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federal register

Book 1 of 2 Books
Tuesday, July 14, 1981

Highlights

36148 **Mediterranean Fruit Fly** USDA/APHIS adds portions of Alameda and Santa Clara Counties, and all of San Mateo County, Calif. to list of regulated areas.

36277 **Iran** State issues notice on claims of U.S. nationals against Iran.

36105 **Loan and Grant Programs** USDA/FmHA permits borrowers to establish supervised accounts with savings and loan associations and credit unions.

36198 **Retirement Plans** Treasury/IRS proposes regulations on individual retirement plans and simplified employee pensions.

36212 **Wildlife Refuge—Oil and Gas Exploration** Interior/GS requests comments on activities within the coastal plain of the Arctic National Wildlife Refuge.

36138 **Probation and Parole** Justice/PARCOM revises Paroling Policy Guidelines.

36346 **Defense Procurement** DOD amends Defense Acquisition Regulations. (Part V of this issue) (3 Documents)

36113 **Livestock** USDA/FSIS establishes interim cattle post-mortem inspection staffing standards.

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

36280 **Foreign Trade** Trade Representative gives notice of effective date of certain staged tariff rate reductions.

36213 **Government Contracts** Labor/FCCPO requests comments on affirmative action requirements for government and federally assisted contractors.

36338 **Education** ED issues Law School Clinical Experience Program provisions. (Part III of this issue)

36342 **Grant Programs—Education** ED simplifies existing rules for State Student Incentive Grant Program. (Part IV of this issue)

36120 **Securities** SEC amends requirements for Management Investment Company Registration Statements and reports to shareholders.

36127 SEC issues interpretative release on "last-in, first out" inventory pricing method.

36135 **Indians** Interior/BIA issues regulations on payment of "Sioux benefits."

36258 **Indians—Energy** HHS/SSA announces intent to reallocate 1981 funds for Indian tribes under the Low Income Energy Assistance Program.

36219 **Cotton** USDA/ASCS announces revision of national program acreage, allocation factor, and payment rate for 1980 crop upland cotton.

36137 **Prisoners** Justice/PARCOM removes mandatory provision to eliminate duplicative hearings.

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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.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822, 1823, and 1902

Loan and Grant Disbursement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations to permit borrowers to establish supervised accounts with savings and loan associations, and credit unions. The current regulation provides that supervised accounts be maintained only with banks. This action is needed in order to comply with Treasury Circular 176 to permit deposits of government funds in savings and loan associations, and credit unions. The intended effect of this action is to give borrowers greater opportunity in choosing a financial institution to deposit and disburse loan fund proceeds. The supervised accounts will be used only in rare instances because FmHA field offices can request loan checks on an as needed basis. The regulation also recognizes the increase from $40,000 to $100,000 in Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration coverage on deposits. Minor editorial changes are also being made.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip A. Carter, Financial Support Division, Room 4118, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Phone: (202) 447–4871.

The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Carl O. Opstad, Chief, Directives Management Branch, Room 6346, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Phone: (202) 447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 and has been classified "not significant." It has also been reviewed under Executive Order 12291 and determined not to be a "major rule." FmHA revised Subpart A of Part 1902, Chapter XVIII, Title 7, Code of Federal Regulations. This instruction does not directly affect any programs or projects which are subject to A–95 Clearing House review.

The Catalog of Federal Domestic Assistance numbers and titles are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Grazing Association Loans
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10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
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10.415 Rural Rental Loans
10.416 Soil and Water Loans (SW Loans)
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10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
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10.429 Above Moderate Income Housing Loans (Guaranteed Rural Housing Loans)
10.430 Energy Impacted Area Development Assistance Program
10.431 Technical and Supervisory Assistance Grants
10.432 Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environment Policy Act of 1949, Pub. L. 91–190 an Environmental Impact Statement is not required.

The proposed regulation was published in the **Federal Register** on November 19, 1980 for public comment. Three comments were received and two changes were made as a result of these comments. Under Section 1902.3(d), a sentence was added to provide that funds deposited in a supervised bank account are to be recorded and accounted for on FmHA Form 402–2, "Statement of Deposits and Withdrawals." Also, item 7 of Exhibit A, collateral pledge memorandum, was changed from "Estimated closing date" to "Date supervised bank account to be opened." This change was made because loans to public bodies may involve the use of interim credit and the loan may not be closed until several months after the supervised bank account is opened. It was also recommended that the $100,000 amount be deleted and reference be made only to pledging collateral for funds on deposit in excess of the funds protected by the FDIC, FSLIC, and NCUA. It was felt that by doing this the forms and regulations would not have to be revised each time there was a change in the insurance coverage amount. The Agency decided not to make this change because the dollar amount for the insurance coverage would not change that often and it would be better for the field offices to actually know what the insurance coverage was at any given time. Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

Subchapter B—Loans and Grants Primarily for Real Estate Purposes

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.267 [Amended]

1. In § 1822.267(h)(i), line 10, change "$20,000" to "$100,000."

2. In § 1822.267(h)(i), line 14, change "in a bank which a member of the Federal Deposit Insurance Corporation" to "in accordance with Part 1902, Subpart A of this Chapter."

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart F—Loan to Timber Development Organizations

§ 1823.172 [Amended]

3. In § 1823.172(b), line 6, remove "in a bank in which deposits are covered by Federal Deposit Insurance."

4. In § 1823.172(b), line 16, change "$20,000" to "$100,000."

5. In § 1823.172(b), line 17, change "bank" to "financial institution."

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measure

§ 1823.263 [Amended]

6. In § 1823.263(b), line 5, change "$20,000" to "$100,000."

Subpart I—Processing Loans to Association (Except for Domestic Water and Waste Disposal

§ 1823.272 [Amended]

7. In § 1823.272(l)(1), line 8, remove "in a bank in which deposits are covered by Federal Deposit Insurance."

8. In § 1823.272(l)(1), line 17, change "$20,000" to "$100,000" and change "bank" to "financial institution."

9. In § 1823.272(1)(7)(i), line 2, change "bank (but not in a savings and loan association)" to "financial institution."

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.408 [Amended]

10. In § 1823.408(e)(1), line 5, change "$20,000" to "$100,000."

11. In § 1823.408(e)(1), line 6, change "depository bank" to "financial institution."

Exhibit B [Amended]

12. In Exhibit B, Section 5, line 6, change "in a bank which is a member of the Federal Deposit Insurance Corporation" to "in accordance with Part 1902, Subpart A of this Chapter."

13. In Exhibit B, Section 5(A), line 7, change "$20,000" to "$100,000" and change "depository bank" to "financial institution."

Subchapter H—Program Regulations

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

14. Subpart A of Part 1902 is revised as follows:

Chapter XVIII—Farmers Home Administration, Department of Agriculture

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

Sec.

1902.1 General.
1902.2 Policies concerning disbursement of funds.
1902.3 Procedures to follow in fund disbursement.
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Subpart A—Loan and Grant Disbursement

§ 1902.1 General.

This Subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for disbursement of funds under the Loan Disbursement System (LDS) and in establishing and using supervised bank accounts. The LDS system provides for disbursement of funds on an as needed basis to substantially reduce interest costs to FmHA borrowers, U.S. Treasury, and FmHA.

(a) Form FmHA 1940–1, "Request for Obligation of Funds," provides for: (1) obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use this form are contained in the Forms Manual Insert (FMI) for this form.

(b) Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," provides for: (1) the initial loan amount check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office. The instructions on when and how to use this form are contained in the FMI for this form.

(c) See FmHA Instruction 102.1 (available in any FmHA office) for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this Subpart include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA.

(e) Banks referred to in this Subpart are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Savings and Loans referred to in this Subpart are those in which deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

(g) Credit Unions referred to in this Subpart are those in which deposits are insured by the National Credit Union Administration (NCUA).

(h) Financial Institutions as referred to in this Subpart include banks, savings and loans, and credit unions which are covered by the proper insurance coverage cited in paragraphs (e), (f) and (g) of this Section.

(i) Supervised bank accounts referred to in this Subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either (A) the borrower, the United States of America acting through the FmHA, and the bank on Form FmHA 402–1, "Deposit

Agreement," or the savings and loan and credit union on "Deposit Agreement (Exhibit C)", or (B) the borrower, FmHA, other lenders, and the bank on Form FmHA 402–5, "Deposit Agreement (Non-FmHA Funds)", or the savings and loan and credit union on "Deposit Agreement (Non-FmHA Funds)" (Exhibit D).

(j) Form FmHA 402–1 or Exhibit C provides for the deposit of funds in a supervised bank account as security for payment of the borrower's indebtedness to secure the performance of the borrower's obligation to FmHA in connection with a loan and grant.

(k) Form FmHA 402–5 or Exhibit D will be completed when deposits of funds advanced by other lenders as security for payments of the indebtedness to them and to assure the performance of the borrower's obligation to them in connection with a loan and grant are made in a separate supervised bank account.

(l) "Interest-Bearing Deposit Agreement" (Exhibit B), provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 402–1 or Form FmHA 402–5.

§ 1902.2 Policies concerning disbursement of funds.

(a) The partial advance feature of the LDS will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in rare instances, e.g.:*

(1) When a construction loan is made and the construction is substantially completed, but a small amount is being withheld pending completion of landscaping or some similar item, or a small loan closing. In this case, the amount of funds not disbursed when the predetermined amortization effective date occurs may be placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc. as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those District and County Offices authorized to request checks by telephone may request more than one check at a time. If more than one check is required, a Form FmHA 440–57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the Loan Approval Official.

(4) Supervised bank accounts will be used only when necessary to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA and other lenders when the accounts are no longer required.

(5) Income from the sale of security property of Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 or Exhibit C when the District Director or County Supervisor determines it is necessary to do so to assure that the funds will be available for replacement of the property.

(6) When a borrower has a clearly demonstrated inability to handle financial affairs, all or part of the income or other funds may be deposited in the supervised bank account under the appropriate Deposit Agreement if the District Director or County Supervisor determines that such an arrangement is necessary to provide guidance in major financial management practices essential to the borrower's success, subject to the following requirements:

(i) This supervisory technique will be used for a temporary period to help the borrower learn to properly manage financial affairs. Such a period will not exceed one year unless extended by the District Director; and

(ii) The borrower is agreeable to such an arrangement.

(7) In exceptional cases when the unincorporated EO cooperative or grazing association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in § 1902.6 (and § 1902.2(f) of this Subpart if another lender is involved).

(b) For all construction loans, and those loans to be advanced in increments, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940–1 or through Form FmHA 440–57. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 to the Finance Office.

(c) Program instructions provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from the loan closing date or date of check whichever is later. For association and organization type loans interest will accrue from the date the check is delivered to the borrower.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the FMI for Form FmHA 1940–1, the Finance Office will forward the remaining balance to the District Director or County Supervisor for appropriate action, unless the District Director or County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will return the check(s) with Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," in accordance with FmHA Instruction 102.1 (available in any FmHA Office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402–5 or Exhibit D, provided:

(1) The District Director or County Supervisor determines such action is necessary to protect FmHA's interest and to assure that the funds will be used for the purposes planned,

(2) The other lender is unwilling to control the use of such funds, and

(3) The other lender is agreeable to the use of the FmHA supervised bank account.

(g) The debt instruments executed at the time of loan closing constitute an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the Finance Office by complying with the FMI for Forms FmHA 1940–1 and FmHA 440–57.

(b) Counties using the telephone to request subsequent advances will call the designated telephone number provided by the Finance Office and request all subsequent checks by providing the information required on Form FmHA 440–57.

(c) When check(s) are delivered to the District or County Office, the District Director or County Supervisor will make sure that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The District Director or County Supervisor should be sure that the check is properly endorsed to insure payment to the intended recipient. Examples of such restrictive endorsements are:

(1) "For Deposit Only to Account No. (Number of Construction Account) of (*Name of Borrower*) in (*Name of Bank*)."

(2) "Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of ————.

(d) When necessary and only under the circumstances listed in § 1902.2 the District Director or County Supervisor will establish, or cause to be established, a supervised bank account. Funds deposited in a supervised bank account are to be recorded and accounted for on Form FmHA 402.2, "Statement of Deposits and Withdrawals."

§ 1902.4–1902.5 [Reserved]

§ 1902.6 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the financial institution in which the supervised bank account will be established, provided the bank is a member of the FDIC, the savings and loan is a member of the FSLIC, and the credit union is a member of the NCUA.

(b) When accounts are established, it should be determined that:

(1) The financial institution is fully informed concerning the provisions of the applicable deposit agreement,

(2) Agreements are reach with respect to the services to be provided by the financial institution including the frequency and method of transmittal of checking account statements, and

(3) Agreement is reached with the financial institution regarding the place where the counter-signature will be on checks.

(c) When possible, District Directors or County Supervisors will make arrangements with financial institutions to waive service charges in connection with supervised bank accounts. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) If the amount of Community Facility, Water and Waste Disposal, Grazing Association, Irrigation and Drainage, Indian Land Acquisition, Watershed (WS), Organizational Rural Rental Housing (RRH), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan funds, and grant funds plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $100,000 the financial institution will be required to pledge collateral for the excess over $100,000 before the deposit is made (see § 1902.7). In addition, a pledge of collateral may be required for other types of loans or grants in amounts in excess of the State Director's approval authority when determined necessary by the National Office on an individual case basis.

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans where separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of the applicable Deposit Agreement and the Interest-Bearing Deposit Agreement (Exhibit B), when applicable, will be executed by the borrower, the financial institution, and a District or County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the financial institution and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement, when applicable, will be prepared and attached to the certificate, passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on the applicable Deposit Agreement has previously been executed and Form FmHA 402–6, "Termination of Interest in Supervised Bank Account," has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the financial institution.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000 for borrowers referred to in § 1902.6(d), deposited in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a financial institution for the supervised bank account, the District Director or County Supervisor will contact the financial institution to determine:

(1) That the financial institution selected is insured by the FDIC (banks), FSLIC (savings and loans), or NCUA (credit unions).

(2) Whether the financial institution is willing to pledge collateral with the Federal Reserve Bank under Treasury Circular No. 176 to the extent necessary to secure the amount of funds being deposited in excess of $100,000.

(3) If the financial institution is not a member of the Federal Reserve System it will be necessary for that financial institution to pledge the securities with a correspondent bank who is a member of the System. The correspondent bank should contact the Federal Reserve Bank informing them they are holding securities pledged for the supervised bank account under Treasury Circular 176.

(c) If the financial institution is agreeable to pledging collateral, the District Director or County Supervisor should complete a form letter (Exhibit A) in an original and two copies, the original for the National Office, the first copy for the State Office, and the second copy for the District or County Office. The form letter should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the Treasury Department to have the financial institution designated as a depository, unless already designated, and to have collateral pledged.

(e) If, two days before loan closing, the State Director has not received a copy of the Treasury Department's letter to the financial institution confirming that the pledge of collateral has been made, contact should be made with the depository bank to ascertain whether

they have pledged collateral with their local Federal Reserve Bank in compliance with the provisions of Treasury Circular 176. If the bank has accomplished the pledge then contact the National Office, Financial Support Division.

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the financial institution desires part, or all of its collateral released, it should write to the Treasury Department, Domestic Banking Staff, Bureau of Government Operations, Washington, D.C. 20226, (Attention: Collateral and Reports Branch) requesting the release and stating the balance in the supervised bank account.

§ 1902.8 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

District Directors or County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to a person listed in Exhibit B of FmHA Instruction 1951–B, under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in § 1902.16.

§ 1902.9 Deposits.

(a) *Deposit by FmHA personnel.*

(1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States is a joint payee, may not be deposited in a supervised bank account.

