1500.52, and 1500.53 below) have been changed to specify an insertion depth of 0.25 to 0.5 inch.

e. *Force levels.* Eight toy manufacturers and TMA contend that the force levels prescribed in the bite tests are unnecessarily high and are not indicative of a child's biting capabilities. TMA and the firms suggest alternative levels substantially lower than those in the proposal.

Based on a study entitled "Manual and Oral Strengths of American White and Negro Children, Ages 3–6 Years," by Dr. Wilton M. Krogman (further identified in paragraph 4a above), the Commission finds that children in the three specified age groups are capable of exerting compressive forces with their teeth at the levels designated in the respective bite tests. The performance levels were selected from the Krogman data by using three standard deviations and rounding off to the nearest rational number. This performance level is intended to be indicative of the oldest child in each age group. For example, a three-year old child has an average biting capability of approximately 15 pounds with standard deviations ranging from about 6 to 16 pounds. Since the data is scattered over a somewhat wide range, the performance requirement of 50 pounds was selected to include the upper percentile children that may be in each age group and to provide a factor of safety in anticipation of reasonably foreseeable abuse or damage.

The performance requirement used for the above age group and the similar requirements used in the two remaining age groupings can be generated by the molar region of the teeth. In using these performance limits in conjunction with a contact radius of 0.020 inch, the Commission is assuming so-called "worst case" conditions for the toys subject to the requirements. This position of assuming "worst case" conditions is intended to consider the high stresses which may be generated in the rear portion of an incomplete or irregularly shaped dental structure.

The proposed force levels then, promulgated below in 16 CFR 1500.51(c)(3), 1500.52(c)(3), and 1500.53(c)(3) are considered to provide an appropriate simulation of reasonably forseeable damage or abuse due to biting.

5. *Flexure test*—a. *Scope.* Three manufacturers recommend that the proposed flexure tests (21 CFR 191.21(d)(1), 191.22(d)(1), and 191.23(d)(1)) be limited to articles that are intended to be repeatedly bent or formed.

Such a limitation would not properly reflect the intended extent of applicability of the flexure tests. They are intended to simulate use and abuse of any toy or toy component that incorporates metal materials for stiffening or for retention of form and that could be bent or formed. The flexure tests, however, have been changed in 16 CFR 1500.51(d)(1), 1500.52(d)(1), and 1500.53(d)(1) below to clarify their applicability.

b. *Testing procedure.* A manufacturer suggests that the 60-second rest period in the proposed testing procedure for the flexure tests (paragraph (d)(2) of 21 CFR 191.21, 191.22, 191.23) be applied after each group of five cycles rather than 10 cycles because it would be a more appropriate simulation of a child's use.

The intent of the flexure tests is to simulate not only normal use but also reasonably foreseeable damage or abuse. The proposed flexure test procedures are considered to be appropriate simulation of reasonably foreseeable use and abuse conditions. Accordingly, the regulations (paragraph (d)(2) of 16 CFR 1500.51, 1500.52, 1500.53 below) have not been changed as suggested.

TMA and three manufacturers suggest that a specified point-of-force, application be added to the flexure test procedures. This would specify the point at which an article is to be bent.

Such a change is appropriate and the regulations (16 CFR 1500.51(d)(1), 1500.52(d)(1), 1500.53(d)(1)) have been changed accordingly. Maximum flexing forces have also been prescribed as a means of indentifying those toys and components that are capable of being bent or formed.

A retailer suggests adding to the flexure tests a method to aid in determining the accessibility of metal components that may break during the 30 cycles of testing.

Although this change appears to be appropriate, the Commission believes such a change may have a substantial impact on the affected industry. Therefore, this suggested change will be proposed as an amendment to these test methods in the near future in order to provide an opportunity for public comment.

6. *Torque tests*—a. *Scope.* A toy retailer suggests that application of the proposed torque tests (21 CFR 191.21(e), 191.22(e), and 191.23(e)) be limited to those toy components that a child can "firmly grasp and hold" instead of "grasp by at least the thumb and forefinger."

The Commission finds that the suggested change would inappropriately restrict the intended application of the torque tests. To better approximate the manner in which a child could grasp a toy, however, the Commission has changed the regulations (paragraph (e)(1)(i) of 16 CFR 1500.51, 1500.52, and 1500.53 below) to include components that can be grasped with the teeth.

A manufacturer suggests that the torque test provisions be changed so that toys with rotating components would be tested with the rod or shaft clamped with the clamp resisting no more torque than can be exerted by a child of the appropriate age group grasping the shaft with his thumb and forefinger.

The torque tests are not meant to be limited to parts or assemblies that a child can grasp with the thumb and forefinger. Obviously, a child can grasp many toy projections with his whole hand or his teeth. Adoption of the suggestion would therefore be inconsistent with the purposes of the tests.

Another manufacturer suggests that the torque tests be applied only to toys with round or cylindrical projections, parts, or assemblies. This change would make application of the tests too narrow and restrictive for the purposes of the tests.

b. *Rotating components.* Two manufacturers and TMA suggest changing the torque tests regarding rotating components so that the test load would be applied to the projections, parts, or assemblies attached to the rod or shaft.

In torque testing these components, the Commission is determining the integrity of the attachment method used on the components. Whether the torque is applied to the shaft or to the component itself is immaterial. Accordingly, the suggestion has not been adopted.

c. *Torque levels.* A manufacturer comments that the proposed torque test force levels, 2, 3, and 4 inch-pounds, are too severe and should be changed to 1, 2, and 3 inch-pounds respectively.

On the basis of child-strength data obtained from the National Bureau of Standards, the Commission finds that the torque test performance levels specified in the proposal are indicative of the capabilities of children in the respective age groups. Accordingly, the performance levels have not been changed as suggested (16 CFR 1500.51(e)(3), 1500.52(e)(3), and 1500.53(e)(3) below).

7. *Tension tests*—a. *Scope.* A toy retailer suggests that application of the proposed tension tests (21 CFR 191.21(f), 191.22(f), and 191.23(f)) be limited to those toy components that a child can "firmly grasp and hold" rather than "grasp by at least the thumb and forefinger."

The Commission finds that the suggested change would inappropriately restrict the intended application of the tension tests. To better approximate the manner in which a child could grasp the toy, however, the Commission has changed the regulations (paragraph (f)(1)(i) of 16 CFR 1500.51, 1500.52, 1500.53 below) to include components that can be grasped with the teeth.

A manufacturer suggests that components intended to be removed from children's articles during use be excluded from the tension tests.

The Commission finds that such exclusion would inappropriately restrict the intended application of the tension tests. The fact that some components or attachments of toys are screwed in or placed in the articles does not preclude their exposure to tensile forces during reasonably foreseeable use and abuse. Accordingly, this suggestion has not been adopted.

b. *Stuffed toys and beanbags.* Five toy manufacturers suggest that the 15-pound tension test force level in proposed 21 CFR 191.22(f)(3) and 191.23(f)(3) be changed to 10 pounds with respect to testing fabric-type articles such as beanbags and plush toys. They contend that fastener and fabric technology are not sufficiently advanced to permit construction that would resist the 15-pound force level.

Testing results indicate to the Commission, however, that a variety of children's articles currently on the market can successfully withstand greater than 15-pound tensile forces applied to fabric seams and objects fastened to fabric and other pliable materials. Accordingly, the regulations (16 CFR 1500.52(f)(1)(ii) and 1500.53(f)(1)(ii) below) have not been changed.

c. *Testing procedure.* Regarding the proposed tension test procedures (21 CFR 191.21(f)(3), 191.22(f)(3), and 191.23(f)(3)), eight manufacturers and TMA suggest that a point-of-load application be specified for the test which applies a load (force) 90 degrees from the main axis of the test components.

The Commission finds that adopting this suggestion would be inconsistent with the purpose of these regulations since reasonably foreseeable damage or abuse, with respect to tension forces, is not restricted to a particular point of application. Accordingly, the regulations (16 CFR 1500.51(f)(3), 1500.52(f)(3), and 1500.53(f)(3) below) have not been so changed.

8. *Compression tests.* A toy association recommends that the force level in each of the proposed compression tests (paragraph (g)(3) of 21 CFR 191.21, 191.22, 191.23) be changed from 20, 25, and 30 pounds to 10, 15, and 20 pounds respectively. The recommendation is not accompanied by any substantiating data or material.

The Commission finds that the force levels as proposed (20, 25, and 30 pounds) are considered appropriate factors for simulating reasonably foreseeable damage or abuse. Accordingly, the recommended change has not been adopted in 16 CFR 1500.51(g)(3), 1500.52(g)(3), and 1500.53(g)(3) below.

9. *Effective date.* Suggested effective dates for these regulations vary from 3 to 18 months after FEDERAL REGISTER publication. Since the regulations promulgated below do not in and of themselves ban particular toys or classes of toys, the Commission concludes that they should become effective on or before February 6, 1975.

Therefore, having considered the comments and other relevant material, the Commission concludes that the proposed regulations, with changes, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 10(a), 74 Stat. 372, 374, 375, 378, as amended 80 Stat. 1304, 83 Stat. 187–89; 15 U.S.C. 1261, 1262, 1269) in accordance with the provisions of 5 U.S.C. 553, and under authority vested in the Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), 16 CFR Part 1500 is amended by adding four new sections as follows:

§ 1500.50 Test methods for simulating use and abuse of toys and other articles intended for use by children.

(a) *Objective.* The objective of §§ 1500.51, 1500.52, and 1500.53 is to describe specific test methods for simulating normal use of toys and other articles intended for use by children as well as the reasonably foreseeable damage or abuse to which the articles may be subjected. The test methods are for use in exposing potential hazards that would result from the normal use or the reasonably foreseeable damage or abuse of such articles intended for children.

(b)(1) *Application—general.* (i) The test methods described in §§ 1500.51, 1500.52 and 1500.53 are to be used in determining what is normal use and reasonably foreseeable damage or abuse when specifically referenced under § 1500.18. Other banning regulations may also reference these use and abuse toy test procedures.

(ii) The test methods described in §§ 1500.51, 1500.52, and 1500.53 have been established for articles intended for the specified age groups of children: 18 months of age or less, over 18 months but not over 36 months of age, and over 36 months but not over 96 months of age. If an article is marked, labeled, advertised, or otherwise intended for children of ages spanning more than one of these age groups, the article will be sub-

jected to the tests providing the most stringent requirements. If an article is not age-labeled in a clear and conspicuous manner or, based on such factors as marketing practices and the customary patterns of usage of a product by children, is inappropriately age-labeled, and is intended or appropriate for children 96 months of age or less, it will also be subjected to the most stringent test requirements.

(2) For purposes of compliance with the test methods prescribed in §§ 1500.51, 1500.52, and 1500.53, the English system shall be used. The metric approximations are provided in parentheses for convenience and information only.

(3) Each of the test methods described in §§ 1500.51, 1500.52, and 1500.53 shall be applied to a previously untested sample except the tension test which shall be conducted with the test sample used in the torque test.

(4) Prior to testing, each sample shall be subjected to a temperature of 73°±3° F (23°±2°) at a relative humidity of 20–70 percent for a period of at least 4 hours. The toy testing shall commence within five minutes after the toy has been removed from the preconditioning atmosphere.