(2) FmHA personnel will accept funds for deposit in a borrower's supervised bank account only in the form of a check or money order endorsed by the borrower "For Deposit Only," or a check drawn to the order of the financial institution in which the funds are to be deposited, or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA will be endorsed by the District Director or County Supervisor as provided in section 1951.57(e) of this Chapter.

(ii) Ordinarily, when deposits are made from funds which are received as the result of consent or subordination agreements or assignments of income, the check should be drawn to the order of the financial institution in which the supervised bank account is established or jointly to the order of the borrower and the FmHA. All such checks should be delivered or mailed to the District or County Office.

(3) If direct or insured loan funds (other than OL or EM, loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing *after it has been determined that the loan can be closed.* However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the financial institution or banking hours, the funds will be deposited on the first banking day following the date of loan closing.

(4) Grant funds will be deposited when such funds are delivered.

(5) When funds from any source are deposited by FmHA personnel in a supervised bank account, a deposit slip will be prepared in an original and two copies and distribution as follows: Original to the financial institution, one copy to the borrower, and one copy for the borrower's case folder. The names of the borrower, the sources of funds, and "Subject to FmHA Countersignature," and if applicable, the account number will be entered on each deposit slip.

(6) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the financial institution. The borrower will be notified immediately of any deposit made and will be furnished a copy of the deposit slip. When a deposit of this nature is made, the following endorsement will be used:

> For deposit only in the supervised bank account of *(name of borrower)* in the *(name of financial institution and address when necessary for identification)* pursuant to Deposit Agreement dated ————.

(7) Accounts established through the use of Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by FmHA provided the financial institution has agreed that when a deposit in made to the account by other than FmHA personnel, the financial institution will promptly deliver or mail a copy of the deposit slip to the FmHA District or County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

> For deposit only in my supervised bank account in the *(name of financial institution and address when necessary for identification)* pursuant to Deposit Agreement dated ————.

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the District Director or County Supervisor and the borrower, whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1902.9 (a)(5).

§ 1902.10 Withdrawal

(a) The District Director or County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits, or checks which the District Director or County Supervisor knows to be good, or until the deposit checks have cleared.

(b) Withdrawals of funds deposited under the applicable deposit agreement are permitted only by order of the borrower and countersignature of authorized FmHA personnel, or upon written demand on the financial institution by the State Director.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA 402–1 or Form FmHA 402–5.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to "cash." The purpose of the expenditure will be clearly shown on Form FmHA 402–2 and indicated on the fact of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the

expenditure will be identified on the check, as "miscellaneous."

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and a determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from personal funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower, District Director of County Supervisor would be involved, or purchase would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the District Director or County Supervisor must make it clear to the borrower and to the payee, if possible, that the check will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: "Valid only upon countersignature of Farmers Home Administration."

(iii) The check must be presented by the payee or a representative to the District or County Office of the FmHA servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number, and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

(Title)

Farmers Home Administration

§ 1902.11 District and County Office records.

A record of funds deposited in a supervised bank account will be maintained on Form FmHA 402–2 in accordance with the FMI and Exhibit A of FmHA Instruction 2033–A, available in any FmHA office. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FmHA 402–2 so that they can be clearly identified.

§ 1902.12–1902.13 [Reserved]

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If requested by the financial institution a supply of addressed, franked envelopes will be provided for use in mailing checking account statements and cancelled checks for supervised bank accounts to the District or County Office. Checking account statements will be reconciled promptly with District or County Office records. The persons making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and canceled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

§ 1902.15 Closing accounts.

When FmHA loan or grant funds and those of any lender have all been properly expended or withdrawn, Form FmHA 402–6 may be used to give FmHA's consent (and of another lender, if involved) to close the supervised bank account in the following situations:

(a) When FmHA loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loan accounts, except loans listed in Section 1902.6(d), after completion of authorized loan fund expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For loan and grant accounts listed in Section 1902.6(d), when the funds have been expended in accordance with the requirements of Part 1942 Subpart A and Part 1823, Subpart I (FmHA Instructions 1942–A and 442.9) the supervised bank account will be closed within 90 days following completion of development unless an extension of time is authorized in writing by the District Director. If the borrower will not agree to close the account, the District Director or County Supervisor will request the State Director to make demand upon the financial institution in accordance with § 1902.16.

(d) Promptly upon death of a borrower, except when the loan is being continued with a joint debtor, when a borrower is in default and it is determined that no further assistance will be given, or when a borrower is no longer classified as "active."

(1) *Deceased borrowers.*

(i) Ordinarily, upon notice of the death of a borrower, the District Director or the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit and apply all the balance after payment of any bank charges to the borrower's FmHA indebtedness. When the State Director approves continuation with a survivor, the supervised bank account of deceased borrower may be continued with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the financial institution will agree to permit the addition of the surviving joint debtor's name to the existing signature card and the appropriate Deposit Agreement and continue to disburse checks out of the existing account upon FmHA's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The financial institution will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FmHA and the surviving joint debtor and deposit the money in a new supervised bank account with a surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FmHA official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA indebtedness, is authorized upon approval by the Office of the General Counsel (OGC) to refund any

unobligated balances of funds from other lenders to the FmHA borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA, the lender and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA.

(2) *Borrowers in default.* Whenever it is impossible or impractical to obtain a signed check from a borrower whose supervised bank account is to be closed, the District Director or County Supervisor will request the State Director to make demand upon the financial institution for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FmHA indebtedness, or

(ii) As refunds of any unobligated advance provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA grant funds to the FmHA Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Inactive borrowers.* An inactive borrower is one whose loan has not been paid in full, but is no longer classified as "active."

(4) *Paid up borrowers.* A paid-up borrower is one who has a balance remaining in the supervised bank account and has repaid the entire indebtedness to FmHA and has properly expended all funds advanced by other lenders. In such cases the District Director or County Supervisor will (i) notify the borrower in writing that the interests in the account of FmHA have been terminated, and (ii) inform the borrower of the balance remaining in the supervised bank account.

§ 1902.16 Request for withdrawals by State Director.

When the State Director is requested to make written demand upon the financial institution for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information.

(a) Name of borrower as it appears on the applicable Deposit Agreement.

(b) Name and location of financial institution.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant, or under a subordination agreement or other arrangement between the FmHA, the other lender, and the borrower.

(d) Amount to be withdrawn, excluding any service charges, for a refund of FmHA's.

(e) Other pertinent information including reasons for the withdrawal.

§§ 1902.17–1902.50 [Reserved]

Exhibit A—United States Department of Agriculture, Farmers Home Administration

Subject: Designated Financial Institution—Collateral Pledge

Date:

District Office or County Office Location: (as applicable)

Telephone No.: (indicate FTS or provide area code)

To: Administrator, FmHA; Attn: Financial Support Division, Washington, DC 20250.

1. Name of borrower or grantee (Please indicate if subsequent loan)
2. Type of loan or grant funds
3. Name and location of Financial Institution *(excluding street address)*———

———

Location of Branch,———

(If to be used for deposit of loan funds)

4. Proposed amount of FmHA: Loan $—— Grant $——
5. Amount of any other funds to be deposited in addition to amount in item 4 $——
6. Largest amount from all sources that will be on deposit at any one time $—— (Amount should include FDIC, FSLIC, or NCUA coverage of $100,000)
7. Date supervised bank account to be opened ————
8. Name of other account(s) for which the financial institution has pledged collateral ————. Also indicate balance of FmHA loan and/or grant funds on deposit for these accounts or any future deposits which will be above the FDIC, FSLIC or NCUA coverage.

(Signature) ———

Exhibit B—United States Department of Agriculture, Farmers Home Administration

Interest-Bearing Deposit Agreement

Whereas, Certain funds of ———— hereinafter referred to as the "Depositor," are now on deposit with the ————, hereinafter referred to as the "Bank," under a Deposit Agreement, dated ———, 19—, providing for supervision thereof by the United States of America, acting through the Farmers Home Administration, hereinafter referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interests in the funds covered thereby; and,

Whereas, certain of said funds are not now required for immediate disbursement and it is the desire of the Depositor to place the same in interest-bearing deposits with the Bank;

Now therefore, the Depositor and the Government hereby authorize and direct the Bank to place ——— Dollars ($———) of the funds subject to said Deposit Agreement in interest-bearing deposits as follows:

$——— for a period of —— months at ——— % interest

$——— for a period of —— months at ——— % interest

$——— for a period of —— months at ——— % interest

Said interest-bearing deposits and the income earned thereon at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion thereof, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this — day of ——.

(Depositor) ———

United States of America

By: ———

County Supervisor,

Farmers Home Administration,

U.S. Department of Agriculture

By: ———

Title: ———

Accepted on the foregoing terms and conditions this — day of ——, 19—

(Bank) ———

(Office or Branch) ———

By: ———

Title: ———

Exhibit C—United States Department of Agriculture, Farmers Home Administration

Deposit Agreement

Name(s) of Depositor(s)

Social Security or IRS Tax No.

Address (Including Zip Code) c/o Farmers Home Administration

Name and Address of Savings and Loan or Credit Union (Including Zip Code)

County of Residence

Date of Agreement Account Number (If used)

This agreement, made on the date indicated above, between the United States of America, acting through the Farmers Home Administration, herein called the "Government," the above-named Depositor(s), herein called the "Depositor" and the above named Savings and Loans or Credit Union herein called the "Depository"

Witnesseth:

In consideration of loans or other advance(s) of funds made or insured by the Government and the depositing in the Depository to the credit of the Depositor in the account established pursuant to this agreement, of moneys derived from such loans or other advance(s) of funds, of moneys

otherwise obtained by the Depositor, it is agreed as follows:

1. The Depositor hereby assigns, transfers, and pledges to the Government the aforesaid account and deposit(s), heretofore or hereafter made, and conveys to the Government a security interest in all money deposited in said account, as security for the repayment of any and all indebtedness now or hereafter owing by the Depositor to or insured by the Government, and for the performance of the obligations and agreements of the Depositor in connection with such advances(s) or indebtedness.

2. No part of such deposit(s), account or money shall be withdrawn by the Depositor and no withdrawal shall be permitted by the Depository except on the order of the Depositor and the counter signature of a duly authorized representative of the Government. Provided, however, that at any time upon written demand or order by the State Director of the Farmers Home Administration the Depository shall pay over the balance then on hand, or any part thereof demanded, for application on said indebtedness or as a return of grant funds to the Government or for protection of the Government's lien or security to accomplish the purpose for which such advances were made: Provided, further, that the death, disability, or insolvency of the Depositor shall not impair the power of the State Director to demand or order such withdrawal.

3. The Depository agrees that it will not assert any right of offset, except service charges, with respect to the funds deposited pursuant to this agreement by reason of any indebtedness or claim now or hereafter owing to or acquired by it.

4. The Depository shall be under no obligation with respect to the expenditure of funds after their withdrawal from the Depository in accordance with the provisions of this agreement. Upon making payment pursuant to an order or check duly executed by the Depositor and the countersigning officer, or pursuant to the written demand or order of the said State Director, the Depository shall be discharged from all obligations with respect to the funds so released.

5. The Depository agrees that, at the end of each ——— period, it will forward statements and cancelled checks to the Farmers Home Administration office at the address shown above for review by that Agency.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written.

Depository ———
By ———
United States of America
By (Title) ———
Depositor ———
Farmers Home Administration
Depositor ———
United States Department of Agriculture

Note to Depository: Please return signed original and copy of this form, along with copy of deposit slip to the above FmHA Office address.

Exhibit D

Deposit Agreement (Non-FmHA Funds)

Name(s) of Depositor(s)
Name and Address of Savings and Loan or Credit Union (Zip Code)
County of Residence
Address of Farmers Home Administration (Zip Code)
Date of Agreement Account Number (If Used)
Name and Address of Lender (Zip Code) (Leave Blank When Lender and S&L or Credit Union are Same

This agreement, made on the date indicated above, between the United States of America, acting through the Farmers Home Administration, herein called the "Depositor," and the above-named Savings and Loan or Credit Union herein called the "Depository" and the above-named lender or grantor, herein called the "Lender."

Witnesseth:

In consideration of loans or other advance(s) of funds made or insured by the Lender and by the Government and the depositing in the Depository, to the credit of the Depositor in the account established pursuant to this agreement, of moneys derived from the loans or other advance(s) of funds by the Lender, or moneys otherwise obtained by the Depositor, it is agreed as follows:

1. The Depositor hereby assigns, transfers, and pledges to the Government as trustee for the Lender the aforesaid account and deposit(s), heretofore, or hereafter made, and conveys to the Government as trustee for the Lender a security interest in all money deposited in said account, (a) as security for the repayment of any and all indebtedness now or hereafter owing by the Depositor to or insured by the Lender and (b) for the performance of obligations and ageements of the Depositor in connection with such advance(s)

2. No part of such deposit(s), account or money shall be withdrawn by the Depositor and no withdrawal shall be permitted by the Depository except on the order of the Depositor and counter-signature of a duly authorized representative of the Government: Provided, however, that at any time upon written demand or order by the State Director of the Farmers Home Administration the Depository shall pay over the balance then on hand, or any part thereof demanded, in accordance with the demand for use for the purposes for which the advance(s) were made or for return to the Lender for application on the indebtedness or as a return of grant funds: Provided, further, that the death, disability or insolvency of the Depositor shall not impair the power of the State Director to demand or order such withdrawal.

3. The Depository agrees that it will not assert any right of offset, except service charges, with respect to the funds deposited pursuant to this agreement by reason of any indebtedness of claim now or hereafter owing to or acquired by it.

4. The Depository and the Government shall be under no obligations with respect to the expenditure of funds after their withdrawal from the Depository in accordance with the provisions of this agreement. Upon making payment pursuant to an order or check duly executed by the Depositor and the countersigning officer, or pursuant to the written demand or order of the said State Director, the Depository shall be discharged from all obligations with respect to the funds so released.

5. The Depository further agrees that, at the end of each———period, it will forward statements and cancelled checks to the Farmers Home Administration office at the address shown above for review by that Agency.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written.

Depository ———
By ———
United States of America
By (Official title Farmers Home Administration) ———

Omit Lender's Signature When it is the Same as the Depository
Lender ———
By (Official Title) ———
Depositor ———
Depositor ———

PART 1942—ASSOCIATION

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

15. In § 1942.17(p)(3)(i), line 7, change "in a bank having Federal Deposit Insurance (F.D.I.C.) coverage" to"in accordance with Part 1902, Subpart A of this Chapter."

16. In § 1942.17(p)(3)(i), line 13, change "F.D.I.C." to "insurance."

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.169 [Amended]

17. In § 1944.169(g)(2), line 2, change "depositary bank" to "financial institution."

Exhibits C-E [Amended]

18. In Exhibit C, Section 4, line 8, change "$40,000" to "$100,000" and on line 9, change "depository bank" to "financial institution."

19. In Exhibit D, Section 3, line 8, change "$40,000" to "$100,000" and on line 9, change "depositary bank" to "financial institution."

20. In Exhibit E, Section 4, line 9, change "$40,000" to "$100,000" and change "depository bank" to "financial institution."

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

§ 1955.15 [Amended]

21. In § 1955.15(d)(4), line 3, change "bank" to "financial institution."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 429; deleg. of auth. by the Sec. of Agri., 7 CFR 2.23; deleg. of auth. by the Under Sec. for Small Community and Rural Development, 7 CFR 2.70.

Dated May 29, 1981.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 81-20507 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service [1]

9 CFR Parts 307 and 310

[Docket No. 81-023I]

Cattle Post-Mortem Inspection Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations on an interim basis and requesting comments on the rules prior to taking any final action in the matter. The interim rule establishes new cattle post-mortem inspection staffing standards based on adjustments to the present work measurement-based standard and sets forth certain related facility requirements for inspection. The new staffing standards will result in an increase in Agency productivity in cattle inspection with no loss of inspection effectiveness. The standards and requirements are being implemented on an interim basis without a prior proposal because of the immediate need of FSIS to achieve greater labor efficiency in order to meet its inspectional responsibilities within its mandated appropriations and personnel limitations. It is also being published for comment as a means to provide full public participation in the rulemaking process prior to promulgation of a final rule.