(5) Toys reasonably intended to be assembled by an adult and not intended to be taken apart by a child shall be tested only in the assembled state if the shelf package and the assembly instructions prominently indicate that the article is to be assembled only by an adult.

(6) Toys intended to be repeatedly assembled and taken apart shall have the individual pieces as well as the completed article subjected to these test procedures.

(7) In situations where a test procedure may be applied in more than one way to a toy test component, the point (or direction) of force (or torque) application which results in the most severe conditions shall be used.

(c) *Definitions.* As used in this section and in §§ 1500.51, 1500.52, and 1500.53:

(1) "Toy" means any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children.

(2) "Mouth toy" means any toy reasonably intended to be placed into or in contact with a child's mouth.

§ 1500.51 Test methods for simulating use and abuse of toys and other articles intended for use by children 18 months of age or less.

(a) *Application.* The test methods described in this section shall be used to simulate the normal and reasonably foreseeable use, damage, or abuse of toys and other articles intended for use by children 18 months of age or less in conjunction with section 1500.18.

(b) *Impact test*—(1) *Application.* Except as provided in paragraph (b) (4) of this section, toys having a weight of less than 3.0 pounds ±0.01 pound (1.4 kilograms) shall be subject to this test.

(2) *Impact medium.* The impact medium shall consist of a ⅛ inch (0.3-centimeter) nominal thickness of type IV vinyl-asbestos tile, as specified in Federal specification SS–T–312A,[1] over at least a 2.5 inch (6.4-centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter).

(3) *Testing procedure.* Except as provided in paragraph (b) (4) (i) and (ii) of this section, the toy shall be dropped 10 times from a height of 4.5 feet ±0.5 inch, (1.37 meters) onto the impact medium described in paragraph (b) (2) of this section. The toy shall be dropped in random orientation. After each drop, the test sample shall be allowed to come to rest and shall be examined and evaluated before continuing.

(4) *Large and bulky toys.* (i) A toy that has a projected base area of 2,560 or more square centimeters (400 or more square inches), shall be tested for impact in accordance with paragraph (b) (4) (iii) of this section. The base area for toys with permanently attached legs shall be measured by calculating the area enclosed by straight lines connecting the outermost edge of each leg of the perimeter.

(ii) A toy that has a volume of more than 3 cubic feet (0.085 cubic meter) calculated by the major dimensions without regard to minor appendages, shall be tested for impact in accordance with paragraph (b) (4) (iii) of this section.

(iii) The toys described in paragraph (b) (4) (i) and (ii) of this section shall be tested for impact by tipping them over three times by pushing the samples slowly past their centers of balance onto the impact medium described in paragraph (b) (2) of this section.

(c) *Bite test*—(1) *Application.* A toy (or component or any accessible portion thereof) that has an external dimension of 1.25 inches ±0.05 inch (3.18 centimeters) or less and a design configuration that would permit a child to insert a portion into the mouth in any orientation up to a biting thickness of 1.25 inches ±0.05 inch (3.18 centimeters), for a penetration of at least 0.25 inch (0.635 centimeter), shall be subject to this test.

(2) *Test equipment*—(i) *Contact mechanism.* The contact mechanism shall be two metal strips or plates each measuring 0.25 inch ±0.002 inch (0.635 centimeter), high and each having a contact edge radius of 0.020 inch ±0.002 inch (0.05 centimeter), for at least a 150-degree cross-sectional arc. A suggested contact mechanism appears in figure 1 of this section.

(ii) *Loading device.* The loading device shall be a scale or force gauge having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* The test article shall be placed in the contact mechanism in any reasonable position for a penetration of 0.25 to 0.5 inch (0.64 to 1.27 centimeters), which position utilizes less than 180 degrees of the arc of the contact mechanism, and a test load increasing to 25 pounds ±0.5 pound (11.35 kilograms), shall be evenly applied within 5 seconds. This load shall be maintained for an additional 10 seconds.

(d) *Flexure test*—(1) *Application.* This test shall be applied to each component of a toy containing metal wire(s), or other metal material(s), for stiffening or for retention of form if the component can be bent through a 60-degree arc by a maximum force of 10 pounds ±0.5 pound (4.55 kilograms), applied perpendicularly to the major axis of the component at a point 2 inches (5 centimeters) from the intersection of the component with the main body of the toy or at the end of the component if the component is less than 2 inches ±0.05 inch (5 centimeters) long.

(2) *Testing procedure.* The toy shall be secured in a vise equipped with vise shields that are fabricated from 13-gauge cold-rolled steel or other similar material and that have a 0.375-inch (0.95-centimeter) inside radius. The component shall then be bent through a 60-degree arc by a force applied at a point on the component 2 inches ±0.05 inch (5 centimeters), from the intersection of the component with the main body of the toy or applied at the end of the component if the component is less than 2 inches (5 centimeters), long. The component shall then be bent in the reverse direction through a 120-degree arc. This process shall be repeated for 30 cycles at a rate of one cycle per two seconds with a 60-second rest period occurring after each 10 cycles. Two 120-degree arc bends shall constitute one cycle.

(e) *Torque test*—(1) *Application*—(i) *General.* A toy with a projection, part, or assembly that a child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test.

(ii) *Toys with rotating components.* Projections, parts, or assemblies that are rigidly mounted on an accessible rod or shaft designed to rotate along with the projections, parts, or assemblies shall be tested with the road or shaft clamped to prevent rotation.

(2) *Test equipment*—(i) *Loading device.* The loading device shall be a torque gauge, torque wrench, or other appropriate device having an accuracy of ±2 inch pound (±0.23 kilogram-centimeter).

(ii) *Clamp.* The clamp shall be capable of holding the test component firmly and transmitting a torsional force.

(3) *Testing procedure.* With the toy rigidly fastened in any reasonable test position, the clamp is fastened to the test object or component. A torque of 2 inch pounds ±0.2 pound (2.30 kilogram-centimeters) shall be applied evenly within a period of 5 seconds in a clockwise direction until a rotation of 180 degrees from the original position has been attained or 2.30 kilogram-centimeters (2 inch-pounds) exceeded. The torque or maximum rotation shall be maintained for an additional 10 seconds. The torque shall then be removed and the test component permitted to return to a relaxed condition. This procedure shall then be repeated in a counterclockwise direction.

(f) *Tension test*—(1) *Application*—(i) *General.* Any projection of a toy that the

[1] Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Incorporation by reference approved by the Director of the Federal Register on October 5, 1972.

child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test. This test is to be conducted on the same toy that has been subjected to the torque test described in paragraph (e) of this section.

(ii) *Stuffed toys and beanbags.* A stuffed toy or beanbag constructed of pliable materials having seams (such as fabrics) shall have the seams subjected to 10 pounds ±0.5 pound (4.55 kilograms of force applied in any direction.

(2) *Test equipment*—(i) *Clamps.* One clamp capable of applying a tension load to the test component is required. A second clamp suitable for applying a tension load perpendicularly to the major axis of the test component is also required.

(ii) *Loading device.* The loading device is to be a self-indicating gauge or other appropriate means having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* With the test sample fastened in a convenient position, an appropriate clamp shall be attached to the test object or component. A 10-pound ±0.5 pound (4.55 kilogram) direct force shall be evenly applied, within a period of 5 seconds, parallel to the major axis of the test component and maintained for an additional 10 seconds. The tension clamp shall then be removed and a second clamp appropriate for pulling at 90 degrees shall be attached to the test object or component. A 10-pound ±0.5 pound (4.55 kilogram) tensile force shall be evenly applied, within a period of 5 seconds, perpendicularly to the major axis of the test component and maintained for an additional 10 seconds.

(g) *Compression test*—(1) *Application.* Any area on the surface of a toy that is accessible to a child and inaccessible to flat-surface contract during the impact test shall be subject to this test.

(2) *Test apparatus.* The loading device shall be a rigid metal disc 1.125 inches ±0.015 inch (2.86 centimeters) in diameter and (0.375 inch) (0.95 centimeter) in thickness. The perimeter of the disc shall be rounded to a radius of 1/32 inch) (0.08 centimeter) to eliminate irregular edges. The disc shall be attached to an appropriate compression scale having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* The disc shall be positioned so that the contact surface is parallel to the surface under test. A direct force of 20 pounds ±0.5 pound (9.1 kilograms) shall be evenly applied within 5 seconds through the disc. This load shall be maintained for an additional 10 seconds. During the test the toy is to rest on a flat, hard surface in any convenient position.

§ 1500.52 Test methods for simulating use and abuse of toys and other articles intended for use by children over 18 but not over 36 months of age.

(a) *Application.* The test methods described in this section shall be used to simulate the normal and reasonably foreseeable use, damage, or abuse of toys and other articles intended for use by children over 18 but not over 36 months of age in conjunction with section 1500.18.

(b) *Impact test*—(1) *Application.* Except as provided in paragraph (b)(4) of this section, toys having a weight of less than 4.0 pounds ±0.01 pound (1.8 kilograms), shall be subject to this test.

(2) *Impact medium.* The impact medium shall consist of a 1/8 inch (0.3 centimeter) nominal thickness of type IV vinyl-asbestos tile, as specified in Federal specification SS–T–312A (see section 1500.51(b)(2) regarding availability), over at least a 2.5 inch (6.4 centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter).

(3) *Testing procedure.* Except as provided in paragraph (b)(4) (i) and (ii) of this section, the toy shall be dropped four times from a height of 3 feet ±0.5 inch (0.92 meter), onto the impact medium described in paragraph (b)(2) of this section. The toy shall be dropped in random orientation. After each drop, the test sample shall be allowed to come to rest and shall be examined and evaluated before continuing.

(4) *Large and bulky toys.* (i) A toy that has a projected base area of 2,560 or more square centimeters (400 or more square inches) shall be tested for impact in accordance with paragraph (b)(4)(iii) of this section. The base area for toys with permanently attached legs shall be measured by calculating the area enclosed by straight lines connecting the outermost edge of each leg of the perimeter.

(ii) A toy that has a volume of more than 3 cubic feet (0.085 cubic meter) calculated by the major dimensions without regard to minor appendages, shall be tested for impact in accordance with paragraph (b)(4)(iii) of this section.

(iii) The toys described in paragraph (b)(4) (i) and (ii) of this section shall be tested for impact by tipping them over three times by pushing the samples slowly past their centers of balance onto the impact medium described in paragraph (b)(2) of this section.

(c) *Bite test*—(1) *Application.* A toy (or component or any accessible portion thereof) that has an external dimension of 1.25 inches ±0.05 inch (3.18 centimeters) or less and a design configuration that would permit a child to insert a portion into the mouth in any orientation up to a biting thickness of 1.25 inches ±0.05 inch (3.18 centimeters), for a penetration of at least 0.25 inch (0.635 centimeter), shall be subject to this test.

(2) *Test equipment*—(i) *Contact mechanism.* The contact mechanism shall be two metal strips or plates each measuring 0.25 inch ±0.002 inch (0.635 centimeter) high and each having a contact edge radius of 0.020 inch ±0.002 inch (0.05 centimeter) for at least a 150-degree cross-sectional arc. A suggested contact mechanism appears in figure 1 of section 1500.51.

(ii) *Loading device.* The loading device shall be a scale or force gauge having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* The test article shall be placed in the contact mechanism in any reasonable position for a penetration of 0.25 to 0.5 inch (0.64 to 1.27 centimeters), which position utilizes less than 180 degrees of the arc of the contact mechanism, and a test load increasing to 50 pounds ±0.5 pound (22.74 kilograms) shall be evenly applied within 5 seconds. This load shall be maintained for an additional 10 seconds.

(d) *Flexure test*—(1) *Application.* This test shall be applied to each component of a toy containing metal wire(s), or other metal material(s), for stiffening or for retention of form if the component can be bent through a 60-degree arc by a maximum force of 15 pounds ±0.5 pound (6.80 kilograms) applied perpendicularly to the major axis of the component at a point 2 inches ±0.05 inch (5 centimeters), from the intersection of the component with the main body of the toy or at the end of the component if the component is less than 2 inches ±0.05 inch (5 centimeters) long.

(2) *Testing procedure.* The toy shall be secured in a vise equipped with vise shields that are fabricated from 13-gauge cold-rolled steel or other similar material and that have a 0.375-inch (0.95 centimeter) inside radius. The component shall then be bent through a 60-degree arc by a force applied at a point on the component 2 inches ±0.05 inch (5 centimeters) from the intersection of the component with the main body of the toy or applied at the end of the component if the component is less than 2 inches (5 centimeters) long. The component shall then be bent in the reverse direction through a 120-degree arc. This process shall be repeated for 30 cycles at a rate of one cycle per two seconds with a 60-second rest period occurring after each 10 cycles. Two 120-degree arc bends shall constitute one cycle.

(e) *Torque test*—(1) *Application*—(i) *General.* A toy with a projection, part, or assembly that a child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test.

(ii) *Toys with rotating components.* Projections, parts, or assemblies that are rigidly mounted on an accessible rod or shaft designed to rotate along with the projections, parts, or assemblies shall be tested with the rod or shaft clamped to prevent rotation.

(2) *Test equipment*—(i) *Loading device.* The loading device shall be a torque gauge, torque wrench, or other appropriate device having an accuracy of ±0.2 inch-pound (±0.23 kilogram-centimeter).

(ii) *Clamp.* The clamp shall be capable of holding the test component firmly and transmitting a torsional force.

(3) *Testing procedure.* With the toy rigidly fastened in any reasonable test position, the clamp is fastened to the test object or component. A torque of 3 inch-pounds ±0.2 inch-pounds (3.46 kilogram-within a period of 5 seconds in a clockwise direction until a rotation of 180 degrees from the original position has been attained or 3 inch-pounds ±0.2

inch-pounds (3.46 kilogram-centimeters) exceeded. The torque or maximum rotation shall be maintained for an additional 10 seconds. The torque shall then be removed and the test component permitted to return to a relaxed condition. This procedure shall then be repeated in a counterclockwise direction.

(f) *Tension test*—(1) *Application*—(i) *General.* Any projection of a toy that the child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test. This test is to be conducted on the same toy that has been subjected to the torque test described in paragraph (e) of this section.

(ii) *Stuffed toys and beanbags.* A stuffed toy or beanbag constructed of pliable materials having seams (such as fabrics) shall have the seams subjected to 15 pounds (±0.5 pound (6.80 kilograms) of force applied in any direction.

(2) *Test equipment*—(i) *Clamps.* One clamp capable of applying a tension load to the test component is required. A second clamp suitable for applying a tension load perpendicularly to the major axis of the test component is also required.

(ii) *Loading device.* The loading device is to be a self-indicating gauge or other appropriate means having an accuracy of ±0.5 pound(±255 grams).

(3) *Testing procedure.* With the test sample fastened in a convenient position, an appropriate clamp shall be attached to the test object of component.

A 15-pound ±0.5 pound (6.80-kilogram) direct force shall be evenly applied, within a period of 5 seconds, parallel to the major axis of the test component and maintained for an additional 10 seconds. The tension clamp shall then be removed and a second clamp appropriate for pulling at 90 degrees shall be attached to the test object of component. A 15-pound ±0.5 pound (6.80-kilogram) tensile force shall be evenly applied, within a period of 5 seconds, perpendicularly to the major axis of the test component and maintained for an additional 10 seconds.

(g) *Compression test*—(1) *Application.* Any area on the surface of a toy that is accessible to a child and inaccessible to flat-surface contact during the impact test shall be subject to this test.

(2) *Test apparatus.* The loading device shall be a rigid metal disc 1.125 inches ±0.015 inch (2.86 centimeters) in diameter and 0.375 inch (0.95 centimeter) in thickness. The perimeter of the disc shall be rounded to a radius of 1/32 inch (0.08 centimeter) to eliminate irregular edges. The disc shall be attached to an appropriate compression scale having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* The disc shall be positioned so that the contact surface is parallel to the surface under test. A direct force of 25 pounds ±0.5 pound (11.4 kilograms) shall be evenly applied within 5 seconds through the disc. This load shall be maintained for an additional 10 seconds. During the test the toy is to rest on a flat, hard surface in any convenient position.

§ 1500.53 Test methods for simulating use and abuse of toys and other articles intended for use by children over 36 but not over 96 months of age.

(a) *Application.* The test methods described in this section shall be used to simulate the normal and reasonably foreseeable use, damage, or abuse of toys and other articles intended for use by children over 36 but not over 96 months of age in conjunction with section 1500.18.

(b) *Impact test*—(1) *Application.* Except as provided in paragraph (b)(4) of this section, toys having a weight of less than 10.0 pounds ±0.01 pound (4.6 kilograms) shall be subject to this test.

(2) *Impact medium.* The impact medium shall consist of a 0.125-inch (0.3-centimeter), thickness of type IV vinyl-asbestos tile, as specified in Federal specification SS-T-312A (see section 1500.51 (b)(2) regarding availability), over at least a 2.5-inch (6.35-centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.29 square meter).

(3) *Testing procedure.* Except as provided in paragraph (b)(4)(i) and (ii) of this section the toy shall be dropped four times from a height of 3 feet ±0.5 inch (0.92 meter) onto the impact medium described in paragraph (b)(2) of this section. The toy shall be dropped in random orientation. After each drop, the test sample shall be allowed to come to rest and shall be examined and evaluated before continuing.

(4) *Large and bulky toys.* (i) A toy that has a projected base area of 2,560 or more square centimeters (400 or more square inches) shall be tested for impact in accordance with paragraph (b)(4)(iii) of this subsection. The base area for toys having permanently attached legs shall be measured by calculating the area enclosed by straight lines connecting the outermost edge of each leg of the perimeter.

(ii) A toy that has a volume of more than 3 cubic feet (0.085 cubic meter), calculated by the major dimensions without regard to minor appendages, shall be tested for impact in accordance with paragraph (b)(4)(iii) of this section.

(iii) The toys described in paragraph (b)(4) (i) and (ii) of this section shall be tested for impact by tipping them over three times by pushing the samples slowly past their centers of balance onto the impact medium described in paragraph (b)(2) of this section.

(c) *Bite test*—(1) *Application.* A toy (or component) that is a mouth toy shall be subject to this test.

(2) *Test equipment*—(i) *Contact mechanism.* The contact mechanism shall be two metal strips or plates each measuring 0.25 inch ±0.002 inch (0.635 centimeter) high and each having a contact edge radius of 0.020 inch ±0.002 inch (0.5 centimeter) for at least a 150-degree cross-sectional arc. A suggested contact mechanism appears in figure 1 of section 1500.51.

(ii) *Loading device.* The loading device shall be a scale or force gauge having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* The test article shall be placed in the contact mechanism in any reasonable position for a penetration of 0.25 to 0.5 inch (0.64 to 1.27 centimeters) inch), which position utilizes less than 180 degrees of the arc of the contact mechanism, and a test load increasing to 100 pounds ±0.5 pound (45.50 kilograms) shall be evenly applied within 5 seconds. This load shall be maintained for an additional 10 seconds.

(d) *Flexure test*—(1) *Application.* This test shall be applied to each component of a toy containing metal wire(s), or other metal material(s), for stiffening or for retention of form if the component can be bent through a 60-degree arc by a maximum force of 15 pounds ±0.5 pound (6.80 kilograms) applied perpendicularly to the major axis of the component at a point 2 inches ±0.05 inch (5 centimeters) from the intersection of the component with the main body of the toy or at the end of the component if the component is less than 2 inches ±0.05 inch (5 centimeters) long.

(2) *Testing procedure.* The toy shall be secured in a vise equipped with vise shields that are fabricated from 13-gauge thick cold-rolled steel or other similar material and that have a 0.375-inch (0.95-centimeter) inside radius. The component shall then be bent through a 60-degree arc by a force applied at a point on the component 2 inches (5 centimeters) from the intersection of the component with the main body of the toy or applied at the end of the component if the component is less than 2 inches (5 centimeters) long. The component shall then be bent in the reverse direction through a 120-degree arc. This process shall be repeated for 30 cycles at a rate of one cycle per two seconds with a 60-second rest period occurring after each 10 cycles. Two 120-degree arc bends shall constitute one cycle.

(e) *Torque test*—(1) *Application*—(i) *General.* A toy with a projection, part, or assembly that a child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test.

(ii) *Toys with rotating components.* Projections, parts, or assemblies that are rigidly mounted on an accessible rod or shaft designed to rotate along with the projections, parts, or assemblies shall be tested with the rod or shaft clamped to prevent rotation.

(2) *Testing equipment*—(i) *Loading device.* The loading device shall be a torque gauge, torque wrench, or other appropriate device having an accuracy of ±0.2 inch-pound (±0.23 kilogram-centimeter).

(ii) *Clamp.* The clamp shall be capable of holding the test component firmly and transmitting a torsional force.

(3) *Testing procedure.* With the toy rigidly fastened in any reasonable test position, the clamp is fastened to the test object or component. A torque of 4 inch-ponuds ±0.2 inch-pound (4.60 kilogram-centimeters) shall be applied evenly within a period of 5 seconds in a

clockwise direction until a rotation of 180 degrees from the original position has been attained or 4 inch-pounds ±0.2 inch-pound (4.60 kilogram-centimeters) exceeded. The torque or maximum rotation shall be maintained for an additional 10 seconds. The torque shall then be removed and the test component permitted to return to a relaxed condition. This procedure shall then be repeated in a counterclockwise direction.

(f) *Tension test*—(1) *Application*—(i) *General.* Any projection of a toy that the child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test. This test is to be conducted on the same toy that has been subjected to the torque test described in paragraph (e) of this section.

(ii) *Stuffed toys and beanbags.* A stuffed toy or beanbag constructed of pliable materials having seams (such as fabrics) shall have the seams subjected to 15 pound ±0.5 pound (6.80 kilograms) of force applied in any direction.

(2) *Test equipment*—(i) *Clamps.* One clamp capable of applying a tension load to the test component is required. A second clamp suitable for applying a tension load perpendicularly to the major axis of the test component is also required.

(ii) *Loading device.* The loading device is to be a self-indicating gauge or other appropriate means having an accuracy of ±0.5 pound (±225 grams).

(3) *Testing procedure.* With the test sample fastened in a convenient position, an appropriate clamp shall be attached to the test object or component. A 15-pound ±0.5 pound (6.80-kilogram) direct force shall be evenly applied, within a period of 5 seconds, parallel to the major axis of the test component and maintained for an additional 10 seconds. The tension clamp shall then be removed and a second clamp appropriate for pulling at 90 degrees shall be attached to the test object or component. A 15-pound ±0.5 pound (6.80-kilogram) tensile force shall be evenly applied, within a period of 5 seconds, perpendicularly to the major axis of the test component and maintained for an additional 10 seconds.