DATES: Interim rule effective July 14, 1981; comments must be received on or before September 14, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. John Prucha, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601) because it only slightly affects the current staffing standards at small entities where the slower line speeds are more prevalent. The existing facility requirements, although now to be specified in the regulations, have not been changed. Therefore, no significant economic impacts will ensue.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Regulations Coordination Division and should bear reference to the docket number located in the heading of this document. All comments submitted pursuant to this document will be made available for public inspection in the Regulations Coordination Division between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires, among other things, the Secretary of Agriculture, through appointed inspectors, to carry out a post-mortem examination of the carcasses and parts of certain domestic food animals, including cattle, when they are slaughtered in an official establishment which is subject to inspection under the Act. The post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera (internal organs), and other parts of the carcass of each animal slaughtered, for the purpose of detecting disease or other conditions which could render the carcass or any part of the carcass unfit for human food or otherwise adulterated. In performing the examination, the inspectors follow standardized inspection procedures and initiate appropriate actions consistent with their findings. The procedures are designed to provide assurance that only wholesome, unadulterated carcasses and parts are passed for human food.

Post-mortem inspection requires a large portion of the budget of the Agency's meat and poultry inspection program. Therefore, the Agency's ongoing responsibility for efficient utilization of its resources is especially important with respect to post-mortem inspection. A failure to use the most efficient post-mortem staffing standards could result in costs to the public which are significantly higher than necessary. For reasons explained below, FSIS has determined that efficiencies are achievable in the post-mortem inspection of cattle with no loss in consumer protection.

Cattle Post-Mortem Inspection

The staffing standards currently in use for cattle were developed in the 1960's and informally distributed in January 1968. They included standards for ranges of slaughter line speeds above the highest production rate, or line speed, in operation at the time. However, as new equipment technology was developed, approved, and adopted during the 1970's, some slaughter establishments were able to increase production rates well above the highest range covered by those standards. To accommodate these higher line speeds, decisions on increased staffing assignments were made on an individual plant basis. However, this has resulted in some non-uniformity in staffing patterns in these high speed plants. Therefore, the standards have been refined and mathematically extended to cover the higher slaughter rates. The rate changes are discussed below:

1. *The 1968 Standards.* These standards were work measurement-based. The amount of time needed to

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[1] Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1030-1, issued June 19, 1981, the Food Safety and Quality Service has become the Food Safety and Inspection Service. A notice detailing the Agency's reorganization is now being drafted for later publication.

perform the post-mortem inspection varied based on the different types of cattle and the particular slaughter method used by the plant. Mature cows and bulls require a little more time to inspect than young steers and heifers because of a greater likelihood of tissue abnormalities in these animals due to the longer period of time these animals have been exposed to other animals and the environment. Inspection also required more time in plants using a bed-type kill rather than a viscera table kill method. Under the older bed-type kill, the carcass is skinned on the floor, and hung in a stationary position for inspection. The viscera is placed in a truck or cart, and the head on a stationary rack, for inspection. Under the newer viscera table kill method, the carcass is hung from a moving rail during inspection, the viscera are inspected on a mechanized, moving conveyor or table, and the head is inspected on a mechanized, moving hook. Part of the difference in the time required to do essentially the same inspection tasks is a result of the different shifts in body position that the inspector must make. Also, bed-type kills require the inspector to walk from task to task, whereas viscera table kills do not.

2. *Revisions of the Standards.* The 1968 standards have been mathematically extended in this interim rule to cover faster slaughter lines. In addition, the rates have been altered, in accord with recent work measurement developments, generally, but not always, allowing the inspectors to inspect at a faster rate. More time has been allowed for body movement in the basic work standard, slowing the inspection rate. On the other hand, the workload requirements have been more efficiently distributed (line-balancing) among the three inspection work stations, which increases the inspection rate. The net effect of these changes has resulted in a larger number of staffing rates, some of which are faster and some slower than those distributed in 1968. In addition, the staffing rates have been adjusted to reflect the differences in inspection time attributable to plants separating the tongues from the heads prior to inspection.

Work Measurement of Other Species

The inspection of other species such as swine, sheep, and calves has also been work measured. New swine inspection procedures have been developed which appear to be more efficient. Therefore, the new swine slaughter staffing standards have been prepared in coordination with these new procedures. The new swine procedures and staffing standards will soon be published in a separate document. The 1968 standards for sheep and calves have been updated, but because they do not affect the manpower in place today, there is no need for an interim rule. FSIS will address new staffing standards for them separately in a proposal at a future date.

New Inspection Methods for Cattle, Swine, and Other Species

In addition to adjusting staffing standards to make them more efficient, FSIS is committed to developing better post-mortem inspection methods for all species to reduce inspection costs wherever this can be done without lessening consumer protection. As mentioned above, a new swine procedure has been developed and appraised which will be published in the near future. A new cattle inspection procedure, which is under examination now, appears very promising in terms of future productivity improvement. However, at this point, the cattle inspection procedure must remain the same until further evaluation is completed. New inspection procedures for other species are in the planning stage.

Publication of Facilities Requirements for Inspection

Establishments in which USDA inspectors work must provide certain facilities to the inspectors, such as work stations on the line, lighting, handwashng facilities, etc. While some of these facility requirements are detailed in the regulations, others are more generally referenced. The blueprint review and approval process, when establishments apply for inspection or apply to modify existing facilities, has resulted in uniform interpretation of these general requirements. Since certain of these general facility requirements with regard to slaughter inspection are so closely related to staffing standards, they are being detailed in this interim rule as a convenience to establishments or other interested persons, and to allow for public comment. The amendments, with respect to facility requirements, make no change in the requirements currently being applied in federally inspected establishments.

Need for Interim Rule

The Agency finds that it must take the unusual action of implementing these amendments on an interim basis effective immediately in view of its own manpower shortages. Because of the need to reduce Federal spending and the resulting government-wide restrictions on hiring, the Agency must act expeditiously to make the most efficient use of its existing manpower.

Therefore, the Administrator has determined that the following changes in the regulations must be adopted as an interim final rule. The interim rule will have the effect of reducing the staffing requirement for cattle inspection by approximately 40 positions nationwide. Since the meat and poultry inspection program is already experiencing personnel shortages in many areas, it is anticipated that implementation of the interim rule will have the effect of releasing some inspectors now required for cattle post-mortem inspection so that they may be utilized for other essential inspection activities, such as staffing positions with critical shortages and new inspection positions where industry production increases. In taking this action, the Administrator is mindful that, in the current volatile economic climate, establishments are going in and out of business and expanding and contracting. FSIS must be able to react to these needs. Due to appropriation and manpower restraints imposed on the Agency, FSIS cannot meet its inspectional responsibilities, even in the short term, without this immediate revision of the 1968 cattle post-mortem inspection staffing standards and related facility requirements.

Accordingly, §§ 307.2 and 310.1 of the Federal meat inspection regulations (9 CFR 307.2 and 310.1) are amended as follows:

1. The authority citation for Parts 307 and 310 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

2. Section 307.2 is amended by adding a new paragraph (m) to read as follows:

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) In addition to any facilities required to accomplish sanitary dressing procedures, the following inspection station facilities for cattle slaughter lines described in § 310.1(b) of this subchapter are required:

(1) An inspection station consisting of 5 feet of unobstructed line space for each head or carcass inspector and, for viscera table kills, 8 feet on the

inspector's side of the table for each viscera inspector.

(2) A minimum of 50 foot-candles of shadow-free lighting at the inspection surface of the head, viscera, and carcass.

(3) For each inspector, a handwash lavatory (other than one which is hand operated), furnished with soap, towels, and hot and cold water, and located adjacent to the inspector's work area. In addition, for each head and viscera inspector, a sterilizer located adjacent to the inspector's work area.

(4) For mechanized operations, a switch located adjacent to each inspection station, which can stop the chain or conveyor.

(5) Facilities to position tally sheets or other recording devices, such as digital counters, and facilities to contain condemned brands.

3. Section 310.1 of the Federal meat inspection regulations (9 CFR 310.1) is amended as follows:

The Table of Contents is amended by showing the revised § 310.1 heading, and § 310.1 is amended by changing the section heading, designating the present text as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b)(1) The staffing standards on the basis of the number of carcasses to be inspected per hour are outlined in the following tables. Standards for multiple inspector lines are based on inspectors rotating through the different types of inspection stations during each shift to equalize the workload. The inspector in charge shall be responsible for requiring the establishment to reduce slaughter line speeds where, in his judgment, the inspection procedure cannot be adequately performed within the available time because of particular deficiencies in carcass preparation and presentation by the plant at the higher speed, or because the health condition of the particular animals indicates a need for more extensive inspection.

(2) Cattle Inspection. For all cattle staffing standards, an "a" in the "Number of Inspectors by Stations" column means that one inspector performs the entire inspection procedure and a "b" means that one inspector performs the head and lower carcass inspection and a second inspector performs the viscera and upper carcass inspection.[2]

(i) Inspection Using the Viscera Truck.

Steers and heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-27	a	a	a
28-56	b	b	b
57-84	1	1	1
85-86	1	2	1
87-143	2	2	1

Cows and bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-27	a	a	a
28-55	b	b	b
56-77	1	1	1
78-81	1	2	1
82-134	2	2	1

(A) Rules for determining adjusted maximum per hour per line rates for single-inspector kills considering walking distances according to the table in this subdivision: Determine the distances the inspector actually walks between the points shown in columns 2 through 14 of the following table. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 14. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus total of the deduction figures. If the resultant number is not a whole number, it must be rounded off to the next *lowest* whole number.

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[2] The maximum "Head per Hour per Line" figures listed in paragraph (b)(2)(i) of this section for one (a) and two (b) inspector kills are overstated because the time required to walk from one inspection station to another is not included. To determine the proper adjusted maximum head per hour per line, paragraph (b)(2)(i)(A) of this section for one inspector kills or paragraph (b)(2)(i)(B) of this section for two inspector kills must be used along with their accompanying rules.

ONE INSPECTOR CATTLE KILL - VISCERA TRUCK

Table of Deductions from Maximum Rates of Kill for Each Two Feet Between Points (in Tenths of Cattle Per Hour)

1 Number of Feet Between Points	2 Head Rack and High Rail		3 Viscera and Low Rail		4 Low Rail and Head Rack		5 Head Rack and Carcass**		6 Carcass** and Wash-basin		7 Tags-Brands and Low Rail		8 Viscera and Wash-basin		9 Viscera and High Rail		10 Low Rail and High Rail		11 Head Rack and Closest Washbasin		12 Washbasin and High Rail*		13 Head Rack and Wash-basin*		14 Viscera and Tags - Brands	
	Strs. Hfrs.	Cows Bulls	Strs. Hfrs	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. frs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.1	0
5	0	0	0.1	0	0	0	0	0	0	0	0	0	0	0.1	0.1	0.1	0	0	0	0	0	0	0	0	0.2	0.1
7	0	0	0.1	0.1	0.1	0.1	0	0	0	0	0.1	0.1	0.1	0.2	0.2	0.2	0.1	0.1	0	0	0	0	0	0	0.3	0.3
9	0	0	0.2	0.1	0.1	0.1	0	0	0	0	0.1	0.1	0.1	0.3	0.3	0.3	0.1	0.1	0	0	0.1	0.1	0.1	0.1	0.4	0.4
11	0.1	0.1	0.2	0.2	0.2	0.2	0	0	0	0	0.1	0.2	0.2	0.4	0.4	0.4	0.2	0.2	0	0	0.1	0.1	0.1	0.1	0.5	0.6
13	0.1	0.1	0.3	0.2	0.2	0.2	0	0	0	0	0.2	0.2	0.2	0.5	0.5	0.5	0.2	0.2	0	0	0.1	0.1	0.1	0.1	0.6	0.7
15	0.1	0.1	0.4	0.3	0.3	0.3	0	0	0	0	0.2	0.3	0.3	0.5	0.6	0.6	0.3	0.3	0	0	0.2	0.2	0.2	0.2	0.7	0.9
17	0.1	0.1	0.4	0.3	0.3	0.3	0	0	0	0	0.3	0.3	0.3	0.6	0.7	0.7	0.3	0.3	0	0.1	0.2	0.2	0.2	0.2	0.9	1.0
19	0.1	0.1	0.5	0.4	0.4	0.4	0	0	0	0	0.3	0.4	0.4	0.7	0.8	0.8	0.4	0.4	0	0.1	0.2	0.2	0.2	0.2	1.0	1.1
21	0.2	0.2	0.5	0.4	0.4	0.4	0	0	0	0	0.3	0.4	0.4	0.8	0.9	0.8	0.4	0.4	0	0.1	0.3	0.2	0.3	0.2	1.1	1.3
23	0.2	0.2	0.6	0.5	0.5	0.5	0	0	0	0	0.4	0.5	0.5	0.9	1.0	0.9	0.5	0.5	0	0.1	0.3	0.3	0.3	0.3	1.2	1.4
25	0.2	0.2	0.7	0.5	0.5	0.5	0	0	0	0	0.4	0.5	0.5	1.0	1.1	1.0	0.5	0.5	0	0.1	0.3	0.3	0.3	0.3	1.3	1.5
27	0.2	0.2	0.7	0.5	0.6	0.5	0	0	0	0	0.4	0.5	0.6	1.1	1.2	1.1	0.6	0.6	0	0.1	0.3	0.3	0.3	0.3	1.4	1.7
29	0.2	0.2	0.8	0.6	0.6	0.6	0	0	0	0	0.5	0.6	0.6	1.2	1.3	1.2	0.6	0.6	0	0.1	0.4	0.3	0.4	0.3	1.5	1.8
31	0.3	0 2	0.8	0.6	0.7	0.6	0	0	0	0	0.5	0.6	0.7	1.3	1.3	1.4	0.7	0.7	0	0.1	0.4	0.4	0.4	0.4	1.6	1.9
33	0.3	0.3	0.9	0.7	0.7	0.7	0	0	0	0	0.6	0.7	0.7	1.3	1.4	1.4	0.7	0.7	0	0.1	0.4	0.4	0.4	0.4	1.7	2.1
35	0.3	0.3	1.0	0.7	0.8	0.7	0	0	0	0	0.6	0.7	0.8	1.4	1.5	1.5	0.8	0.8	0	0.2	0.5	0.4	0.5	0.4	1.8	2.2
37	0.3	0.3	1.0	0.8	0.8	0.8	0	0	0	0	0.6	0.8	0.8	1.5	1.6	1.6	0.8	0.8	0	0.2	0.5	0.5	0.5	0.5	1.9	2.3
39	0.3	0.3	1.1	0.8	0.9	0.8	0	0	0	0	0.7	0.8	0.9	1.6	1.7	1.7	0.9	0.9	0	0.2	0.5	0.5	0.5	0.5	2.0	2.4
41	0.4	0.3	1.1	0.9	0.9	0.9	0	0.1	0	0.1	0.7	0.9	0.9	1.7	1.7	1.8	0.9	0.9	0	0.2	0.6	0.5	0.6	0.5	2.1	2.6
43	0.4	0.4	1.2	0.9	1.0	0.9	0	0.1	0	0.1	0.7	0.9	1.0	1.8	1.8	1.9	1.0	1.0	0.1	0.2	0.6	0.5	0.6	0.5	2.2	2.7
45	0.4	0.4	1.2	0.9	1.0	0.9	0	0.1	0	0.1	0.8	0.9	1.0	1.8	1.9	2.0	1.0	1.0	0.1	0.2	0.6	0.6	0.6	0.6	2.3	2.8
47	0.4	0.4	1.3	1.0	1.1	1.0	0	0.1	0	0.1	0.8	1.0	1.1	1.9	2.0	2.1	1.1	1.1	0.1	0.2	0.6	0.6	0.6	0.6	2.4	2.9
49	0.4	0.4	1.4	1.0	1.1	1.0	0	0.1	0	0.1	0.8	1.0	1.1	2.0	2.1	2.2	1.1	1.1	0.1	0.2	0.7	0.6	0.7	0.6	2.5	3.1
51	0.5	0.5	1.4	1.1	1.2	1.1	0	0.1	0	0.1	0.9	1.1	1.2	2.1	2.2	2.2	1.2	1.2	0.1	0.3	0.7	0.7	0.7	0.7	2.6	3.2
53	0.5	0.5	1.5	1.1	1.2	1.1	0	0.1	0	0.1	0.9	1.1	1.2	2.2	2.3	2.3	1.2	1.2	0.1	0.3	0.7	0.7	0.7	0.7	2.7	3.3
55	0.5	0.5	1.5	1.2	1.2	1.2	0	0.1	0	0.1	1.0	1.2	1.2	2.3	2.3	2.4	1.3	1.3	0.1	0.3	0.8	0.7	0.8	0.7	2.8	3.4
57	0.5	0.5	1.6	1.2	1.3	1.2	0	0.1	0	0.1	1.0	1.2	1.3	2.3	2.4	2.5	1.3	1.3	0.1	0.3	0.8	0.7	0.8	0.7	2.9	3.5
59	0.5	0.5	1.6	1.3	1.3	1.3	0	0.1	0	0.1	1.0	1.3	1.3	2.4	2.5	2.6	1.4	1.4	0.1	0.3	0.8	0.8	0.8	0.8	3.0	3.6

*The washbasin referred to here is the one the inspector uses while enroute from the head rack to high rail inspection.
**This refers to the carcass in the bleeding area.