(g) *Compression test*—(1) *Application.* Any area on the surface of a toy that is accessible to a child and inaccessible to flat-surface contact during the impact test shall be subject to this test.

(2) *Test apparatus.* The loading device shall be a rigid metal disc 1.125 inches ±0.015 inch (2.86 centimeters) in diameter and 0.375 inch (0.95 centimeter) in thickness. The perimeter of the disc shall be rounded to a radius of $\frac{3}{32}$ inch (0.08 centimeter) to eliminate irregular edges. The disc shall be attached to an appropriate compression scale having an accuracy of ±0.5 pound (±225 grams).

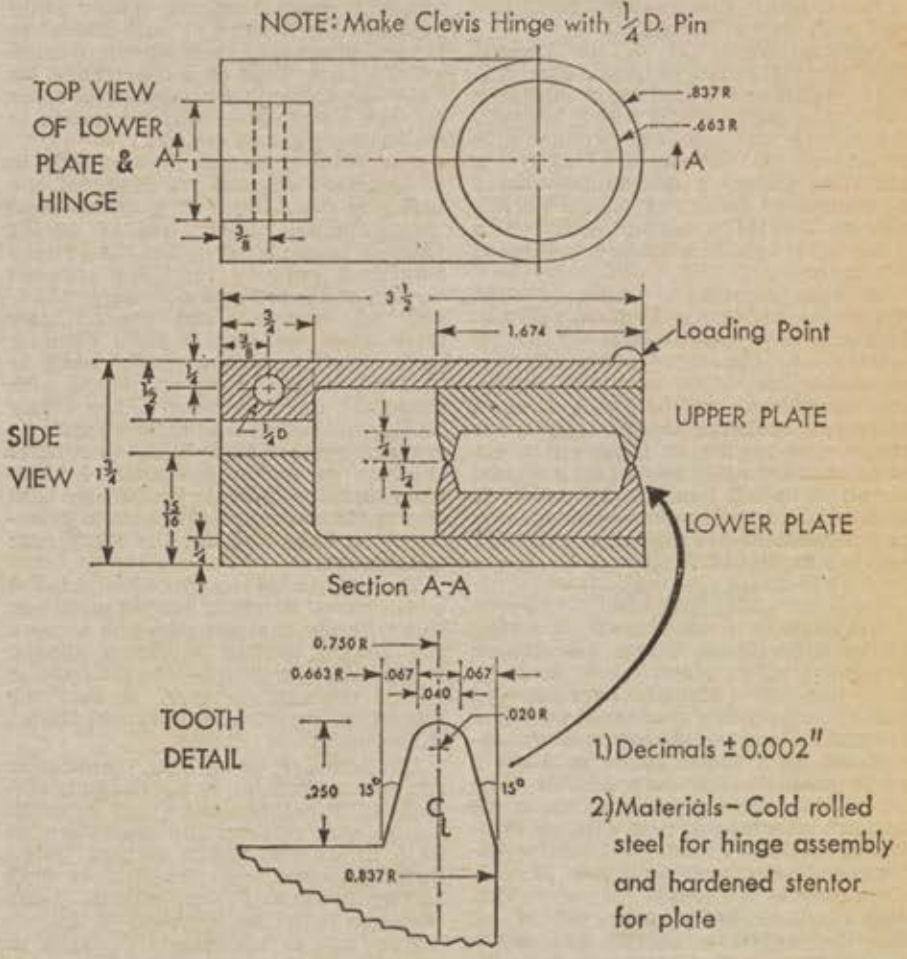
(3) *Testing procedure.* The disc shall be positioned so that the contact surface is parallel to the surface under test. A direct force of 30 pounds ±0.5 pound (13.6 kilograms) shall be evenly applied within 5 seconds through the disc. This load shall be maintained for an additional 10 seconds. During the test the toy is to rest on a flat, hard surface in any convenient position.

Effective date. The regulation promulgated above, 16 CFR 1500.50, 1500.51, 1500.52, and 1500.53, shall become effective February 6, 1975.

(Secs. 2(f)(1)(D), (q)(1)(A), (s), 9(e)(1), 10(a), 74 Stat. 372, 374, 375, 378, as amended 80 Stat. 1304, 83 Stat. 187-89 (15 U.S.C. 1261, 1262, 1269); (5 U.S.C. 553))

Dated: December 30, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.



BITE TEST CLAMP

FIGURE 1

[FR Doc.75-225 Filed 1-6-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1500]

TOYS AND OTHER CHILDREN'S ARTICLES PRESENTING INJURY HAZARDS DUE TO SHARP EDGES

Proposed Banning

The purpose of this document is to propose regulations (16 CFR 1500.18(a)(16) and 1500.47) that will determine whether toys and other articles intended for use by children 8 years of age or less present an unreasonable risk of personal injury due to sharp edges and ban such toys and articles.

Section 2(f)(1)(D) of the Federal Hazardous Substances Act (15 U.S.C. 1261) defines as a hazardous substance any toy or other article which is determined by regulation, in accordance with section 3(e)(1) of the act (15 U.S.C. 1262), to present a mechanical hazard as defined by section (2)(s) of the act. Section 2(q)(1)(A) provides that such a toy or article is a banned hazardous substance.

Existing regulations under 16 CFR 1500.18(a)(1), (2), and (3) ban certain toys that have the potential for causing lacerations, puncture wound injury, aspiration, ingestion or other injury. The Commission will be issuing a series of more specific regulations such as the sharp edge regulation proposed herein and the sharp point regulation proposed elsewhere in this issue (40 FR 1491). It is anticipated that, when finalized, these new regulations will supersede §§ 1500.18(a)(1), (2), and (3).

Injury Data

Injury data from the Commission's National Electronic Injury Surveillance System (NEISS) indicate that a significant number of children have required hospital emergency room treatment for laceration and puncture wounds associated with sharp points and sharp edges presented by toys. NEISS comprises approximately two per cent of the nation's hospital emergency rooms. During 1973, NEISS reported 1,853 lacerations and punctures occurring to children under ten years of age. This figure represents 54 per cent of all NEISS-reported toy injuries to children in this age group. A review of in-depth investigations of a sample of these 1,853 reported injuries discloses the role of sharp points and sharp edges in causing lacerations and punctures. This proposed regulation deals with sharp edges; a companion proposal deals with sharp points.

The injury reports, their sources, and the analysis by the Commission's Bureau of Epidemiology of injuries related to sharp edges on toys may be seen in the Office of the Secretary, CPSC, 10th floor, 1750 K St., NW., Washington, D.C., during working hours Monday through Friday.

Sharp Edge Test Method

A. *General.* The purpose of this proposal is to ban toys that cause unreasonable risk of injury due to sharp edges. A test method is proposed that would identify edges which could cause injury. The test utilizes a synthetic tape wrapped around a metal rod simulating a child's finger. A sharp edge on a toy is pressed against the tape with a force of 3.8 lbs. while the metal rod is rotated through 360° It is proposed that toys with edges which cut the tape under these conditions will be banned.

Because children do not always use toys as they are intended to be used, all accessible edges must pass the sharp edge test.

B. *Force level.* A child cannot be expected to have developed proper judgment for the amount of force needed to hold or grasp a toy and therefore could exert a large force on a sharp edge. To limit the effect of the sharpness of edges on toys, a force level must be chosen at which injury can be avoided.

The National Bureau of Standards, in a document entitled "A Study of the Strength Capabilities of Children Ages Two Through Six," NBSIR 73-156 (August 1973), reports that the average maximum gripping force for children 5 years of age is 20 pounds. Older children are stronger and reach larger force levels but have a more accurate sense of judgment and are less likely to indiscriminately grasp an object with maximum force. In view of the injury reports indicating that children under 5 years of age are more likely than older children to suffer laceration injuries from toys, the Commission believes that 20 pounds is a reasonable base to determine the force level for the sharp edge test method.

The sharp edge test procedure is based on the casual handling contact mode and this criterion does not take into account the hazard pattern involving impact. A byproduct of limiting the criterion to casual contact, however, is that the hazard arising from certain slight impact situations will be reduced.

C. *Cutting criteria.* The Commission sponsored a project at the National Bureau of Standards (NBS) to research human skin cutting. The results are set forth in an NBS report entitled "Some Cutting Experiments on Human Skin and Synthetic Materials," NBSIR 73-262 (October 1973). An objective of this research was to correlate the depth of cut in excised skin samples with combinations of edge configurations and cutting forces. All skin specimens were taken from the abdomen region. The skin samples were wrapped around a semicircular hardwood mandrel that turned a single rotation while the test edge was held stationary and a known force was applied. The edges for these tests were selected for having typical geometrics and varied abilities to cut skin. The resultant data were summarized for forces of 1, 2, 4, 8, 12, 16, and 20 pounds and the edges ranked in order of sharpness. The transition from sharp to dull under the 20-pound, no-bleed criterion occurs between two edges; both edges have a 90° included angle and the respective radii are 0.002 and 0.004 inch. The criterion established in the study is used as a basis for the sharp edge test proposed herein.

The sharp edge test method is performance oriented (as opposed to design oriented). The sharpness of an edge cannot be judged by only the included angle and radius. Factors such as the roughness of the surface and burrs or nicks on the edge influence sharpness. Therefore, instead of limiting the requirements to a minimum radius design specification, the sharp edge test method judges sharpness of an edge by its ability to cut through a specified artificial skin at a force of 3.8 lbs. which has been found to simulate the behavior of human skin at a force of 20 lbs.

D. *Test device and artificial skin.* A prototype test device for sharp edges in toys has been developed for use in the testing procedure. The device is described and illustrated in an NBS report entitled "An Inspection Procedure for Detecting Hazardous Edges," NBSIR 74-428 (April 1974). The operating parameters are based on those used in the human skin cutting tests taking into account the differences between the forces necessary to cut artificial skin as opposed to human skin.

The device is designed to be hand-held, usable in any orientation, and easy to operate. The diameter of the mandrel approximates the size of a child's finger and the mandrel can make a single rotation at a constant speed. The force between the edge and the mandrel is low enough to make the device manageable and inertial loading caused by rotating parts is minimized.

The artificial skin suitable for use with the test device is a tape made from polytetrafluoroethylene (Teflon) and has an adhesive backing to provide for easy mounting on the mandrel. The tape enables the user to discriminate between sharp and dull edges. All test edges categorized into sharp or not by the skin cutting test are correctly classed as sharp or not sharp by use of the polytetrafluoroethylene tape. An edge is judged sharp if it completely cuts through the tape at any location along the center 75 per cent of the line of contact.

To specify the type of tape suitable for the test, performance of the tape against two standard edges must be checked. One edge is in the sharp zone and the other is in the not sharp zone. These standard edges have a 90° included angle and respective radii of 0.002 and 0.010 inch. The range between these edges is wider than the range between edges chosen to represent sharp and not sharp based on the skin cutting test. This will allow several tapes to qualify and will avoid problems of reliance on one specific tape type for the test. Also, tape samples vary in cutability and said edge specifications will make the variances negligible within each roll.

The NBS reports cited above may be seen in the Office of the Secretary, CPSC, 10th floor, 1750 K Street NW., Washington, D.C., during working hours Monday through Friday.

E. *Accessibility probe.* A sharp edge must be accessible to present a hazard; therefore, only articles that meet defined accessibility criteria are subject to the sharp edge test. These accessibility

criteria may be applied to actual products by use of a finger probe device or by any other means that achieves identical results. The suggested probe is based on a design developed by Underwriters Laboratories, Inc. (shown in figure 1 of proposed 16 CFR 1500.47 below). The dimensions are derived from the maximum penetration depth of fingers and hands into holes and slots up to one inch in diameter or width. The data represents 100 children of ages 1 to 10 years, 100 men, and 100 women.

The accessibility being determined is that of reach or touch as contrasted to accessibility for grasping. Penetration is considerably deeper through slots than holes, and this is reflected by the wedge portion of the otherwise cylindrical shape of the probe.

A justification for the long reach of the probe is that forces on the same level as the criteria could occur in situations where the child has inserted a finger to its maximum reach and jerks the finger out or has the toy pulled or pushed causing contact. The probe has three knuckle joints to allow bending around corners as a finger would, and the tip has an included angle of 60° that allows touching edges on small slots, holes, and tabs. A blunt end design that appears the same as a finger would not be able to touch those edges accessible to the soft end of a finger, such as when pressed against a narrow slot, small hole, or tab. The abrupt changes in the probe's slope reflects averaging the data and the resistance offered to insertion by knuckle joints.

Use and Abuse Tests

Many toys for younger children do not present sharp edges hazards until the toy is broken, dismembered, or disassembled by the child through use or abuse. For this reason, the regulations proposed below require appropriate articles to be subjected to use and abuse test procedures prescribed by 16 CFR 1500.50 through 1500.53 (promulgated elsewhere in this issue of the Federal Register (40 FR 1480). Those procedures simulate the use and abuse of toys, games, and other articles intended for children in three age groups (18 months or less, over 18 but not over 36 months, and over 36 but not over 96 months).

The regulations proposed below prescribe testing for sharp edges before and after application of the appropriate use and abuse tests.

Proposal

Therefore, on the basis of the above information and data, the Commission proposes to ban by regulation articles intended for use by children not over 96 months of age that have sharp edges and/or contain sharp edges that become accessible in normal use or after reasonably foreseeable damage or abuse because the mechanical hazards associated with the design and manufacture of such articles present an unreasonable risk of personal injury to young children from lacerations and avulsions. Further, the Commission proposes to exempt from such banning toys with sharp edges that perform an operational function, such as toy scissors, provided that such items are identified as specified in paragraph (a)(16) and other articles with sharp edges that perform an operational function, such as knives. It is contemplated that the effective date will be 180 days after publication of the final regulation in the Federal Register.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended 80 Stat. 1304–05, 83 Stat. 187–80; 15 U.S.C. 1261, 1262) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend 16 CFR Part 1500 by adding a new paragraph (a)(16) to § 1500.18 and by adding a new § 1500.47, as follows:

1. Section 1500.18 is amended by adding (a)(16) as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illnesses:

* * * * *

(16) Any toy or other article intended for use by children not over 96 months of age (i) that has a sharp edge as determined pursuant to § 1500.47(d) or (ii) that has an accessible component that has such a sharp edge or (iii) that has such a sharp edge resulting from tests prescribed by §§ 1500.51, 1500.52, or 1500.53. Toys such as toy scissors that (iv) by reason of their functional purpose necessarily present the hazard of sharp edges and (v) do not have any nonfuctional sharp edges are exempt from this paragraph (a)(16) provided that the toy is identified at time of sale as having functional sharp edges. Other articles intended for use by children such as knives that (vi) by reason of their functional purpose necessarily present the hazard of sharp edges and (vii) do not have any nonfunctional sharp edges are exempt from this paragraph (a)(16).

* * * * *

2. Section 1500.47 is added as follows:

§ 1500.47 Test method for determining a sharp edge in toys and other articles intended for use by children not over 96 months of age.

(a) *Objective.* The sharp edge test prescribed by paragraph (d) of this section, or any device utilizing the same reference dimensions and yielding precisely equivalent results, will determine whether or not edges on toys and other articles intended for use by children not over 96 months of age, and edges exposed in normal use or as a result of reasonably foreseeable damage or abuse of such toys and articles, present an unreasonable risk of injury by laceration and other similar wounds. The test methods specified in §§ 1500.51, 1500.52, and 1500.53 are designed to expose potential hazards that would result from such normal use or reasonably foreseeable damage or abuse.

(b) *Application.* The sharp edge test of paragraph (d) of this section shall be applied to a toy or other article intended for use by children not over 96 months of age if its design or construction could present an unreasonable risk of injury by laceration and other similar wounds. The sharp edge test shall be applied to the sample before and after subjecting the sample to the appropriate tests of §§ 1500.51, 1500.52, and 1500.53.

(c) *Accessibility.* Any edge that can be contacted by a child in normal use or after reasonably foreseeable damage or abuse of the toy shall be subject to the sharp edge test of paragraph (d) of this section. Edges that are accessible through an opening large enough to pass a 1.00-inch (25.4-millimeter) diameter cylinder shall be considered accessible to a child and shall be subjected to the sharp edge test. Edges accessible through an opening having smaller dimensions shall be tested for accessibility by use of the probe shown in figure 1 of this section. The probe shall be used by inserting the tapered end into the opening. The knuckle joints of the probe can be rotated up to 90° from the center line and are designed to simulate knuckle movement. Any edge that can be contacted by the portion of the probe forward of the collar is subject to the sharp edge test.

(d) *Sharp edge test.* (1) Part of the toy may be removed to allow the sharp edge testing device to test an edge that is reached by the probe. Such dismantling of the toy may affect the rigidity of the edge in question. The sharp edge test shall be performed with the edge supported so that its stiffness approximates the edge stiffness in the assembled toy.

(2) The sharp edge test shall be done with a mandrel that is wrapped with one layer of tape, as specified in paragraph (e) (3) and (4) of this section, for a full circumference and a width necessary to give sufficient area for the test. The mandrel shall be so placed that its axis is at 90°±5° to the line of a straight edge, or 90°±5° to a tangent at the test point of a curved edge, and the tape is at the point of contact when the mandrel is rotated.

(3) The edge shall be fixed so that it does not bend or move when the force of the mandrel is applied. To do this, the edge may be supported not closer to the edge than 0.50 inch (12.7 millimeters). No relative motion between the mandrel and the edge shall occur other than the rotation of the mandrel. A force of no greater than 3.8 pounds (16.9 newtons) shall be applied by pressing the mandrel against the edge and the

mandrel shall be rotated 360° about its axis. If this procedure causes the edge to bend, the maximum force that will not cause the edge to bend shall be used in the test.

(4) The tape shall be removed from the mandrel without enlarging any cut in the tape or causing any score in the tape to become a cut. The edge shall be judged to be sharp if it completely cuts the tape at any location along the center 75 per cent of the line of contact.

(e) *Specifications.* The following specifications shall apply to the sharp edge test of paragraph (d) of this section:

(1) The rotation of the mandrel shall produce a constant tangential velocity of 1.00±0.08 inch per second (25.4±2.0 millimeters per second) during the center 75 per cent of its rotation and shall have a smooth start and stop.

(2) The mandrel shall be made of steel. The test surface of the mandrel shall be free of scratches, nicks, or burrs and shall have a surface roughness no greater than 16 microinches (0.40 micron). The test surface shall have a hardness no less than 40 as measured on the Rockwell "C" scale, as determined pursuant to ASTM E 18–67 entitled "Standard Methods of Test for Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials," dated March 6, 1967.[1] The diameter of the mandrel shall be 0.375±0.0005 inch (9.35±0.12 millimeters). The mandrel shall be of suitable length to carry out the test.

(3) The tape shall be adhesive-backed polytetrafluoroethylene. The thickness of the polytetrafluoroethylene shall be between 0.003 inch (0.08 millimeter) and 0.004 inch (0.10 millimeter). The thickness of the adhesive shall be between 0.001 inch (0.03 millimeter) and 0.003 inch (0.08 millimeter).

(4) The tape must be qualified for use by correctly discriminating between two standard shaped edges. The qualification procedure in this subparagraph shall be performed on each section of tape no greater than 20 inches (50 centimeters in length within 4 hours prior to conducting the sharp edge test of paragraph (d) of this section. The tape, when used according to the sharp edge test procedure, shall classify edges I and II (described below) as sharp and not sharp, respectively. Edges I and II shall be made from tool steel and oil hardened to a hardness between 58 and 62 on the Rockwell "C" scale (see paragraph (e)(2) of this section). The two surfaces that intersect to define the edge shall have an included angle of 90° and a surface roughness no greater than 8 microinches (0.20 micron). Edges I and II shall have radii of 0.002±0.0005 inch (0.05±0.012 millimeter) and 0.010±0.0005 inch (0.25±0.012 millimeter), respectively.

(5) The tests prescribed by this section shall be conducted at an ambient temperature between 60° F (15.6° C) and 80° F (26.7° C).

(6) For purposes of compliance with the test method prescribed by this section, the English figures shall be used. The metric approximations are provided in parentheses for convenience and information only.

Interested persons are invited to submit, on or before March 10, 1975, written comments regarding this proposal. Comments and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, 10th floor, 1750 K Street NW., Washington, D.C., during working hours Monday through Friday.

Dated: December 30, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

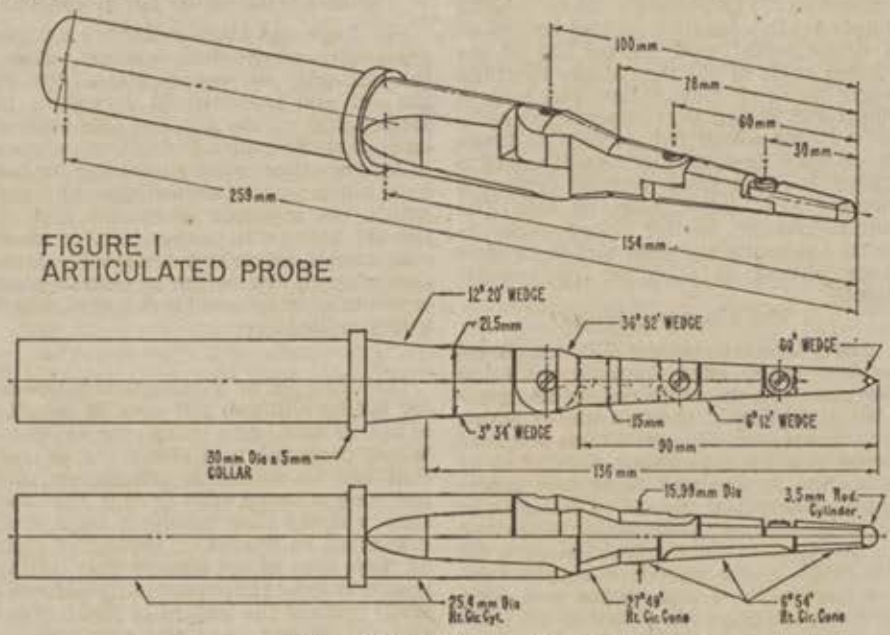


FIGURE I
ARTICULATED PROBE

[FR Doc.75-227 Filed 1-6-75;8:45 am]

[1] Copies available from American National Standards Institute, 1430 Broadway, New York, N.Y. 10018 (ANSI Reference No. Z115.6–1967). Filed as part of original document.