BILLING CODE 3410-DM-C

(B) Rules for determining adjusted maximum per hour per line rates for two-inspector kills considering walking distance according to the table in this subdivision. Determine the distances the inspectors actually walk between the points shown in columns 2 through 9 of the following table. Column 9 is used only if the condemned brand and tags the viscera inspector uses are kept at a location other than at the washbasin-sterilizer. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 9. Divide this total by 2. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus the number calculated above. If the resultant number is not a whole number, it must be rounded off to the next *lowest* whole number.

TWO-INSPECTOR CATTLE KILL - VISCERA TRUCK

Table of Deductions from Maximum Kill Rates for Each Two Feet Between Points (in Tenths of Cattle Per Hour)

Heads and Low Rail Inspection									Viscera and High Rail Inspection							
1	2		3		4		5		6	7		8		9*	
Number of Feet Between	Head Rack and Washbasin		Head Rack and Carcasses**		Washbasin and Low Rail		Head Rack and Low Rail		Viscera and brands tags (Washbasin)	Viscera and High Rail		High Rail and Washbasin		Viscera and Washbasin	
Points	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0.1	0	0.1	0	0.1	0	0	0	0	0	0	0	0	0	0.1	0.2
5	0.1	0.1	0.1	0.1	0.1	0.1	0.8	0.7	0.4	0.5	0.5	0.5	0.1	0.2	0.2	0.3
7	0.1	0.2	0.1	0.1	0.1	0.1	1.5	1.4	0.7	0.9	1.0	0.9	0.3	0.3	0.3	0.4
9	0.2	0.2	0.1	0.2	0.1	0.2	2.2	2.0	1.1	1.3	1.5	1.3	0.4	0.5	0.4	0.5
11	0.2	0.3	0.1	0.2	0.2	0.2	2.8	2.7	1.4	1.7	1.9	1.8	0.5	0.6	0.4	0.6
13	0.2	0.4	0.1	0.3	0.2	0.2	3.5	3.3	1.7	2.1	2.4	2.2	0.6	0.7	0.5	0.8
15	0.3	0.4	0.1	0.3	0.2	0.3	4.1	3.9	2.0	2.5	2.9	2.6	0.7	0.9	0.6	0.9
17	0.3	0.5	0.1	0.4	0.2	0.3	4.8	4.5	2.4	2.9	3.3	3.0	0.8	1.0	0.7	1.0
19	0.3	0.6	0.2	0.4	0.3	0.4	5.4	5.1	2.7	3.3	3.7	3.4	0.9	1.2	0.7	1.2
21	0.3	0.6	0.2	0.4	0.3	0.4	6.0	5.7	3.0	3.7	4.2	3.7	1.0	1.3	0.8	1.3
23	0.4	0.7	0.2	0.5	0.3	0.5	6.6	6.3	3.3	4.0	4.6	4.1	1.2	1.4	0.9	1.4
25	0.4	0.7	0.2	0.5	0.3	0.5	7.2	6.8	3.6	4.4	5.0	4.5	1.3	1.6	1.0	1.6
27	0.4	0.8	0.2	0.6	0.4	0.5	7.8	7.4	3.9	4.7	5.4	4.9	1.4	1.7	1.0	1.7
29	0.5	0.9	0.2	0.6	0.4	0.6	8.3	7.9	4.2	5.1	5.8	5.2	1.5	1.8	1.1	1.8
31	0.5	0.9	0.2	0.7	0.4	0.6	8.9	8.5	4.5	5.4	6.2	5.6	1.6	2.0	1.2	2.0
33	0.5	1.0	0.2	0.7	0.4	0.7	9.4	9.0	4.8	5.8	6.5	5.9	1.7	2.1	1.3	2.1
35	0.6	1.1	0.3	0.8	0.5	0.7	10.0	9.5	5.0	6.1	6.9	6.3	1.8	2.2	1.3	2.3
37	0.6	1.1	0.3	0.8	0.5	0.7	10.5	10.0	5.3	6.4	7.3	6.6	1.9	2.4	1.4	2.4
39	0.6	1.2	0.3	0.9	0.5	0.8	11.0	10.5	5.6	6.8	7.6	6.9	2.0	2.5	1.5	2.5
41	0.7	1.2	0.3	0.9	0.6	0.8	11.5	11.0	5.9	7.1	8.0	7.2	2.1	2.6	1.5	2.6
43	0.7	1.3	0.3	0.9	0.6	0.9	12.0	11.4	6.1	7.4	8.3	7.6	2.2	2.8	1.6	2.8
45	0.7	1.4	0.3	1.0	0.6	0.9	12.5	11.9	6.4	7.7	8..	7.9	2.4	2.9	1.7	2.9
47	0.8	1.4	0.3	1.0	0.6	1.0	13.0	12.4	6.7	8.0	9.0	8.2	2.5	3.0	1.8	3.0
49	0.8	1.5	0.3	1.1	0.7	1.0	13.4	12.8	6.9	8.3	9.4	8.5	2.6	3.2	1.8	3.1
51	0.8	1.6	0.3	1.1	0.7	1.0	13.9	13.3	7.2	8.6	9.7	8.8	2.7	3.3	1.9	3.3
53	0.9	1.6	0.4	1.2	0.7	1.1	14.4	13.7	7.4	8.9	10.0	9.1	2.8	3.4	2.0	3.4
55	0.9	1.7	0.4	1.2	0.7	1.1	14.8	14.1	7.7	9.2	10.3	9.4	2.9	3.5	2.0	3.5
57	0.9	1.7	0.4	1.3	0.8	1.2	15.2	14.6	7.9	9.5	10.6	9.7	3.0	3.7	2.1	3.6
59	0.9	1.8	0.4	1.3	0.8	1.2	15.7	15.0	8.2	9.7	10.9	9.9	3.1	3.8	2.2	3.8

*This column to be used only if brands and tags are not located at the washbasin.
**This refers to the carcasses in the bleeding area.

(ii) Inspection Using the Viscera Table, Tongue-In Presentation of Heads.

Steers and Heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-32	a	a	a
33-58	b	b	b
59-84	1	1	1
85-86	1	2	1
87-143	2	2	1
144-171	3	2	1
172-198	3	3	1
199-226	3	3	2
227-253	4	3	2
254-280	4	4	2
281-306	5	4	2
307-333	5	5	2

Cows and Bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-29	a	a	a
30-56	b	b	b
57-77	1	1	1
78-81	1	2	1
82-134	2	2	1
135-159	2	3	1
160-187	3	3	1
188-213	3	4	1
214-234	3	4	2
235-264	4	4	2
265-289	5	4	2
290-314	5	5	2

(iii) Inspection Using the Viscera Table, Tongue-Out Presentation of Heads.

Steers and Heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-32	a	a	a
33-58	b	b	b
59-86	1	1	1
87-103	1	2	1
104-156	2	2	1
157-186	2	3	1
187-216	3	3	1
217-246	3	3	2
247-275	3	4	2
276-304	4	4	2
305-333	4	5	2
334-362	5	5	2
363-390	5	6	2

Cows and Bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-29	a	a	a
30-56	b	b	b
57-79	1	1	1
80-98	1	2	1
99-147	2	2	1
148-174	2	3	1
175-205	3	3	1
206-233	3	4	1
234-256	3	4	2
257-288	4	4	2
289-316	5	4	2
317-343	5	5	2

Dr. Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that immediate implementation of this rule, on an interim basis, is necessary in order to meet existing budgetary constraints. The adjustments of staffing levels and related facility requirements will accommodate increased industry production, will reduce the Agency's projected labor costs, and will provide continued, high levels of public protection under the Federal Meat Inspection Act.

Therefore, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this amendment at this time are impracticable and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on: June 29, 1981.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 81-20586 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 73

Change of Telephone Number for NRC Regional IV Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; change of telephone number.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to change the telephone number for NRC's Region IV office located in Arlington, Texas. The amendments are intended to inform the public of the new telephone number for NRC Region IV.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: J. M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 Telephone (301) 492-7086.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has changed the telephone number of its Inspection and Enforcement Regional Office IV in Arlington, Texas. The new telephone number for the Region IV office is (817) 465-8100.

The amendments are made to a portion of the footnote in § 21.2 and as a complete revision of Appendix A to Part 73. This latter amendment is needed to include the address and telephone number of, and states included under, the Region IV office. In addition, certain minor editorial revisions have been made in the authority for Parts 21 and 73.

Since these amendments are administrative and relate solely to a minor procedural matter, notice of proposed rulemaking and public procedure thereon are unnecessary, and good cause exists to make the amendments effective upon publication in the **Federal Register.**

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Parts 21 and 73 of Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for Part 21 is revised to read as follows:

Authority: Secs. 161i and 161o, Pub. L. 83-703, 68 Stat. 949 and 950, as amended, sec. 234, Pub. L. 91-161, 83 Stat. 444; secs. 201 and 206, Pub. L. 93-438, 88 Stat. 1242 and 1246, as amended (42 U.S.C. 2201(i), 2201(o), 2282, 5841, 5846).

§ 21.2 [Amended]

2. The authority citation for § 21.2 is removed.

3. Footnote 1 and § 21.2 is amended by changing the telephone number of NRC Regional Office IV to read as follows:

* * *

IV (Dallas).....(817) 465-8100

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

4. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161b, 161i, 161o, Pub. L. 85-703, 68 Stat. 930, 948-950, as amended, Pub. L. 85-507, 72 Stat. 327, Pub. L. 88-489, Stat. 602, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2073, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, 1243, as amended, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, § 73.55 is issued under Sec. 161b, 68 Stat. 948, as amended, 42 U.S.C. 2201(b); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under Sec. 161i, 68 Stat. 949, as amended, 42 U.S.C. 2201(i); and §§ 73.20(c)(i), 73.24(b)(i), 73.26 (b)(3), (h)(6), (i)(6), and (k)(4), 73.27 (a) and (b), 73.40 (b) and (d), 73.46 (g)(6), and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71, and

73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o).

5. Appendix A of Part 73 is revised to read as follows:

Appendix A—*United States Nuclear Regulatory Commission Inspection and Enforcement Regional Offices*

	Address and Telephone No.
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	Region I: USNRC, Office of Inspection and Enforcement, 631 Park Avenue, King of Prussia, PA. 19406, (215) 337-5000
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, The Virgin Islands, Virginia, and West Virginia.	Region II: USNRC, Office of Inspection and Enforcement, 101 Marietta St., Suite 3100, Atlanta, Ga. 30303, (404) 221-4503
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Region III: USNRC, Office of Inspection and Enforcement, 799 Roosevelt Road, Glen Ellyn, Ill. 60137, (312) 932-2500
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	Region IV: USNRC, Office of Inspection and Enforcement, 611 Ryan Plaza Drive, Arlington, Texas 76102, (817) 465-8100
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Pacific Trust Territories, and Washington.	Region V: USNRC, Office of Inspection and Enforcement, 1990 N. California Blvd., Suite 202, Walnut Creek, California 94596, (415) 943-3700

Dated at Bethesda, Maryland, this 7th day of July 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-20679 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 72

Reporting Requirements for Spent Fuel Storage Facilities Subject to IAEA Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to make it clear that licensees required to submit inventory change reports and material status reports pursuant to the US/IAEA Safeguards Agreement are not additionally required to submit material status reports and nuclear material transfer reports under NRC domestic safeguards regulations. This amendment clarifies Commission intent that a licensee need not submit duplicative reports.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. E. R. Morgan, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-443-5976).

SUPPLEMENTARY INFORMATION: On July 31, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 50705) a new Part 75 to Title 10 of the Code of Federal Regulations and amendments to 10 CFR Parts 40, 50, 70, 150, and 170 to implement the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America.

On November 2, 1980 (45 FR 74693), the Commission added a new Part 72 to Title 10 implementing licensing requirements for the storage of spent fuel in an independent spent fuel storage installation.

Parts 75 and 72 both contain requirements for the submittal of material status reports and material transfer reports (the latter are referred to in Part 75 by the IAEA nomenclature as inventory change reports). The amendments which follow clarify that the Commission does not intend that a licensee submit duplicative reports.

These amendments are of a minor and nonsubstantive nature in that they clarify existing requirements. As a result, the publication of a notice of proposed rulemaking is unnecessary and the requirements of the Regulatory Flexibility Act do not apply. No new reporting requirements subject to the Paperwork Reduction Act are imposed.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Part 72 of Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

1. Section 72.53 is revised to read as follows:

§ 72.53 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit Material Status Reports to the Commission on Form NRC-742, in accordance with printed instructions for completing the form. The reports shall provide information concerning the special nuclear material contained in spent fuel possessed, received, transferred, disposed of, or lost by the licensee. All such reports shall be made as of March 31 and September 30 of each year and shall be filed with the U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit Material Status Reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section.

2. Section 72.54 is revised to read as follows:

§ 72.54 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on Form NRC-741. Each licensee who transfers spent fuel shall submit a copy of Form NRC-741 to the U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, and three copies to the receiver of the material promptly after the transfer takes place. Each licensee who receives spent fuel shall submit a copy of Form NRC-741 to the Department of Energy and to the shipper of the material within 10 days after the spent fuel is received and unloaded and its identity is verified.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form-741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section.

(Sec. 161o, Pub. L. 83-703, 68 Stat. 950 (42 U.S.C. 2201(o); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Bethesda, Md. this 11th day of June, 1981.

For the Nuclear Regulatory Commission

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-20564 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 270, 274

[Release Nos. 33-6326, IC-11850, AS-294, File No. S7-865]

Standardization of Financial Statement Requirements in Management Investment Company Registration Statements and Reports to Shareholders

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and amendments to forms.