[16 CFR Part 1500]

TOYS AND OTHER CHILDREN'S ARTICLES PRESENTING PUNCTURE OR LACERATION INJURY HAZARDS DUE TO SHARP POINTS

Proposed Banning

The purpose of this document is to propose regulations (16 CFR 1500.18(a)(17) and 1500.48) that will determine whether toys and other articles intended for use by children 8 years of age or less present an unreasonable risk of personal injury from puncture or laceration hazards due to sharp points and to ban such toys.

Section 2(f)(1)(D) of the Federal Hazardous Substances Act (15 U.S.C. 1261) defines as a hazardous substance any top or other article intended for use by children which is determined by regulation, in accordance with section 3(e)(1) of the act (15 U.S.C. 1262), to present a mechanical hazard as defined by section 2(s) of the act. Section 2(q)(1)(A) provides that such a top or article is a banned hazardous substance.

Existing regulations under 16 CFR 1500.18(a)(1), (2), and (3) ban certain toys that have the potential for causing lacerations, puncture wound injury, aspiration, ingestion or other injury. The Commission will be issuing a series of more specific regulations such as the sharp point regulation proposed herein. It is anticipated that, when finalized, these new regulations will supersede §§ 1500.18(a)(1), (2), and (3).

Injury Data

Injury data from the Commission's National Electronic Injury Surveillance System (NEISS) indicate that a significant number of children have required hospital emergency room treatment for laceration and puncture wounds caused by sharp points and sharp edges presented by toys. NEISS comprises approximately two percent of the nation's hospital emergency rooms. During 1973, NEISS reported 1,853 lacerations and punctures occurring to children under ten years of age. This figure represents 54 percent of all NEISS-reported toy injuries to children in this age group. A review of in-depth investigations of a sample of these 1,853 reported injuries discloses the role of sharp points and sharp edges in causing lacerations and punctures. This proposed regulation deals with sharp points; a companion proposal deals with sharp edges.

The injury reports, their sources, and the Bureau of Epidemiology's analysis of injuries related to sharp points on toys may be seen in the Office of the Secretary, CPSC, 10th floor, 1750 K Street NW., Washingon, D.C., during working hours Monday through Friday.

The injury patterns indicate to the Commission that many children's articles have sharp points due to poor design or because of excessive tolerances in the manufacturing equipment. Some of these articles may not be so hazardous for older children. The possibility of puncture wounds and laceration injuries increases significantly, however, when sharp points are present on articles intended for use by younger children and when sharp points on such articles appear during normal use or result from reasonably foreseeable damage or abuse.

NBS Report

This proposal is based in part on research summarized in a National Bureau of Standards' report entitled "The Skin Puncture Potential of Points Associated with Certain Toys," dated April 27, 1972. The report may bee seen in the Office of the Secretary, CPSC, 10th floor, 1750 K Street, NW., Washington, D.C., during working hours Monday through Friday.

The report sets forth a test method for and the results of testing assorted point configurations for ability to puncture skin, recommends a maximum level of sharpness for casual handling conditions, and describes a test device (sharp point tester) capable of distinguishing between sharp and dull points.

The sharp point tester in the NBS report (substantially the same as the device shown in figure 2 of proposed 16 CFR 1500.48 below) was designed to discriminate between sharp and dull points with a recommended maximum level of sharpness. The level of allowable sharpness is based on casual handling conditions for the article.

Developing a device for judging point sharpness required that the limit of allowable sharpness be determined for points on articles that children would contact under casual handling conditions. Casual handling conditions cover the range of activity associated with unpacking, handling, operating, and playing with toys, including foreseeable misuse and types of play not intended by the manufacturer. Such foreseeable misuse does not include throwing or swinging the articles at high velocities.

In determining the limit on sharpness, data from three sources were considered:

1. Subjective evaluation by 50 men and 50 women (nonphysicians) of the sharpness of points for children's articles. Each point was rated as either too sharp, intermediate, or sufficiently dull.

2. Subjective evaluation by 37 physicians of points for children's articles intended for casual handling use. Each point was rated as acceptable or unacceptable.

3. Actual skin puncture tests with points of various configurations.

The results of the two groups, nonphysicians and physicians, indicate a similar consideration of sharpness over a range of points.

The skin puncture tests were made on both human and pig skin samples. These tests were done to determine what combinations of point configuration and force are necessary to cause punctures that penetrate the epidermis and dermis but barely enter the subdermis. Curves were plotted to show force as a function of tip radius for both pig and human skin.

Sharp Point Tester

Using said criteria of the geometry on sharp points, the National Bureau of Standards developed the above-mentioned sharp point tester as an inspection tool. Sharp points on toys do not necessarily conform to a conical shape, so the inspection tool was made to be capable of judging an infinite number of possibilities of point geometry. This was done with judgment of a point based upon the penetration into a slot of specified width.

The dimensions found best to fit the curves for the criterion of a sharp point are a slot width of 0.040 inch (1.02 millimeters) and a penetration depth of 0.020 inch (0.51 millimeter). To penetrate skin, a point must maintain a sharp shape while applying force to the skin. For this reason a force factor was included in the penetration criteria of the testing device.

One other factor needed was the dimension for the length of the slot. At some stage, an irregularly shaped point (other than the conical shape) with sufficient length can be considered an edge rather than a point, and the inspection device had to be designed to make this distinction. The conclusion was that a reasonable transition is at an included angle of 120 degrees; that is, if two edges of a piece of sheet metal are such that they meet at an included angle of 120 degrees, the resulting configuration stands at the transition between a point and an edge. Using this and the penetration depth of 0.020 inch (0.51 millimeter), the slot length was set at 0.070 inch (1.78 millimeters).

Accordingly, the operation of the sharp point testing device is based on admitting a sharp point through a rectangular slot measuring 0.040 inch (1.02 millimeters) by 0.070 inch (1.78 millimeters). As the point penetrates to 0.015 inch (0.38 millimeter), it contacts a pressure plate. Further penetration requires moving the plate against a 0.5-pound (2.2-newton) force. If the point is able to move the plate 0.005 inch (0.13 millimeter), thereby giving a total point penetration of 0.020 inch (0.51 millimeter), electrical contact is made to light a bulb indicating the point is sharp. The key parameters of this test are the slot dimensions, the penetration depth, and the level of force resisting the movement of the point.

Articulated Probe

A sharp point must be accessible to present a hazard; therefore, only toys that meet defined accessibility criteria are subject to the sharp point test. A three-knuckle probe designed by Underwriters Laboratories, Inc. (shown in figure 1 of proposed 16 CFR 1500.48 below) simulates the pentration of a finger into a small slot or hole. The dimensions for the probe are based on the depth of penetration of fingers into slots and holes having respective widths and diameters ranging from 0.125 inch (3.18 millimeters) to 1.0 inch (25.4 millimeters). The data were taken from a study of the finger penetration capacity of 100 men, 100 women, and 100 children. The dimensions used to construct the probe are set such that no more than five per cent of the group with the greatest finger penetration (women) could reach into the slots and holes to a length greater than that of the probe.

USE AND ABUSE TESTS

Many toys for younger children do not present sharp point hazards until the toy is broken, dismembered, or disassembled by the child through use or abuse. For this reason, the regulations proposed below require appropriate articles to be subjected to use and abuse test procedures prescribed by 16 CFR 1500.50 through 1500.53 (promulgated elsewhere in this issue of the FEDERAL REGISTER (40 FR 1480)).

Those procedures simulate the use and abuse of toys, games, and other articles intended for children in three age groups (18 months or less, over 18 but not over 36 months, and over 36 but not over 96 months).

The regulations proposed below prescribe testing for sharp points before and after application of the appropriate use and abuse tests.

PROPOSAL

Therefore, the Commission proposes to ban by regulation articles intended for use by children not over 96 months of age that have nonfunctional sharp points and/or contain sharp points that become accessible in normal use or after reasonably foreseeable damage or abuse because the mechanical hazards associated with the design and manufacture of such articles present an unreasonable risk of personal injury to young children from punctures and lacerations. Further, the Commission proposes to exempt from such banning toys with sharp points that perform an operational function, such as needles for toy sewing machines, provided that such items are identified as specified in paragraph (a)(17) and other articles with sharp points that perform an operational function, such as tips on writing instruments. It is contemplated that the effective date will be 180 days after publication of the final regulation in the FEDERAL REGISTER.

Throughout the regulation English figures are followed by their metric approximations. For purposes of compliance with the regulation, the English figures shall be used. The metric approximations are included for convenience and information only.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended 80 Stat. 1304–05, 83 Stat. 187–89; 15 U.S.C. 1261, 1262) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend 16 CFR Part 1500 by adding a new paragraph (a)(17) to § 1500.18 and by adding a new § 1500.48, as follows:

1. Section 1500.18 is amended by adding paragraph (a)(17) as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(17) Any toy or other article intended for use by children not over 96 months of age (i) that has a sharp point as determined pursuant to § 1500.48 or (ii) that has an accessible component that has such a sharp point or (iii) that has such a sharp point resulting from tests prescribed by §§ 1500.51, 1500.52, and 1500.53 (use and abuse test procedures). Toys such as toy sewing machines that (iv) by reason of their functional purpose necessarily present the hazard of sharp points and (v) do not have any nonfunctional sharp points are exempt from this paragraph (a)(17) provided that the toy is identified at time of sale as having functional sharp points. Other articles intended for use by children such as writing instruments that (vi) by reason of their functional purpose necessarily present the hazard of sharp points and (vii) do not have any nonfunctional sharp points are exempt from this paragraph (a)(17).

* * * * *

2. Section 1500.48 is added as follows:

§ 1500.48 Test method for determining a sharp point in toys and other articles intended for use by children not over 96 months of age.

(a) *Objective.* The sharp point test prescribed by paragraph (d) of this section will determine whether or not points on toys and other articles intended for use by children not over 96 months of age, and points exposed in normal use or as a result of reasonably foreseeable damage or abuse of such toys and articles, present an unreasonable risk of injury by puncture or laceration. The test methods specified in §§ 1500.51, 1500.52, and 1500.53 are designed to expose potential hazards that would result from such normal use of reasonably foreseeable damage or abuse.

(b) *Application*—(1) *General.* The sharp point test of paragraph (d) of this section shall be applied to a toy or other article intended for use by children not over 96 months of age if its design or construction could present an unreasonable risk of injury by puncture or laceration. The sharp point test shall be applied to the sample before and after subjecting the sample to the appropriate tests of §§ 1500.51, 1500.52, and 1500.53.

(2) *Testing of wires.* Wires with potentially sharp points shall be tested by rigidly fastening the wire in a vise at a location of 0.25 inch (6.4 millimeters) along the wire from the point being subjected to the sharp point test.

(c) *Accessibility.* Any point that can be contacted by a child in normal use or after reasonably foreseeable damage or abuse of the toy shall be subject to the sharp point test of paragraph (d) of this section. Points that can be contacted through an opening large enough to pass a 1.00-inch (25.4-millimeter) diameter cylinder shall be considered accessible to a child and shall be subjected to the sharp point test. Points accessible through an opening having smaller dimensions shall be tested for accessibility by use of the probe shown in figure 1 of this section. The probe shall be used by inserting the tapered end into the opening. The knuckle joints of the probe can be rotated up to 90 degrees from the center line and are designed to simulate knuckle movement. Any point that can be contacted by the portion of the probe forward of the collar shall be subject to the sharp point test.

(d) *Sharp point test*—(1) *Principle of operation.* The sharp point tester shown in figure 2 of this section, or any device utilizing the same reference dimensions and yielding precisely equivalent results, shall determine a sharp point. The principle of operation is as follows: A rectangular opening measuring 0.040 ± 0.001 inch (1.02 ± 0.02 millimeters) wide by 0.070 ± 0.001 inch (1.78 ± 0.02 millimeters) long in the end of the slotted cap establishes two reference dimensions. Depth of penetration of the test point determines sharpness. If the test point penetrates the slotted cap a distance of 0.020 ± 0.001 inch (0.51 ± 0.02 millimeter) or more and maintains its original shape while under a force of at least 0.5 pound (2.2 newtons), the point shall be classified as sharp.

(2) *Procedure.* (i) The toy to be tested shall be held in a manner so that the point does not move during the test. In most cases, it will not be necessary to support the point directly; however, if this is done, support shall not be given closer than 0.25 inch (6.4 millimeters) from the point.

(ii) Part of the toy may need to be removed to allow the sharp point testing device to test a point that is reached by the probe. Such dismantling of the toy could affect the rigidity of the point in question. The sharp point test shall be done with the point supported so that its stiffness approximates the point stiffness in the assembled toy, except as provided by paragraph (b)(2) of this section.

(iii) The components for adjusting and operating the sharp point tester are shown in figure 2 of this section. Hold the sharp point tester and loosen the lockring by rotating it so that it moves toward the indicator lamp assembly a sufficient distance to expose the calibration reference mark on the barrel. Rotate the gaging cap clockwise until the indicator lamp lights. Rotate the cap counterclockwise until an equivalent of five divisions (the distance between the short lines on the cap) have passed the calibration reference mark. Lock the gaging cap in this position by rotating the lockring until it fits firmly against the cap. Insert the point, in a direction judged to be most rigid for the point, into the cap slot and use a force sufficient to depress the spring as far as possible without shaving the point on the edges of the slot or extruding the point through the slot. A red glowing light indicates that the point is sharp.

(e) For purposes of compliance with the test method prescribed by this section, the English figures shall be used.

The metric approximations are provided in parentheses for convenience and information only.

Interested persons are invited to submit, on or before March 10, 1975, written comments regarding this proposal. Comments and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, 10th floor, 1750 K Street NW., Washington, D.C., during working hours Monday through Friday.

Dated: December 30, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

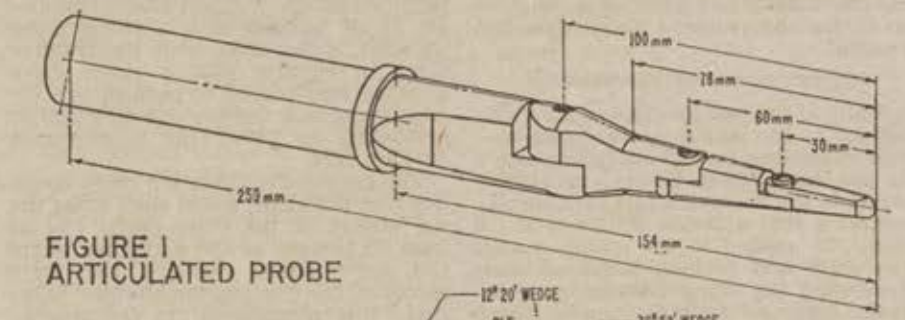
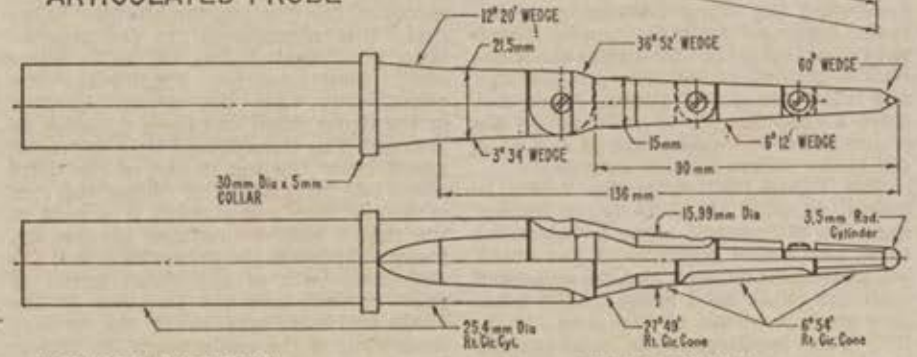
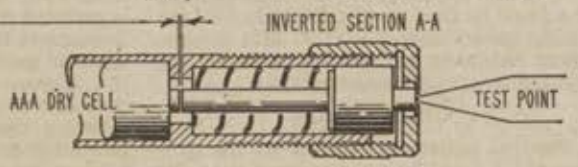


FIGURE 1
ARTICULATED PROBE



CAP IS CLOSED UPON INSERTION OF SUFFICIENTLY SHARP POINT TO PASS THRU GAGING SLOT & DEPRESS SENSING HEAD .005.
ELECTRICAL CIRCUIT IS THEREBY COMPLETED & INDICATOR TEST LAMP LIGHTS—SHARP POINT FAILS TEST.



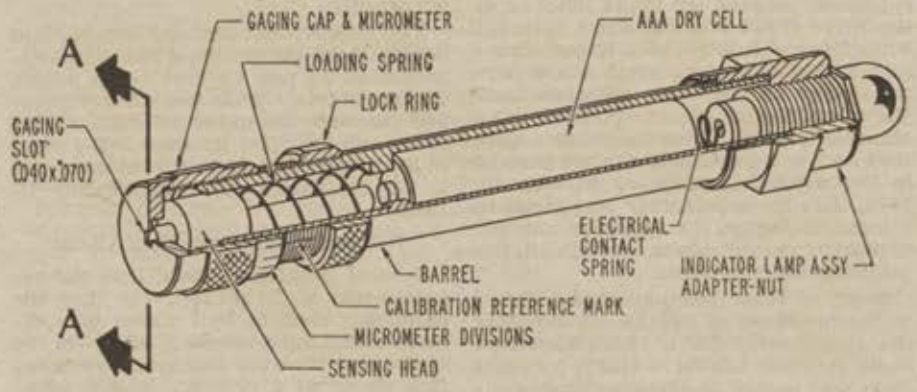


FIGURE 2—SHARP POINT TESTER

[FR Doc. 75-226 Filed 1-6-75;8:45 am]

[16 CFR Parts 1500, 1512]

BICYCLE BANNING AND SAFETY REGULATIONS

Proposed Amendments and Effective Date

The purpose of this document is to propose an effective date for the bicycle banning and safety regulations (16 CFR 1500.18(a)(12) and 16 CFR Part 1512) and to propose amendments concerning the crank differential of bicycles equipped with footbrakes, the handlebar stem-to-fork clamp test, chain guards, and instructions and labeling. The proposed effective date is May 7, 1975. All interested parties are invited to submit written comments on the proposed effective date and the proposed amendments in accordance with the last paragraph of this document.

BACKGROUND

The bicycle banning and safety regulations were proposed by the Commissioner of Food and Drugs in the FEDERAL REGISTER of May 10, 1973 (38 FR 12300), under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and a delegation of authority from the Secretary of Health, Education, and Welfare (21 CFR 2.120).

On May 14, 1973, the authority to issue regulations under the Federal Hazardous Substances Act was transferred to the Consumer Product Safety Commission by section 30(a) of the Consumer Product Safety Act (86 Stat. 1231; 15 U.S.C. 2079(a)).

In the FEDERAL REGISTER of July 16, 1974 (39 FR 26100), the Commission promulgated 16 CFR Part 1512, a regulation prescribing safety requirements for bicycles, and 16 CFR 1500.18(a)(12), a regulation classifying any bicycle introduced into interstate commerce after January 1, 1975, that does not meet the requirements of 16 CFR Part 1512 as a banned toy or article intended for use by children.

Introduction or receipt in interstate commerce of any banned toy or article intended for use by children is prohibited by section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) and is made punishable by fine or imprisonment or both by section 5 of the act (15 U.S.C. 1264). Additionally, section 6 of the act (15 U.S.C. 1265) authorized seizure of any such toy or article introduced into interstate commerce, and section 15 of the act (15 U.S.C. 1274) and a regulation promulgated thereunder (16 CFR 1500.202) require repurchase of any banned toy or other article intended for use by children that is introduced into interestate commerce.

REACTION TO PROMULGATION

After promulgation of the bicycle regulations on July 16, 1974, the Commission received more than 50 written communications thereon. Several of these objected to various provisions of the regulations and requested a public hearing under 16 CFR 1500.201. After consideration of these communications, the Commission concluded that 16 CFR 1500.201 was not applicable to the bicycle regulations and that it would treat these communications as petitions to amend the regulations. Although the Commission determined that a public hearing in accordance with 16 CFR 1500.201 was not required, it directed its staff to conduct a public meeting with all interested parties to receive information relevant to the petitions for amendment of the regulations.

After notice of the meeting was published in the FEDERAL REGISTER on September 3, 1974 (39 FR 31943), member of the Commission staff met with interested parties on September 9 and 10, 1974. Copies of all petitions concerning the bicycle regulations received after July 16, 1974 and a transcript of the presentations made at the public meeting are

available for inspection in the Office of the Secretary, 10th floor, 1750 K Street, NW., Washington, D.C.

EFFECTIVE DATE

Several petitioners state that the regulations' effective date (January 1, 1975) will not allow adequate time for redesign, retooling, testing, production, and shipment of complying components and bicycles, and request extension of the effective date to July 1, 1975. After considering the matters stated in the petitions and at the public meeting, the Commission concludes that the effective date of January 1, 1975, would impose an unreasonable burden on domestic and foreign manufacturers. In a document published in the FEDERAL REGISTER of December 16, 1974 (39 FR 43536), the Commission has suspended the effective date of the bicycle banning and safety regulations until further notice.

In the interest of protecting the public from unreasonable risks of injury associated with bicycles, the Commission desires to make the regulations effective on the earliest date practicable.

Accordingly, the Commission (1) proposes by May 7, 1975 a document in the FEDERAL REGISTER acting on this proposal as the effective date for the regulations; and (2) proposes to amend 16 CFR 1500.18(a)(12) to make the provisions of 16 CFR Part 1512 applicable to bicycles introduced into interstate commerce on or after the new effective date.

BICYCLE IDENTIFICATION

To facilitate enforcement of the bicycle safety regulations, the Commission proposes to amend 16 CFR 1512.19 by adding paragraph (e) to require that bicycles subject to the regulations bear a permanent marking on the bike frame from which it shall be possible for the manufacturer to specify the month and year of manufacture or for a private labeler to identify the manufacturer and the month and year of manufacture. The date of manufacture is defined in the proposal as the completion by the manufacturer of those construction and assembly operations that are performed by the manufacturer before the bicycle is shipped for sale to distributors, retailers, or consumers.