SUMMARY: The Securities and Exchange Commission is adopting today uniform requirements governing the content of and periods to be covered by financial statements included in shareholder reports and prospectuses in (or annual updates of) management investment company registration statements. The general regulation governing the form and content of and requirements for financial statements is amended by including special provisions for prospectuses and shareholder reports of registered management investment companies. In consequence, the Commission is removing most of the detailed financial statement instructions which were previously in the registration statement from and the rule governing shareholder reports. As a result of these changes, most of the differences between the requirements applicable to financial statements in prospectuses and those applicable to financial statements in shareholder reports are being eliminated. Therefore, management investment companies will be able to prepare annually a single set of uniform, updated financial statements that may be used in both the prospectus (or annual update of the registration statement) and the annual report to shareholders. In addition, open-end management investment companies, at their option, will be able either to incorporate financial statements included in any shareholder report by reference into the prospectus or to transmit a currently effective prospectus as the equivalent of any report to shareholders. Although the Commission is retaining certain differences between the financial information required in prospectuses and that required in annual reports, the provisions adopted herein eliminate the necessity for open-end management investment companies to print and mail the same financial statements in two different documents. The Commission is adopting these amendments to reduce the costs incurred in preparing and transmitting essentially duplicative financial information and to provide an opportunity for open-end management investment companies to reduce the length of their prospectuses or, in the alternative, to eliminate separate preparation of periodic reports.

EFFECTIVE DATE: Effective July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2093, Lawrence A. Friend, Senior Accountant, (202) 272-2095, or Susan P. Hart, Attorney, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission announced today the adoption of: (1) amendments to Regulation S-X [17 CFR 210], the Commission's general regulation regarding the form and content of and requirements for financial statements filed under, *inter alia*, the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] and the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.]; (2) amendments to Form N-1 [17 CFR 239.15, 17 CFR 274.11] and Form N-2 [17 CFR 239.14, 17 CFR 274.11a], the registration statement forms for, respectively, open-end and closed-end management investment companies under both the 1933 Act and the 1940 Act; and (3) a revised rule 30d-1 [17 CFR 270.30d-1], regarding reports to shareholders under section 30(d) of the 1940 Act [15 U.S.C. 80a-29(d)]. The amendments reconcile most of the differences in the financial statement requirements of prospectuses and shareholder reports by including special provisions for registered management investment companies in the uniform financial statement requirements and instructions, of Regulation S-X. In turn, these instructions, with certain modifications, are made applicable to prospectuses and to annual updates of 1940 Act registration statements by amendments to the registration statement forms. Finally, revised rule 30d-1, which replaces the current rule, makes the financial statement requirements of the prospectus applicable to shareholder reports, and extends the time in which such reports must be transmitted to shareholders from forty-five days to sixty days after the close of the period for which the report is made.

In addition, amendments to Form N-1 and revised rule 30d-1 provide open-end management investment companies two new options for transmitting disclosure documents containing financial information to shareholders and prospective investors. Such companies are permitted either to incorporate financial statements from shareholder reports by reference into the prospectus or to transmit a currently effective prospectus as the equivalent of any annual or semiannual report to shareholders, provided that certain conditions are satisfied. These provisions are optional, so that companies may, if they choose, continue to include financial statements in prospectuses and to transmit separate shareholder reports. The standardization of financial statement requirements is intended to reduce the costs, imposed by current disclosure requirements, of preparing and transmitting various disclosure documents containing financial statements that are substantively identical but not interchangeable. The options with respect to transmission of financial information are intended to provide open-end companies with opportunities for further reductions in costs by using their prospectuses as a substitute for shareholder reports or, in the alternative, by reducing the length of their prospectuses.

Background

Section 30(d) of the 1940 Act and rule 30d-1 thereunder require management investment companies to transmit a report to shareholders at least semiannually. These reports are required to contain certain financial statements and other information covering either the first six months of the company's fiscal year (the "semiannual report"), or, in the report made as of the end of the fiscal year (the "annual report"), the entire fiscal year. The financial statements required by the statute and the rule are complemented by the requirements of generally accepted accounting principles ("GAAP").

In addition to the semiannual and annual reports required by section 30(d), open-end management investment companies engaged in a continuous offering of their shares to the public (the type commonly known as "mutual funds") must bring their prospectuses up to date on an annual basis, pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] and section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)]. Those management investment companies that file Form N-1R (the annual report of certain information to the Commission) must also bring their 1940 Act registration statements up to date annually pursuant to rule 8b-16 under the 1940 Act [17 CFR 270.8b-16]

(the "annual update"). Like section 30(d) reports, the prospectus (and the annual update) is required to contain specified financial statements, which must be audited. The form and content of financial statements in the prospectus and annual update are governed by Regulation S–X.

The financial statements now required to appear in prospectuses and annual reports are similar. Both documents must contain: (1) a balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year, (2) a schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities, (3) an income statement, (4) statements of changes in net assets, and (5) condensed financial information in the form of a table of per share income and capital changes (the "per share table"). Nevertheless, under current requirements certain differences prevent the financial statements in the prospectus and the annual report from being interchangeable.[1]

As a result of these discrepancies in current financial statement requirements, investment companies prepare two different sets of audited financial statements containing similar information, one set for their prospectuses and one for their annual reports to shareholders. Moreover, there is considerable overlap in the readership of the two docments. Although the prospectus and the annual report are intended for different purposes—the prospectus is primarily designated to disclose material information to potential investors, while the annual report is intended to provide information to existing shareholdes—many investment companies furnish their annual reports to new investors, and many investment companies send a current prospectus to existing shareholders as a matter of course. Differences in financial statements required in prospectuses and annual reports are not related to the different purposes for which the documents are intended, but are rather the result of the fact that prospectuses and annual reports evolved at different times from different statutory bases.

It appeared to the Commission that no useful purpose was served by maintaining the vast majority of the differences between prospectus and annual report financial statement requirements and that the discrepancies between the two documents could be confusing to the investor who receives both sets of financial statements without an explanation of the differences. Accordingly, on December 15, 1980, the Commission proposed amendments to Regulation S-X, including new rule 3–18 of that regulation; revised financial statement items for the registration statement forms (Item 18 of Form N–1 and Item 20 of Form N–2); and revised rule 30d–1, to standardize the financial statement requirements of the prospectus and annual report to shareholders (Investment Company Act Release No. 11490) [45 FR 83517, Dec. 19, 1980] ("Release No. 11490"). Under the amendments as proposed, both the annual report to shareholders and the current prospectus (or, in the case of a closed-end company, the annual update) of a management investment company would be required to contain the following audited financial statements:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of the balance sheet or the statement of assets and liabilities;

(3) An income statement for the most recent fiscal year; and

(4) Statements of changes in net assets for the two most recent fiscal years.

The proposals reconciled current differences between financial statement requirements for prospectuses and shareholder reports, with three exceptions. First, with respect to condensed financial information, the Commission proposed to continue to require the annual report to include a per share table for the five most recent fiscal years, with at least the latest year audited, with the current prospectus of open-end companies to include such information for the ten most recent fiscal years, with at least the five latest years audited. Second, the Commission proposed to continue the differences with regard to disclosure of aggregate management remuneration, with the annual report required to contain the somewhat more extensive disclosure specified by section 30(d)(5) of the 1940 Act [15 U.S.C 80a–29 (d)(5)]. Finally, the Commission proposed to continue to require the cost of individual securities to appear in the schedule of investments in prospectuses, pursuant to Article 12 of Regulation S–X, but not in the comparable schedule in shareholder reports.

As a part of these amendments, the Commission also proposed two options with respect to the transmittal of financial information. First, the Commission proposed to amend Form N–1 to permit an open-end management investment company to incorporate financial statements from a shareholder report by reference into the prospectus, provided that a copy of such report accompanied the prospectus. Alernatively, as part of revised rule 30d–1, an open-end management investment company would be permitted to send a prospectus to shareholders in lieu of any shareholder report, if that prospectus included financial statements for the latest fiscal year.

The Commission today adopts the amendments to Regulation S–X, to Forms N–1 and N–2, and revised rule 30d–1 with the modifications discussed below. Because the amendments are being adopted in substantially the same form as they were proposed, only the changes from the amendments as proposed and the major issues raised by commentators are being discussed in detail in this release. Readers are referred to Release No. 11490 for a more extensive discussion of the amendments.

In addition, in a separate release, the Commission is proposing amendments to rule 465 under the 1933 Act [17 CFR 230.465] to facilitate the process by which certain investment company registrants may bring their prospectuses up to date to use them in place of an annual report to shareholders.

Public Comments and Modifications to Proposed Amendments and Revised Rule 30d–1

The Commission received fourteen comments on Release No. 11490.[2] Twelve of the commentators endorsed the standardization of financial statement requirements in investment company registration statements and reports to shareholders and the optional provisions regarding transmission of financial information.[3] However, most commentators had specific objections to some of the provisions of the proposed

[1] These differences are explained in detail in Investment Company Act Release No. 11490 (Dec. 15, 1980) [45 FR 83517, Dec. 19, 1980].

[2] Comments were received from the following: the Association of Publicly Traded Investment Funds; the Subcommittee on Investment Companies and Investment Advisers of the Federal Regulation of Securities Committee, Section of Corporation, Banking and Business Law of the American Bar Association; Committee on Investment Companies of the American Institute of Certified Public Accountants; Coopers & Lybrand; Gaston Snow & Ely Bartlett; Investment Company Institute; Investors Diversified Services, Inc.; Lord, Abbett & Co.; Price Waterhouse & Co.; Touche Ross & Co.; United Funds; the Vanguard Group of Investment Companies; Lipper Analytical Distributors, Inc.; and one shareholder (Mrs. Paul Ingle of High Point, N.C.). Copies of the comments are located in File No. S7–865.

[3] One commentator made no comment on the proposals generally but addressed only the issue of cost disclosure. The shareholder commentator opposed the proposals on the grounds that annual reports do not provide sufficient information to shareholders.

amendments to Regulation S–X, Forms N–1, and N–2, and revised rule 30d–1. In addition, some of the commentators addressed issues that were not raised in Release No. 11490. The Commission has considered all the comments and has determined to adopt the amendments substantially as published with the modifications set forth below.

Differences in Financial Statement Requirements

Disclosure of the cost of individual securities. Eleven commentators responded to the Commission's specific request for comment on one of the three exceptions to uniform financial statement requirements—the proposal to retain existing requirements under which the cost of individual investments must be disclosed in the schedule of investments in the prospectus but not in the schedule of investments in reports to shareholders.

Nine of these commentators objected to the requirement, stating that such information was of little use and possibly misleading as a basis for judging fund performance. Most of these commentators argued that, in order to make the cost of portfolio securities meaningful disclosure, more information would be needed, and that to require such additional disclosure would be cumbersome and beyond the needs and expectations of current or prospective investors.

It was further argued that cost information might encourage investors to evaluate the fund's performance by looking at its individual securities, rather than by looking at overall performance in relation to the fund's stated investment objectives. Three commentators suggested that the per share table and the statement of net assets were better bases for judging fund performance. In addition, two commentators contended that cost disclosure could lead to "window-dressing" by portfolio managers with more of an eye to year-end disclosure than to the longer term interests of the fund. For example, one commentator suggested that a portfolio manager might decide to sell a security, which otherwise might have been held, because its value at the date of the schedule of investments was significantly lower than its cost.

Two commentators stated that cost information is generally superfluous for investors in income-oriented funds, and in particular for money market funds, where there is little cost fluctuation. They further stated that the disclosure about such funds' investment policies made cost information irrelevant.

Five commentators expressed the view that if the requirement for cost information in the schedule of investments in the prospectus was retained, most investment companies would choose to print different financial statements for the prospectus and annual report, rather than to make such statements interchangeable by including cost disclosure in the annual report, where it is not required. One commentator stated that the schedule of investments is normally the largest single financial statement, and that retention of different requirements would prevent investment companies from realizing any cost savings in the printing of uniform financial statements.

Two commentators noted that GAAP presently requires disclosure of cost information in shareholder reports by total cost per investment category (i.e., common stocks, preferred stocks, bonds, etc.). These commentators saw no reason for prospective investors to receive more detailed cost information.

Two commentators supported retention of cost disclosure. One argued that it was useful to users of financial statements in understanding the effectiveness of the investment adviser. In addition, this commentator argued that the GAAP requirement for disclosure of cost by category of investment was only a minimum requirement. Another commentator stated that disclosure of cost could indicate whether the investment skill of an adviser is specific or of broad applicability, the latter being indicated where the aggregate unrealized loss or gain in a portfolio is disproportionately associated with a limited number of positions. This commentator added that disclosure of the cost of individual investments is useful to some investors, such as taxable foundations, who need to identify unrealized appreciation or depreciation for tax and other purposes. Recognizing that most investors had no interest in cost information, however, the commentator recommended that cost disclosure be made available through Form N–1R under the 1940 Act [17 CFR 274.101] rather than in the prospectus.

The Commission has re-evaluated the need for cost disclosure in light of the comments and has decided to delete the requirement. It appears that cost information is of only marginal value to investors in judging an investment company's performance. Furthermore, it appears from the comments that the costs associated with retention of the requirement would be substantial. Several commentators stated that most investment companies would choose to print different financial statements for the prospectus and annual report if cost disclosure is retained in the prospectus. This argument is given added credibility by the fact that many registrants now go to the trouble and expense of printing two separate schedules of investments, one with the cost column and one without, rather than using the same schedule for both documents. Accordingly, the Commission has added a new Instruction C to the financial statement items (Item 18 of Part I of Form N–1, Item 20 of Part I of Form N–2) to make clear that the cost columns may be omitted entirely from the registration statement.[4] The Commission assumes, however, that investment companies will voluntarily make information about the cost of their portfolio securities available upon request to those members of the public who might desire it.

Condensed Financial Information (Per Share Table). A second instance in which the Commission proposed to retain differences between the financial statement requirements applicable to prospectuses and those applicable to shareholder reports concerns condensed financial information. The per share table in the annual report must cover the five most recent fiscal years, with at least the latest year audited; the per share table in the prospectus (of open-end companies) must include the ten most recent fiscal years, with at least the five latest years audited. Two commentators submitted comments regarding this exception, expressing opposite views. One commentator urged expansion of the per share table in the annual report to a ten year period and argued that, while a five year period would assertedly portray one cycle of up-down fluctuations in the market, disclosure as to two cycles would give the investor a much better basis for judging performance. This commentator concluded that adopting a ten year period for condensed financial information in both prospectuses and shareholder reports, and at the same time eliminating cost information, would result in a net gain of useful information to investors and a net decrease in the amount of effort necessary to prepare such information.

The second commentator, however, proposed reducing the per share table in the prospectus to five years offering three arguments: (1) a five year period

[4] Although rule 6–02(f) of Regulation S–X [17 CFR 210.6–02(f)] permits closed-end investment companies to reflect assets at cost, such companies comply with generally accepted accounting principles which require all investment companies to reflect assets at value.

has been accepted as a reasonable period of time to show significant trends for companies reporting under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] ("1934 Act"); (2) doing so would result in uniformity with the requirement in the annual report; and (3) doing so would further integrate Form N–1 with shareholder reports.

The Commission has decided not to change the requirements for the per share table at this time. There does not appear to be a compelling reason to increase the requirement for condensed financial information for a company that chooses to send a separate annual report. On the other hand, the Commission is not persuaded at this time that it should reduce the long-standing requirement that condensed financial information be presented in the prospectus for a period of ten years, with the latest five years audited.[5] This information may be material to a significant number of prospective investors, and retaining different requirements for the presentation of condensed financial information will not interfere with the overall objective of reconciling the basic financial statements in the prospectus and the annual report.