The Commission anticipates that in the future the regulations may be amended by rulemaking to change existing requirements or to add new ones. Bicycles introduced into interstate commerce after the effective date of any such future amendment would be subject to the requirements imposed by that amendment. The purpose of proposed § 1512.19(e), which requires a means of identifying the month and year of manufacture, is so that the Commission, manufacturers, and private labelers can ascertain quickly the requirements which were in effect at the time any given bicycle was manufactured.

COMPLIANCE LABELING

In the FEDERAL REGISTER of July 16, 1974 (30 FR 26113), the Commission proposed to amend 16 CFR 1512.19 by adding paragraph (d) to require nonpermanent labeling of bicycles subject to the provisions of 16 CFR Part 1512 to indicate compliance with all applicable Commission regulations. While the Commission has not yet taken final action on proposed § 1512.19(d), the Commission contemplates that the requirements of proposed § 1512.19(e) below would be in addition to, rather than in lieu of, any requirements of proposed § 1512.19(d) that may be adopted. Persons wishing to supplement comments previously submitted concerning proposed paragraph (d), or submit new comments, may do so during the comment period specified herein.

FOOTBRAKE CRANK DIFFERENTIAL

Many of the petitions and oral presentations at the public meeting also contain objections to various requirements of the regulations. Several petitioners object to the provisions in § 1512.5(c)(3) requiring that a torque of 13.6 N-m (10 ft-lb) be applied to the crank in both the drive and braking positions when measuring the crank differential of bicycles equipped with footbrakes. These petitioners state that no torque was specified in the original proposed regulations and that interested parties were not given an opportunity to comment on the requirement for application of 13.6 N-m (10 ft-lb) torque in each position.

The Commission proposes below to amend 16 CFR 1512.5(c)(3) to require that the differential angle between the drive and brake positions of the crank not exceed 60 degrees and be measured with the crank held against each position under a torque of 13.6 N-m (10 ft-lb). This requirement is substantially the same as that of 16 CFR 1512.5(c)(3) promulgated July 16, 1974, and is proposed below to provide opportunity for comment by interested parties.

CHAIN GUARDS

Several petitioners object to the provisions of § 1512.9(a) requiring that the chain guard be capable of preventing a rod of a specified size from becoming entrapped between the upper junction of the drive chain and the drive sprocket when the rod is introduced in any direction within 45 degrees from a line perpendicular to the drive sprocket from the side of the bicycle on which the drive chain is located. These petitioners state that such a requirement was not present in the regulation proposed on May 10, 1973, that no opportunity was given to interested parties to comment on the requirements for chain guards in the promulgated regulation.

Some of these petitioners also object to the provision in § 1512.9(a) imposing the requirement for a chain guard on those bicycles having a single sprocket ratio that cannot be freewheeled in a direction opposite to the drive direction. These petitioners state that almost all bicycles that have a single drive sprocket (including those not equipped with coaster brakes that can be pedaled in a direction opposite to the drive direction) do not have any mechanism that will relieve tension on the drive chain to prevent injury should a part of the rider's body or clothing become entrapped between the drive chain and the drive sprocket. These petitioners allege that said provision of § 1512.9(a) would permit a large number of three-speed and five-speed bicycles not equipped with coaster brakes to be manufactured without chain guards and would therefore increase, rather than reduce, unreasonable risks of injury associated with bicycles.

The Commission proposes below to amend section 1512.9(a) to require bicycles with a single drive sprocket to have a chain guard. This would make the requirement for a chain guard applicable to all bicycles with a single drive sprocket, rather than limit the requirement to bicycles with a single drive sprocket that cannot be pedaled in a direction opposite to the drive direction as prescribed by § 1512.9(a) promulgated July 16, 1974.

The proposed amendment below specifies that the chain guard shall cover the top strand of the drive chain and at least 50 percent of the perimeter where the drive chain contacts the drive sprocket. The Commission intended to include this requirement in the regulations promulgated July 16, 1974; however, inadvertently, § 1512.9(a) required only that the upper junction of the drive chain and drive sprocket be guarded. The requirement that the chain guard cover the top strand of the drive chain has been added to reduce the risk of injury that could result if a part of the rider's body or clothing became entrapped between the drive chain and the rear-most part of the chain guard or were carried into the junction of the chain and drive sprocket by the forward movement of the chain when the bicycle is pedaled in the drive direction. The requirement that the chain guard cover at least 50 percent of the perimeter where the drive chain contacts the drive sprocket has been added to prevent clothing from becoming entrapped between the drive chain and the front-most part of the chain guard when the pedals are turned in a direction opposite to the drive direction, and thus prevent injury to the rider.

The requirement that the chain guard be capable of preventing a rod with a diameter of 9.4 mm (⅜ in.) and a length 76 mm (3.0 in.) from becoming entrapped between the upper junction of the chain and the drive sprocket is the same in the proposed amendment below as that in the regulation promulgated July 16, 1974.

HANDLEBAR STEM-TO-FORK CLAMP

Several petitioners state that the requirements of § 1512.18(h)(1) that the handlebar stem-to-fork clamp of a bicycle withstand a torque of 67.5 N-m (50 ft-lb) and that the handlebar stem-to-fork clamp of a sidewalk bicycle withstand a torque of 47.2 N-m (35 ft-lb) are substantially changed from the requirements of the original proposed regulation, which required that the handlebar stem-to-fork clamp of a bicycle withstand a torque of 47.2 N-m (35 ft-lb) and the handlebar stem-to-fork clamp of a sidewalk bicycle withstand a torque of 20.4 N-m (15 ft-lb). These comments object to the absence of any opportunity to comment on the increased torque values specified in the promul-

gated regulation. Many of these petitioners also express the opinion that the torque values specified in the regulations promulgated July 16, 1974, are excessive and impracticable.

Following publication of the proposed regulations on May 10, 1973, the Commission received reports of accidents that resulted after bicycle handlebar stem-to-fork assemblies had been damaged by overtightening of the stem bolts. In an effort to provide a margin of safety against such accidents, the Commission increased the torque values to the levels specified in the regulations promulgated July 16, 1974.

After considering the objections to the increased torque values in the petition and oral presentations at the public meeting, the Commission has concluded that a more direct approach to reducing the risk of injury to the bicycle rider presented by a damaged stem-to-fork assembly caused by overtightening the stem-bolt would be to require an explicit warning in the instruction manual about the danger of damaging the stem-to-fork assembly and the risk of injury to the rider which can result from overtightening the stem-bolt, and a simple, clear and precise statement of the procedures to be followed to avoid damaging the stem-to-fork assembly when tightening the stem-bolt.

Accordingly, the Commission proposes to amend § 1512.18(h)(1) to provide that such a warning and directions must be included in the instruction manual.

The Commission further proposes to amend § 1512.18(h)(1) to require that the stem-to-fork clamp must be able to prevent movement when a torque of 47.2 N-m (35 ft-lb) is applied about the stem axis of a bicycle or when a torque of 20.4 N-m (15 ft-lb) is applied about the stem axis of a sidewalk bicycle. These are the torque values specified in the regulation proposed on May 10, 1973. Additionally, proposed § 1512.18(h)(1) requires that after application of the specified torque, the handlebar stem-to-fork assembly shall be disassembled and its component parts shall be inspected for structural damage including cracking, splitting, excessive galling, gouging, scoring, bulging of the stem and fork structures, stripping of threads, and bearing damage. No visible signs of damage to the stem-to-fork assembly or any of its component parts may be present.

PROPOSAL

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended 80 Stat. 1304–05, 83 Stat. 187–89; 15 U.S.C. 1261, 1262) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to revise 16 CFR 1500.18(a)(12) and 16 CFR 1512.6(e), 1512.9(a), and 1512.18(h)(1) and proposes to add 16 CFR 1512.19(e) as follows (although unchanged, the introductory test of 16 CFR 1500.18(a) is included below for context and 16 CFR 1512.5(c)(3) is included for comments):

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(12) Any bicycle as defined in § 1512.2(a) of this chapter (except a bicycle that is a "track bicycle" or a "one-of-a-kind bicycle" as defined in § 1512.2(d) and (e) of this chapter) that is introduced into interstate commerce on or after (May 1, 1975, or 120 days after publication of a document in the FEDERAL REGISTER acting on this proposal, whichever is later) and that does not comply with the requirements of Part 1512 of this chapter.

* * * * *

§ 1512.5 Requirements for braking system.

* * * * *

(c) *Footbrakes.* * * *

(3) *Crank differential.* The differential between the drive and brake positions of the crank shall be not more than 60° with the crank held against each position under a torque of no less than 13.6 N-m (10 ft-lb).

* * * * *

§ 1512.6 Requirements for steering system.

* * * * *

(e) *Handlebar and clamps.* The handlebar and clamps shall be tested in accordance with the handlebar test, § 1512.18(h). Directions for assembly of the bicycle required in the instruction manual by § 1512.19(a)(2) shall include an explicit warning about the danger of damaging the stem-to-fork assembly and the risk of injury to the rider which can result from overtightening the stem-bolt. The directions for assembly shall also contain a simple, clear and precise statement of the procedure to be followed to avoid damaging the stem-to-fork assembly when tightening the stem-bolt.

§ 1512.9 Requirements for protective guards.

* * * * *

(a) *Chain guard.* Bicycles having a single front sprocket shall have a chain guard that shall cover the top strand of the chain and at least 50 percent of the perimeter where the drive chain contacts the drive sprocket. Such chain guard shall prevent a rod of 9.4 mm (3/8 in.) diameter and 76 mm (3.0 in.) length from entrapment between the upper junction of the chain and the sprocket when introduced from the chain side of the bicycle in any direction within 45° from a line normal to the sprocket.

* * * * *

§ 1512.18 Test and test procedures.

* * * * *

(h) *Handlebar test.* (Ref. § 1512.6(e))

(1) *Stem-to-fork clamp test*—(i) *Procedure.* The handlebar and handlebar stem shall be assembled in accordance with the manufacturer's instructions. The handlebar-fork assembly shall be subjected to a torque applied about the axis of the stem, and shall then be disassembled and examined for signs of structural damage including cracking, splitting, excessive galling, gouging, scoring, bulging of the stem and fork structures, stripping of threads, and bearing damage.

(ii) *Criteria.* There shall be no visible movement between the stem and fork when a torque of 47.2 -0^{+2} N-m (35 -0^{+2} ft-lb) for bicycles and 20.4 -0^{+2} N-m (15 -0^{+2} ft-lb) for sidewalk bicycles is applied to the handlebar about the stem-to-fork axis. There shall be no visible signs of damage to the stem fork assembly or any component part thereof.

* * * * *

§ 1512.19 Instructions and labeling.

* * * * *

(e) Every bicycle subject to the requirements of this Part 1512 shall bear a permanent marking on the bike frame identifying the name of the manufacturer or private labeler. Each frame shall also bear some form of permanent marking from which it shall be possible for the manufacturer to identify the month and year of manufacture or for a private labeler to identify the manufacturer and month and year of manufacture.

For purposes of this paragraph the term "manufacture" means the completion by the manufacturer of a bicycle of those construction assembly operations that are performed by the manufacturer before the bicycle is shipped from the manufacturer's place of production for sale to distributors, retailers, or consumers.

* * * * *

Interested persons are invited to submit, on or before February 6, 1975, written comments regarding this proposal. Comments and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, 10th floor, 1750 K Street, NW., Washington, D.C., during working hours Monday through Friday.

Dated: December 31, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-225 Filed 1-6-75;8:45 am]

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