Age of Financial Statements. One commentator suggested amending requirements in Regulation S–X that pertain to the age of financial statements used in registration statements, because compliance with those requirements would make it necessary for investment companies to update their financial statements more frequently than is required by the provisions of the 1940 Act relating to periodic reporting. Regulation S–X now provides that the most current financial statements in a 1933 Act registration statement filed by a registered investment company may not be older than 134 days at the expected effective date of the registration statement, an aging requirement that derives from quarterly reporting under the 1934 Action Form 10–Q [17 CFR 249.308a]. Investment companies, however, file financial statements only semiannually and are not subject to the Form 10–Q requirement. As a result, imposing the 134-day rule on investment companies means that for certain registration statements filed during the company's fiscal year (such as for mergers), the investment company has to prepare additional financial statements which are not otherwise required. The commentator's suggested amendment to Regulation S–X would require management investment companies to update their financial statements only when more current financial statements were available pursuant to the rules under section 30(d) of the Investment Company Act. This would remove the necessity for odd period "stub" financial statements (otherwise not publicly available or required) in merger documents sent to shareholders. As a result, updated financial statements would be required only for registration statements becoming effective sixty days or more after the end of the fiscal annual and semiannual period.

The Commission believes that this suggestion has merit, and accordingly is modifying proposed rule 3–18 of Regulation S–X to tailor the requirement regarding the age of financial statements to the semiannual reporting requirements of investment companies. This requirement is contained in new paragraphs (b) and (c) of rule 3–18. Rather than complying with the 134-day rule, investment companies will be required to include more current unaudited financial information, in addition to the most current audited financial statements, where a post-effective amendment is expected to become effective with financial statements dated more than 244 days prior to the anticipated effective date. This change will result in prospective shareholders receiving the same financial information that is available to current shareholders receiving the semiannual report.

Disclosure of Management Remuneration. One commentator suggested that Instruction D(3) of the financial statement items, regarding disclosure of aggregate management remuneration, should make clear that a registrant which does not report "aggregate remuneration paid" in accordance with rule 6–04(b)(2) of Regulation S–X [17 CFR 210.6–04(b)(2)] would have to report this information separately in the shareholder report pursuant to section 30(d)(5) of the 1940 Act.

The Commission has decided not to make the change requested by this commentator. The Commission believes that the requirement of the instructions as proposed is clear, in that it explicitly states that a registrant must provide disclosure of aggregate management remuneration to satisfy section 30(d)(5) of the 1940 Act separately in a shareholder report if that disclosure is not "shown elsewhere . . . as part of the financial statements" required to appear in a report to shareholders by new Instructions E and F (Instructions D and E of the amendments as proposed) of the financial statement items.

Other Accounting Changes. In connection with the adoption of new rule 3–18 of Regulation S–X, the Commission is adopting technical amendments to three other rules in Regulation S–X: rule 3–01 [17 CFR 210.3–01] on consolidated balance sheets, rule 3–02 [17 CFR 210.3–02] on consolidated statements of income and changes in financial position, and rule 3–12 [17 CFR 210.3–12] on age of financial statements at effective date of registration statement or at mailing date of proxy statement. The three amendments refer registered management investment companies to the special instructions in new rule 3–18. As a result, the language in proposed rule 3–18 and in instructions E and F of the financial statement items of the forms which excepted registered management investment companies from the provisions of rules 3–01, 3–02 and 3–12 has been deleted from the rule as adopted. In addition, rule 3–18 as adopted has been restructured to include the requirements as to financial statements in paragraph (a) of the rule, special instructions as to age of financial statements in paragraphs (b) and (c), and special instructions as to interim financial statements in paragraph (d). These changes were made to conform rule 3–18 to other rules in Regulation S–X. These amendments are technical in nature and do not change the substance of rule 3–18. Accordingly, they may be adopted without republication. Two of these changes should be noted:

The title of rule 3–18 has been changed to make clear that only registered management investment companies (and companies required to be so registered) are required to comply with the rule, and that it does not apply to investment companies that are not registered under the 1940 Act (*e.g.*, business development companies);[6] and

As a matter of information for registrants, a reference to rule 3–06 of Regulation S–X has been added to paragraph (d) of rule 3–18 regarding a statement required by rule 3–06 to appear when unaudited interim financial statements are presented in a registration statement.

[5] The ten-year requirement was part of the previous 1933 Act registration statement forms for investment companies and was adopted as part of Forms N–1 and N–2 in 1978 (Investment Company Act Release No. 10378, August 28, 1978) [43 FR 39548, Sept. 5, 1978].

[6] The Commission's Division of Investment Management has addressed certain accounting questions for business development companies in another context. *See* Investment Company Act Release No. 11703, March 26, 1981 [46 FR 19459, March 31, 1981].

Transmission of Financial Information

Coordination of Rule 30d–1 and Rule 465(a). Release No. 11490 set forth a procedure to be used by a company that wanted to send its prospectus to current shareholders in place of an annual report, as permitted by proposed rule 30d–1(c), in the same year that it had to file its annual updating post-effective amendment pursuant to rule 465(a) under the Securities Act of 1933 because of a material change in its operations or other material event. In order to be able to use its prospectus in lieu of an annual report, the company would have to file a post-effective amendment under rule 465(a), updating the narrative portion of the prospectus, at least by the end of its fiscal year. After the effective date of such post-effective amendment, but within sixty days after the end of its fiscal year, the company would have to file another post-effective amendment updating its financial statements.[7]

Four commentators were of the opinion that the two-part filing procedure was too cumbersome and involved difficult time constraints. One commentator pointed out that, if the registrant had to wait for the first amendment to become effective under rule 465(a) before filing the financial update under rule 465(b), there would be a one- or two-day period when the fund either would have to print and distribute the prospectus with an updated narrative but old financials, or else discontinue sales altogether. Thus, the registrant would have three separate prospectuses within a short period of time: the old one, the one with an updated narrative portion but old financial statements, and the fully updated one.

The commentators suggested several solutions to the problem: extension of the time period for sending reports to shareholders under proposed rule 30d–1 from sixty days to seventy-five or ninety days; amendment of rule 465 to shorten the time period for automatic effectiveness of post-effective amendments under paragraph (a) from sixty to forty-five days; or amendment of rule 465(d) to provide that the filing of a subsequent amendment to update financials would not automatically suspend the sixty-day waiting period initiated by the filing of the narrative-only amendment under rule 465(a), so that the first amendment would become effective sixty days after it was filed or the two amendments would become effective simultaneously.

The Commission agrees with the commentators that a registrant that has to update its prospectus by means of a rule 465(a) filing should not be hindered in using its prospectus in place of its annual report. Accordingly, in a separate release, the Commission is proposing amendments to rule 465 to facilitate the updating procedure for such registrants.[8] Paragraph (d) of that rule would be amended to provide that the filing of a subsequent amendment to update the financial statements would not suspend the sixty-day waiting period started by the filing of an amendment containing an updated narrative under rule 465(a), provided that the subsequent amendment was filed under paragraph (b) and that it designated as its effective date the same day as the effective date of the paragraph (a) filing. Rule 465(b) would also be amended to make the amendment containing the updated financial statements eligible for filing under that provision.

Incorporation by Reference. One commentator objected to the undertaking required when an investment company incorporates financial statements into its prospectus by reference from its annual report to shareholders. Proposed Item 10(c) of Part II of Form N–1 would require an investment company to undertake "to deliver or cause to be delivered" the incorporated annual report with the prospectus, unless the recipient is a shareholder who has already received the report. The commentator expressed concern that this requirement might be construed to make an investment company that offers its shares through dealers liable for the failure of the dealer to give the purchaser the required report. It suggested that the undertaking state that the investment company's duty is only to use its "best efforts" to cause the report to be delivered.

Upon reconsideration, the Commission has decided to delete the proposed undertaking from Form N–1 and to replace it with a new condition in General Instruction E of Form N–1 on incorporation by reference.[9] The new condition states that a registrant may incorporate financial statements by reference from a shareholder report into the prospectus if the material incorporated by reference is provided along with the prospectus. The Commission believes that, if an issuer is incorporating financial statements from an annual report into the prospectus, its duty to deliver the incorporated annual report is the same as its duty to deliver the prospectus itself. Accordingly, in that situation delivery of a prospectus would not take place unless the annual report was also delivered. Nevertheless, the Commission is deleting the undertaking so that it will not be construed as establishing a different legal standard or potential liability, and to make clear that the issuer's duty with respect to prospectus delivery will not be changed in any way by the option of incorporation by reference. Because the requirement of delivery along with the prospectus of any material incorporated by reference was part of the proposed changes to Form N–1, it may be adopted as part of General Instruction E of Form N–1 without republication.

Other Comments

Some commentators addressed issues that were not raised by the proposals in Release No. 11490. The Commission is not now addressing the merits of the changes requested by these comments, but will reserve them for future consideration.

Text of Amendments and Rules

Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By amending paragraph (a)(4) of § 210.1–01 to read as follows:

§ 210.1-01 Application of Regulation S–X (17 CFR Part 210).

(a) * * *

(4) Registration statements and shareholder reports under the Investment Company Act of 1940 (Part 274 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act.

* * * * *

2. By adding new paragraph (g) to § 210.3–01.

§ 210.3–01 Consolidated balance sheets.

* * * * *

(g) For filings by registered

[7] Release No. 11490 provided the following example of this procedure: A company with a December 31st fiscal year end, which had experienced a material event since its last post-effective amendment became effective, would file a post-effective amendment on December 20, 1980. This amendment would contain new narrative disclosure, but the financial statements would be as of December 31, 1979. The amendment would become effective automatically on February 18, 1981. The second post-effective amendment, which contained financial statements as of December 31, 1980, would have to be filed after February 18, but on or before March 1, 1981, and designate an effective date enabling the registrant to transmit it as a shareholder report on or before March 1, 1981, the end of the sixty days after the end of the fiscal year specified by proposed rule 30d–1(c).

[8] Securities Act Release No. 6327 published under Proposed Rules in this issue. Readers are referred to that release for a fuller explanation of the proposed amendment.

[9] General Instruction E of Form N–1 is also amended by deleting the reference to the undertaking.

management investment companies, the requirements of § 210.3–18 shall apply in lieu of the requirements of this section.

3. By adding new paragraph (c) to § 210.3–02.

§ 210.3–02 Consolidated statements of income and changes in financial position.

* * * * *

(c) For filings by registered management investment companies, the requirements of § 210.3–18 shall apply in lieu of the requirements of this section.

4. By adding new paragraph (d) to § 210.3–12.

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(d) For filings by registered management investment companies, the requiremens of § 210.3–18 shall apply in lieu of the requirements of this section.

5. By adding a new § 210.3–18 to read as follows:

§ 210.3–18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.

(a) For filings by registered management investment companies, the following financial statements shall be filed:

(1) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(2) An audited statement of operations for the most recent fiscal year (including statements of income and expense, realized gain or loss on investments, and unrealized appreciation or depreciation of investments which conform to the requirements of §§ 210.6–04, 6–05 and 6–06, respectively); and

(3) Audited statements of changes in net assets conforming to the requirements of § 210.6–08 for the two most recent fiscal years.

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and changes in net assets shall be provided for the one and two preceding fiscal years, respectively, and for the interim period between the end of the preceding fiscal year and the date of most recent interim balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding interim period of the preceding fiscal year need not be provided.

(c) If the current balance sheet or statement of assets and liabilities in a filing is as of a date 245 days or more prior to the date the filing is expected to become effective, the financial statements shall be updated with a balance sheet or statement of assets and liabilities as of an interim date within 245 days. In addition, the statements of operations and changes in net assets shall be provided for the interim period between the end of the most recent fiscal year for which a balance sheet or statement of assets and liabilities is presented and the date of the most recent interim balance sheet or statement of assets and liabilities filed.

(d) Interim financial statements provided in accordance with these requirements may be unaudited but shall be presented in the same detail as required by §§ 210.6–01 to 6–10. When unaudited financial statements are presented in a registration statement, they shall include the statement required by § 210.3–06(d).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

1. By amending General Instruction E of Form N–1 to add the following paragraph to the existing text of the Instruction.

2. By amending Item 18 of Part I of Form N–1 (§§ 239.15 and 274.11) to read as follows:

§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8A.

§ 274.11 Form N–1,registration statement of open-end management investment companies.

* * * * *

(General Instructions

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E. *Incorporation by Reference*

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Subject to the above rules, a registrant may incorporate by reference, in response to Item 3(a), "Condensed Financial Information," Item 18, "Financial Statements," or to both Items, the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act and rule 30d–1 thereunder, provided the following additional conditions are satisfied:

1. The material that is incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The registrant includes a statement at each place in the prospectus where the information required by Item 3(a), Item 18, or both, would otherwise appear, that the information is incorporated by reference from a report to shareholders. The registrant, at its option, may also specifically describe, in either the prospectus or both the prospectus and Part II of the Registration Statement (in response to Item 1(a)), those portions of the report to shareholders that are not incorporated by reference and are not a part of the Registration Statement]; and

3. The material incorporated by reference is provided along with the prospectus to each person to whom the prospectus is sent or given, unless the person to whom such prospectus is provided currently holds securities of the registrant and otherwise has received a copy of the material incorporated by reference, in which case the registrant shall state in the prospectus that it will furnish, without charge, a copy of such report on request, and the name, address and telephone number of the person to whom such a request should be directed.]

* * * * *

[Item 18. *Financial Statements Instructions:*

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S–X [17 CFR 210]. The specimen price-make-up sheet required by Item 16.a. of this Form may be furnished as a continuation of the balance sheet or statement of assets and liabilities specified by Regulation S–X [17 CFR 210.6–01].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S–X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12–12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12–13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12–14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. Notwithstanding the requirements of Instruction A above, the following information may be omitted from any *Registration Statement:*

(1) Column C of Schedule I [17 CFR 210.12–12];

(2) Column F of Schedule II [17 CFR 210.12–13]; and

(3) Column C of Schedule III [17 CFR 210.12–14].

D. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

E. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] shall contain the following information:

(1) the audited financial statements required by Regulation S–X, as modified by Instructions B and C above, for the periods specified by Regulation S–X;

(2) the condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) unless shown elsewhere in the report as

part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

F. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1], except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S-X, as modified by Instructions B and C above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d–1, and the most recent preceding fiscal year;

(2) The condensed financial information required by Item 3(a) of this Form, for the period of the report as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

G. Reference is made to General Instruction E regarding incorporations by reference.]

3. By amending Item 20 of Part I of Form N–2 (§§ 239.14 and 274.11a–1) to read as follows:

§ 239.14 Form N–2 for closed-end management investment companies registered on Form N–8A.

§ 274.11a–1 Form N–2, registration statement of closed-end management investment companies.

* * * * *

Item 20. *Financial Statements Instructions:*

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S-X [17 CFR 210].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S-X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12–12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12–13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12–14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. Notwithstanding the requirements of Instruction A above, the following information may be omitted from any *Registration Statement:*

(1) Column C of Schedule I [17 CFR 210.12–12];

(2) Column F of Schedule II [17 CFR 210.12–13]; and

(3) Column C of Schedule III [17 CFR 210.12–14].

D. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

E. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] shall contain the following information:

(1) The audited financial statements required by Regulation S–X, as modified by Instructions B and C above, for the periods specified by Regulation S–X;

(2) The condensed financial information required by Item 3(a) of this form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

F. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S–X, as modified by Instructions B and C above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d–1 and the most recent preceding fiscal year;

(2) The condensed financial information required by Item 3(a) of this form, for the period of the report, as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

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

1. By revising § 270.30d–1 to read as follows:

§ 270.30d–1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semiannually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions E and F of Item 18 of Form N–1 or Item 20 of Form N–2) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) Each report shall be mailed within 60 days after the close of the period for which such report is being made.

(c) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus under the Securities Act, provided such prospectus includes the following additional information: (1) in the case of the prospectus serving as an annual or semiannual report, the remuneration disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus is serving as a report; (2) in the case of the prospectus serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus shall be mailed within 60 days after the close of the period for which the report is being made.

(d) The period of time within which any report prescribed by this rule shall be mailed may be extended by the Commission upon written request showing good cause therefor. Section 270.0–5 shall not apply to such requests.

Statutory Authority

The Commission hereby adopts amendments to Regulation S–X and to Form N–1 and Form N–2, and revised rule 30d–1 pursuant to the authority of sections 7, 8, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h, and 77s(a)] and sections 8, 30(d), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 80a–29(d), 80a–30(c), and 80a–37(a)].

By the Commission.

George A. Fitzsimmons,

Secretary.

July 8, 1981.

[FR Doc. 81-20697 Filed 7-13-81; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 211

[Release Nos. 33-6325; 34-17912; 35-22116; IC-11845; AS-293; S7-889]

Last-In, First-Out Method of Accounting for Inventories

AGENCY: Securities and Exchange Commission.

ACTION: Issuance of an accounting series release.

SUMMARY: Several recent enforcement cases and the amendments to the Internal Revenue Service regulations concerning the last-in, first-out ("LIFO") book/tax conformity statute have caused the Commission to focus on certain LIFO practices and disclosures. In addition to finding out that some practices being used are inappropriate, the Commission, after careful consideration, has concluded that practices which potentially contradict the conceptual basis of LIFO, i.e., the matching of current costs and current revenues need to be examined.

The Commission also has included guidelines in this release for those LIFO companies who wish to make supplemental non-LIFO income disclosures.

DATE: July 2, 1981.

ADDRESSES: The Commission invites written submissions concerning the practical experience of accountants and registrants in applying the LIFO inventory method. All comments should be filed in triplicate with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Submissions should refer to file No. S7-889 and, unless confidential treatment is authorized, will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser, George Diacont, or David F. Martin (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

LIFO is an inventory pricing method based on a flow-of-cost assumption that the last item purchased is the first item sold. In times of rising prices, LIFO generally results in higher current costs being charged against income, while older, lower costs are retained in inventory. Of the two fundamental reasons for using LIFO, one is oriented toward financial accounting and the other is income tax oriented. From the standpoint of financial accounting, proponents of LIFO argue that, by charging to expense those costs which more closely reflect the replacement cost of inventory, LIFO tends to reduce the illusionary profits obtained from merely holding inventories and thereby reflects more accurately the "true" income of a company.[1] Most companies that have changed to the LIFO method from other methods in the past decade have indicated that LIFO is a preferable method because of its ability to match current costs with current revenues during periods of rising prices. For income tax purposes many companies prefer LIFO because, during periods of rising prices, it generally reduces taxable income and thereby results in reduced income tax expense.

When LIFO become an acceptable tax method as announced in the Revenue Act of 1938, its application was limited to the specific identification method for raw materials in the inventories of leather tanners and producers and processors of certain nonferrous metals. Since then, the Internal Revenue Service ("IRS") regulations have been amended a number of times and today dollar value LIFO[2] is an acceptable method that can be used for almost all types of inventory goods. While allowing broad usage of the LIFO method, the statute was structured in a unique manner permitting only those taxpayers who use LIFO for financial accounting to use LIFO for tax purposes.

On January 13, 1981, the IRS published amended regulations[3] concerning the LIFO conformity rule. For many years, the IRS strictly enforced the conformity rule and required companies to apply LIFO in most cases identically for book and tax purposes and did not permit companies to disclose supplemental information about alternative methods of inventory pricing.[4] The Commission considers two aspects of the IRS amendments to be significant: (1) Companies may apply LIFO differently for book purposes than for tax purposes as long as they use some acceptable form of LIFO; and (2) companies may provide supplemental non-LIFO disclosures if they are not presented on the face of the income statement.

II. Applying LIFO for Book and Tax Purposes

The Commission believes that the conceptual basis for the LIFO method is the proper matching of current costs with current revenues. However, based on matters which the Commission and its staff have dealt with, we have concluded that when the dollar value method is used, changes in product mix, product prices and inventory pool liquidations can sometimes prevent a proper matching of cost and revenues. Accordingly, the Commission believes that the amended regulations which permit companies to compute LIFO differently for book and tax purposes are very positive. For too long, the application of the LIFO method for financial accounting and reporting has been unduly influenced by the tax application. Most explanations or analyses of LIFO in textbooks and articles have been oriented toward tax implications, rather than financial accounting and reporting. With few exceptions, the accounting profession has deferred to the IRS in this area; indeed, many accountants appear to view IRS LIFO regulations as if they were generally accepted accounting principles ("GAAP"). The Commission disagrees with this approach and believes that since LIFO may now be applied differently for book accounting and tax accounting, it is appropriate for the current practices used in the application of LIFO to be examined.[5]

Activities of the Commission and its staff concerning LIFO include the following: (1) a requirement to disclose the excess of replacement or current cost over LIFO value stated on the balance sheet, if material (Regulation S-

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[1] The Commission, in Accounting Series release No. 151, January 3, 1974, stated, "[s]uch [inventory] profits do not reflect an increase in the economic earning power of a business and they are not normally repeatable in the absence of continued price level increase."

[2] The dollar value method, in contrast to the specific identification method, values dollar rather than quantity increases in ending inventory and the dollar, rather than the physical item, is the unit of measure. There are four major dollar value methods: double extension, index, link chain and retail.

[3] Treasury Decision 7756, Title 26 CFR 1.472-2(e).

[4] There have been exceptions to this rule, e.g., the IRS issued annual waivers to permit companies to comply with Accounting Series Release No. 190, involving replacement cost, without violating the conformity rule.

[5] The Commission is aware of a task force which has been established by the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants to accumulate information about application problems. This type of effort, in addition to self-examination by individual registrants, is appropriate and should assist the Financial Accounting Standards Board in considering these matters.

X CFR 210.5-02-6); (2) a staff accounting bulletin which explicity identifies the need to disclose the amount of income, if material, that has been recorded because a LIFO inventory liquidation has taken place (Staff Accounting Bulletin No. 1)[6], (3) enforcement actions for imporper reporting and (4) meetings and communications with registrants on matters of application and disclosure. This release describes some ot the particular facts and conclusions concerning LIFO issues, that the Commission and its staff have considered, in order to enhance the examination of LIFO practices. These examples, which follow, are limited by the issues which the Commission and its staff have addressed and are not intended to be a complete consideration of concerns about the LIFO method.

Enforcement Issues

The Commission has instituted enforcement actions against a number of registrants that used the LIFO method to report a desired but fallacious result. These enforcement actions involve two distinct topics: new product designation and inventory levels.

New Product Designations

The accounting treatment given products entering an inventory pool for the first time ("new products") can affect financial statement results when they are reported at current cost. This has been noted particularly when the double extension approach to the dollar-value LIFO method is used. When the effects of inflation on the cost of new products are measured by making a comparison with current cost as the base year cost rather than a reconstructed base-year cost,[7] income tends to be increased.

The Commission has noted instances in which companies incorrectly designated pre-existing inventory items as new products and recorded them at current cost. They attempted to justify this treatment by distinguishing between the so-called new product and the same item already contained in the inventory based on insignificant and sometimes arbitrary differences in attributes. For example, new products have been designated because of slight differences in chemical composition, changes in manufacturing or production line location, and differences in supply sources.

[6] Topic 11F of Staff Accounting Bulletin No. 40 (46 FR 11513).

[7] Reconstructed base-year costs are "reasonable" estimates of what a particular inventory item would have cost had it been in the inventory in the base year.

The following examples illustrate instances where the Commission took exception to a registrant's new product policies.

i. Company A treated an item as new product merely because the production of that item was shifted from one plant to another. The change in manufacturing location and the changes in costs associated with the manufacture of that item were given as the major justifications for the new product treatment.

ii. Company B designated part of its nickel inventory as a "new product" because it contained cobalt. Although cobalt did not preclude the use of the nickel in the manufacture of stainless steel, the presence of the cobalt content caused a modification in the manufacturing process and resulted in a lower quality steel. The Commission focused on the apparent contradiction inherent in income being increased (by several million dollars) simply because a particular inventory commodity contained a physical property making it less valuable.

iii. Company C's policy was to treat iron ore obtained from different mine locations as distinct inventory products, arguably because of differences in chemical composition. The Commission objected, however, when Company C increased pre-tax earnings by $4.9 million simply by designating the mixture of three different kinds of iron ore as a new product and recording it at current cost.

Inventory Levels

The Commission has noted where registrants have manipulated the reported level of their inventory or parts of their inventory in order to affect reported earnings. In the following illustrative cases the Commission initiated enforcement actions against registrants because it considered the transactions to be improper.

i. Company D as part of a plan to shift income from 1974, a high income year, to 1975, an expected low income year, recorded the transfer of 1,088 tons of stainless steel from its FIFO to its LIFO inventory. The transfer was recorded on the company's books but the stainless steel was not physically moved. The LIFO effect of the transfer substantially lowered 1974 reported income. In 1975, a book entry was made to transfer the stainless steel back to the FIFO valued inventory, increasing reported earnings for that year.

ii. Company E misclassified some of the raw material in its inventory records. Although this misclassification did not affect the overall inventory quantity, the differences in the LIFO base cost of the misclassified raw materials resulted in reported increases in inventory and earnings.

Transactions such as those described above represent a perversion of the reporting process. Accordingly, financial statements prepared using these devices will be considered to be misleading.

LIFO Applications

Because of the nature of LIFO, transactions which would have no financial accounting impact if another method were used can significantly change reported income under LIFO. The following is an example of a recent registrant inquiry that was considered by the staff which illustrates this situation.

Company F, a company using LIFO, found itself with raw material commitments which were greater than it could utilize and decided to sell the excess. There was excess supply on the market and the sale was not anticipated to be accomplished by year end. The Company inquired whether the staff would object if a new non-LIFO subsidiary were established to hold and eventually sell the inventory. (This transaction would have occurred at an interim period during the Company's fiscal year and would have involved a bookkeeping transfer without physical movement of the inventory.) Since, for other reasons, the Company's inventory had decreased, the net effect of the transfer would have been to further decrease LIFO inventory causing a further decrement of LIFO layers and a substantial infusion of income. Although the staff did not assert any devious intent, it was concerned about the precedent of a bookkeeping transaction that did not involve a physical event but resulted in reporting considerable income. The Company stated that the IRS had approved of the transaction and that it did not expect the Commission staff to object. The staff informed the Company that it could not consider the transaction acceptable because its reported effect contradicted the economic substance of the situation.

III. Supplemental Disclosures

The other matter which the recent amendments affect is supplemental income disclosures based on non-LIFO inventory methods. Because there appears to be a tendency by some companies using LIFO to infer that FIFO earnings are the "real" earnings, the Commission reminds registrants that disclosures must be considered carefully so as not to result in misleading reporting for financial statement purposes. Those disclosures which

previously were prohibited by the conformity rule should not be presented in financial reports without consideration of their desirability or effect.

The most troublesome disclosures relate to pro-forma income information usually assuming the first-in, first-out ("FIFO") method is used. The asserted reason for these disclosures is usually that they are necessary to permit comparison of companies using LIFO and those using FIFO. The Commission does not believe that FIFO-based supplemental income disclosures by companies using the LIFO method for inventory determination are necessarily the best way to obtain comparable information. A better method would be to use the disclosures prescribed by Statement of Financial Accounting Standard No. 33, "Financial Reporting and Changing Prices." However, when such supplemental disclosures are properly formed and located the Commission has not objected to them.

The Commission's primary concern, the risk of user misinterpretation, is mitigated when registrants providing these disclosures (1) state clearly that the use of LIFO results in a better matching of costs and revenues (i.e., supporting the preferability of this method for their purposes), (2) indicate the reason why supplemental income disclosures are being provided and (3) present essential information about the supplemental income calculation to enable users to appreciate the quality of the information. Also, registrants should be careful of the terminology that they use since terms such as "LIFO reserve" or "LIFO adjustment" may be misunderstood by readers.

The purpose of presenting supplemental FIFO income information will have an impact on the location of the information. If companies present FIFO-based disclosures because they believe users want to have information available for comparison to operating results of companies not on LIFO, the Commission believes such disclosures should not be made in financial highlights, press releases or president's letters, since such analytical data, in the required detail, usually is not included in those places.

These disclosures would be better placed in footnotes to financial statements or management's discussion and analysis of financial condition and results of operations.

By the Commission.

George A. Fitzsimmons,

Secretary.

July 2, 1981.

[FR Doc. 81-20562 Filed 7-13-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 80F-0163]

Indirect Food Additives: Paper and Paperboard Components; 1,2-Dibromo-2,4-Dicyanobutane

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of 1,2-Dibromo-2,4-Dicyanobutane as a slimicide in the manufacture of paper and paperboard intended for food contact use. Calgon Corp. filed a petition requesting such use.

DATES: Effective July 14, 1981; Objections by August 13, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 3, 1980 (45 FR 37524), FDA announced that a food additive petition (FAP OB3495) had been filed by Calgon Corp., P.O. Box 1346, Pittsburgh PA 15230, proposing that § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a slimicide in the manufacture of paper and paperboard intended for food contact use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 176.300 should be amended as set forth below.

The Commissioner of Food and Drugs has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Commissioner's finding of no significant impact and the evidence supporting this finding contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 176 is amended in § 176.300(c) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * * * *	
1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691-65-7).	At a maximum level of 0.005% of dry weight fiber.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 13, 1981 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective July 14, 1981.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348).)

Dated: July 2, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20336 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 320

[Docket No. 75N-0051]

Bioavailability and Bioequivalence Requirements; Updating of Drug List

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the bioavailability regulations by revising the list of drug products for which bioavailability data are not waived (21 CFR 320.22(c)). Since these regulations were issued in January 1977, the agency has published individual Drug Efficacy Study Implementation (DESI) notices stating that certain drug products determined to be effective for at least one indication have known or potential bioavailability problems. The names of these drug products are now being added to the list of drugs with such problems.

DATES: Effective July 14, 1981; comments by September 14, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eileen Hodkinson, Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: FDA is amending the list of specific drug products with known or potential bioavailability problems contained in § 320.22(c) (21 CFR 320.22(c)). Since January 7, 1977, when the list was issued as a final regulation (42 FR 1638), the agency has published a number of DESI notices which included a bioavailability requirement for effective drug products. This list is being updated to include all such drug products.

This action is taken, in part, in response to a citizen petition from G. D. Searle & Co. requesting the agency to amend 21 CFR 320.22(c)(1) to incorporate specific reference to "Spironolactone tablets" under the heading "Anti-Hypertensive/Diuretic." The agency granted the petition in a letter to G. D. Searle & Co. on November 26, 1980. A copy of the petition and the agency's response are on file under Docket No. 79N–0206/CP in the Dockets Management Branch (address above).

When the bioavailability regulations were published, they required the submission of in vivo bioavailability data in each new drug application (NDA) or abbreviated new drug application (ANDA) or the submission of information sufficient to justify a waiver. However, certain DESI effective drugs, subject to known or potential bioavailability problems were listed as drugs for which no waiver would be granted. The regulations were amended (21 CFR 320.22(c)(3)) (42 FR 42311; August 23, 1977) to state that a waiver would not be granted for a drug product for which an initial DESI effective notice which contained a bioavailability requirement was published after January 7, 1977. Further, the agency stated that any drug product subject to such a DESI notice would be added to § 320.22(c) at periodic updates of that section. Any person who has submitted a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(b), for one of those drug products has been required to submit evidence demonstrating the in vivo bioavailability of the drug product that is the subject of the application or supplement.

FDA is now updating § 320.22(c) to include all drug products for which a DESI notice has set forth a bioavailability requirement as a condition for NDA, ANDA, or supplemental NDA approval.

No new requirements are intended to be imposed by this amendment. Rather, its purpose is to consolidate into one list the names of the DESI effective drugs that are solid oral dosage forms (other than enteric coated or controlled release) for which in vivo bioavailability data are required. Updating this list will make it easier for prospective applicants and holders of approved NDA's and ANDA's to determine what information must be included in their applications or supplements. Other DESI drugs, evaluated as less-than-effective, are undergoing reviews and further proceedings before final effectiveness determinations can be made. If any of these drug products are upgraded to effective, they then will be evaluated for bioavailability/bioequivalence problems, and further updating of the list set out in § 320.22(c) (1) and (2) may be indicated.

The agency is also amending the list by deleting the heading "Miscellaneous" and reassigning each of the five drugs (imipramine hydrochloride tablets, isoproterenol sublingual tablets, methyltestosterone tablets, probenecid tablets, sodium sulfoxone tablets) now listed as "Miscellaneous" to a category that is more descriptive. Further, the name of one drug product, salicylazosulfapyridine, is being changed to reflect the change in its established name, now sulfasalazine.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

§ 320.22 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 505, 701(a), 52 Stat. 1049–1053 as amended, 1055 (21 U.S.C. 351, 352, 355, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), paragraph (c)(1) of § 320.22 *Criteria for waiver of evidence of in vivo bioavailability* is amended as follows:

1. By adding alphabetically a new heading "Androgens" and adding "Methyltestosterone tablets" under it.

2. By adding alphabetically a new heading "Anti-Cholinergic" and adding "Diphemanil methylsulfate tablets" under it.

3. By adding alphabetically a new heading "Anti-Depressants" and adding "Imipramine hydrochloride tablets" under it.

4. By adding alphabetically a new heading "Anti-Emetic" and adding "Trimethobenzamide capsules" under it.

5. Under the heading "Anti-Hypertensive/Diuretics," by adding alphabetically "Chlorthalidone tablets," "Guanethidine sulfate tablets" and "Spironolactone tablets."

6. Under the heading "Anti-Infectives," by changing the entry "Salicylazosulfapyridine tablets" to read "Sulfasalazine tablets" in accordance with the change in its established name, and adding alphabetically "Sodium sulfoxone tablets."

7. Under the heading "Anti-Neoplastics," by adding alphabetically "Cyclophosphamide tablets."

8. By adding alphabetically a new heading "Anti-Pruritic" and adding "Methdilazine tablets" under it.

9. By adding alphabetically a new heading "Anti-Rheumatic" and adding alphabetically "Oxyphenbutazone tablets" and "Phenylbutazone tablets" under it.

10. Under the heading "Estrogens," by adding alphabetically "Conjugated estrogens with meprobamate tablets. [1] "

11. Under the heading "Hypoglycemics," by adding alphabetically "Chlorpropamide tablets."

12. By deleting the heading "Miscellaneous" and the entries under it.

13. By adding alphabetically a new heading "Sedatives" and adding "Butalbital, aspirin, phenacetin, and caffeine tablets and capsules [1] " under it.

14. By adding alphabetically a new heading "Skeletal Muscle Relaxants" and adding "Carisoprodol in combination with phenacetin and caffeine (with or withour codeine phosphate) [1]" and "Methocarbamol with aspirin tablets [1]" under it.

15. By adding alphabetically a new heading "Sympathomimetics" and adding "Isoproterenol sublingual tablets" under it.

16. Under the heading "Thyroid Supplement," by adding "Thyroglobulin tablets."

17. Under the heading "Tranquilizers," by adding "Hydroxyzine hydrochloride tablets [1]" and "Hydroxyzine pamoate capsules and oral suspension."

18. By adding alphabetically a new heading "Uricosurics" and adding "Probenecid tablets" and "Sulfinpyrazone tablets and capsules" under it.

19. By adding the following footnote after the list:

"[1] In vivo bioavailability must be demonstrated only if product fails to achieve adequate dissolution when compared to the test drug product."

Because this amendment does not impose new requirements but merely updates the list of drug products with potential but bioavailability or bioequivalence problems to reflect previous decisions on individual products, FDA finds for good cause that notice and public procedure are unnecessary. Interested persons, however, may on or before September 14, 1981, submit to the Dockets Management Branch (address above), written comments on the final rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12291, the economic effects of this final rule have been carefully analyzed, and it has been determined that the rule is not a major rule under the criteria in the Executive Order. In addition, the individual DESI notices which this document consolidates into a list were adjudications that would not have been subject to Executive Order 12291. A copy of the regulatory impact analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Effective date. This regulation will be effective July 14, 1981.

(Secs. 501, 502, 505, 701(a), 52 Stat. 1049–1053 as amended, 1055 (21 U.S.C. 351, 352, 355, 371(a)).)

Dated: June 23, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 81-20337 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Sulfamethazine Sustained-Release Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods Corp. providing for safe and effective use of sulfamethazine sustained-release boluses in treating beef cattle and nonlactating dairy cattle for certain infections caused by sulfamethazine-sensitive organisms. The regulations are further amended to indicate those conditions of use of this product for which applications for approval of identical or similar products need not include certain types of effectiveness data.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Richard A. Carnevale, Bureau of Veterinary Medicine (HFV–125), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1788.

SUPPLEMENTARY INFORMATION: International Multifoods Corp., 1200 Multifoods Bldg., 8th and Marquette Sts., Minneapolis, MN 55402, filed an NADA (120–615) providing for the safe and effective use of sustained-release boluses containing 32.1 grams of sulfamethazine for treating beef cattle and nonlactating dairy cattle for bacterial pneumonia and bovine respiratory disease complex (shipping fever complex) caused by *Pasteurella* spp., colibacillosis (bacterial scours) caused by *E. coli*, necrotic pododermatitis (foot rot) and calf diphtheria caused by *Fusobacterium necrophorum*, and acute mastitis and acute metritis caused by *Streptococcus* spp.

The Bureau of Veterinary Medicine has determined that the product is generically equivalent to American Cyanamid Co.'s sulfamethazine conventional oblet, which was the subject of a National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group, evaluation published in the **Federal Register** of July 17, 1970 (35 FR 11532). NAS/NRC found, and FDA concurred, that the products were probably effective for treatment of infectious diseases caused by sulfamethazine-sensitive organisms. NAS/NRC recommended that American Cyanamid make certain labeling revisions to upgrade its oblet's rating to effective. The labeling for International Multifoods' sulfamethazine sustained-release bolus is in compliance with those NAS/NRC recommendations. International Multifoods' bolus has been found bioequivalet to American Cyanamid's conventional oblet. Bioequivalency of the two formulations is based on comparability of data from crossover blood level studies in cattle. Additionally, the firm submitted literature references supporting the effectiveness of sulfamethazine for use as labeled. Furthermore, certain acute toxicity tests and tissue residue studies demonstrating safety were submitted. Based on the data and information submitted, the NADA is approved and the regulations are amended accordingly. The regulations are further amended by editorially revising existing § 520.2260b to reflect current format.

In a notice published elsewhere in this issue of the **Federal Register**, the agency states its position of accepting applications for generic equivalents of sulfonamide drugs reviewed by NAS/NRC and found to be effective. Consistent with that notice, and because International Multifoods' labeling is in compliance with NAS/NRC

recommendations, this document indicates those conditions of use for which applications for approval of identical products need not include certain types of effectiveness data required by § 514.111(a)(5)(ii)(*a*)(*4*) of the new animal drug regulations. In lieu of those data, approval of applications for such products may be based on bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs. The guideline is available from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 520.2260b is amended by reorganizing paragraphs (a) through (d) and redesignating them as paragraphs (a) and (b) and by adding new paragraph (c). As revised, § 520.2260b reads as follows:

§ 520.2260b Sulfamethazine sustained-release boluses.

(a)(1) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter for use of a 22.5-gram sulfamethazine prolonged-release bolus.

(2) *Conditions of use*—(i) *Amount.* Depending on the duration of therapeutic levels desired, administer boluses as a single dose as follows: 3½ days—1 bolus (22.5 grams) per 200 pounds of body weight; 5 days—1 bolus per 100 pounds of body weight.

(ii) *Indications of use.* Beef and nonlactating cattle for sustained treatment of shipping fever pneumonia caused or complicated by *Pasteurella multocida;* as an aid in the treatment of foot rot, mastitis, pneumonia, metritis, bacterial enteritis, calf diphtheria, and septicemia when caused or complicated by bacteria susceptible to sulfamethazine.

(iii) *Limitations.* Cattle that are acutely ill should be treated parenterally with a suitable antibacterial product to obtain immediate therapeutic blood levels; do not slaughter animals for food within 16 days of treatment; do not use in lactating dairy cattle; Federal law restricts this drug to use by or on the order of licensed veterinarian.

(b)(2) *Sponsor.* See No. 011519 in § 510.600(c) of this chapter for use of a 27-gram sulfamethazine sustained-release bolus.

(2) *Conditions of use*—(i) *Amount.* 27 grams (1 bolus) for each 150 pounds of body weight as a single dose.

(ii) *Indications for use.* For nonlactating cattle for the treatment of infections caused by organisms sensitive to sulfamethazine such as hemorrhagic septicemia (shipping fever complex), bacterial pneumonia, foot rot, and calf diphtheria and as an aid in the control of bacterial diseases usually associated with shipping and handling of cattle.

(iii) *Limitations.* If no response within 2 to 3 days, reevaluate therapy; do not crush tablets; treated animals must not be slaughtered for food within 28 days after the latest treatment; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c)(1) *Sponsor.* See No. 012518 in § 510.600(c) of this chapter for use of a 32.1-gram sustained-release bolus.

(2) *Conditions of use*—(i) *Amount.* 32.1 grams (1 bolus) per 200 pounds of body weight.[1]

(ii) *Indications for use.* For beef and nonlactating dairy cattle for the treatment of diseases caused by sulfamethazine-sensitive organisms as follows: bacterial pneumonia and bovine respiratory disease complex (shipping fever complex) caused by *Pasteurella* spp., colibacillosis (bacterial scours) caused by *E. coli,* necrotic pododermatitis (foot rot) and calf diphtheria caused by *Fusobacterium necrophorum,* and acute mastitis and acute metritis caused by *Streptococcus* supp.)[1]

[1] These conditions are NAS/NRC reviewed and found effective. Applications for these uses need not inlcude effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(iii) *Limitations.* Boluses are designed to provide a therapeutic sulfamethazine level in approximately 8 to 12 hours and to maintain the level for 72 hours (3 days). After 72 hours, all animals should be reexamined for persistence of observable disease signs. If signs are present, consult a veterinarian. It is strongly recommended that a second dose be given to provide for an additional 72 hours of therapy, particularly in more severe cases. The dosage schedule should be used at each 72-hour interval. Animals should not receive more than 2 doses because of the possibility of incurring residue violations. This drug, like all sulfonamides, may cause toxic reactions and irreparable injury unless administered with adequate and continuous supervision; *follow dosages carefully.* Fluid intake must be adequate at all times throughout the 3-day therapy. Do not use in lactating dairy cattle. Do not treat animals within 12 days of slaughter.

Effective date. July 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 23, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81–20509 Filed 7–13–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Henwood Feed Additives, Inc., providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Henwood Feed Additives, Inc., 211 Western Rd., Box 577, Lewisburg, OH 45338, is the sponsor of supplemental NADA 106–484 filed on its behalf by Elanco Products Co. The supplemental NADA provides for use of a premix

containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds for (1) maintaining weight gain and feed efficiency in the presence of atrophic rhinitis, (2) lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, (3) prevention of swine dysentery (vibrionic), and (4) control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The firm currently has approval for use of a premix containing 10 grams per pound each of tylosin and sulfamethazine for making an identical finished feed to be used for identical purposes (21 CFR 558.630(b)(3)).

Approval of this application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA's 12-491 and 41-275. Use of this data in NADA's 12-491 and 41-275 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this supplement is a Category II supplemental NADA which does not require reevaluation of the safety and effectiveness data in NADA's 12-491 and 41-275.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 by revising paragraph (b)(3) and by adding new paragraph (b)(8) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(3) To 011490, 011749, 016968, 017255, 017274, 024174, 034500, 035955, 043743, 046987; 10 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

(8) To 026186; 5 or 10 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

Effective date. This regulation is effective July 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 6, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-20505 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 7H5156/T71; PH-FRL-1880-6]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; Profenofos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule renews a temporary feed additive regulation for the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolites converted to 4-bromo-2-chlorophenol (calculated as the parent compound) in cottonseed hulls at 6 parts per million (ppm) and soapstock at 15 ppm resulting from application of the insecticide to growing cotton. This regulation was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: Effective on July 14, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William H. Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 403, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7040).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of August 21, 1980 (45 FR 55715) that Ciba-Geigy Corp., Agricultural Div., P.O. Box 11422, Greensboro, NC 27409, had requested an extension of feed additive petition 7H5156. This regulation extended a feed additive for residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolites converted to 4-bromo-2-chlorophenol (calculated as the parent compound) in cottonseed hulls at 6 parts per million (ppm) and soapstock at 15 ppm resulting from application of the insecticide to growing cotton in accordance with an experimental use permit. This experimental program expired October 16, 1980.

Ciba-Geigy Corp. has requested a renewal of this regulation to permit continued testing to obtain additional data and to permit the marketing of feed commodities affected by the application of the insecticide profenofos to cottonseed hulls and soapstock.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being renewed under the Federal Insectide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136). A related document (PP 7G1888/T315) for residues of the subject insecticide in or on the raw agricultural commodities cottonseed; milk; eggs, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may on or before August 13, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C.

20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

Effective date: July 14, 1981.

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

Dated: June 29, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore 21 CFR 561.53(a) is revised to read as follows:

§ 561.53 Profenofos.

(a) A regulation is established permitting residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolites converted to 4-bromo-2-chlorophenol (calculated as the parent compound) in cottonseed hulls at 6 parts per million (ppm) and soapstock at 15 ppm resulting from application of the insecticide to growing cotton. Such residues may be present therein only as a result of the application of the insecticide in accordance with the provisions of an experimental use permit that expires June 29, 1982.

* * * * *

[FR Doc. 81-20504 Filed 7-13-81; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 79N-0076]

Additional Standards for Diagnostic Substances for Laboratory Tests; Antibody to Hepatitis B Surface Antigen; Reduction in the Number of Samples Submitted

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to reduce the number of samples of diagnostic test kits containing Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I that must be submitted to FDA's Bureau of Biologics (the Bureau) after consistency in manufacturing has been established following licensure. Tests conducted by the Bureau show that it is no longer necessary to require samples from every lot of diagnostic test kits produced. This will eliminate the unnecessary burdens imposed on manufacturers in the loss of product and cost of mailing and on the agency in the cost of storing, testing, and disposing of sample diagnostic test kits.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 28, 1979 (44 FR 76811), FDA proposed to reduce the number of samples of diagnostic test kits containing Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I required to be submitted to the agency for testing after licensure. Instead of requiring each licensed manufacturer to submit a sample and protocol for each lot of the diagnostic test kit, the proposed revision would require manufacturers to submit one finished package of each lot until written notification of official release by the agency is received for each of at least five consecutive lots. Thereafter, written notification would no longer be required. The manufacturer would only be required to submit, at periodic intervals of 90 days, one finished package of a lot of diagnostic test kits and protocol identified by the manufacturer as "surveillance test results."

As discussed in the preamble to the proposal, this rule is supported by the Bureau of Biologic's experience in testing samples of diagnostic test kits received and by the Bureau's evaluation of proficiency test results performed by 1,164 participating licensed manufacturers or their testing laboratories to detect hepatitis reactive samples.

Interested persons were given until February 26, 1980, to file written comments. Only one comment was received and it supported the proposed rule. In addition, the comment requested that the proposed rule be extended to biologic diagnostic test kits which employ Hepatitis B Surface Antigen iodinated with ^{125}I. The agency will review and evaluate available data regarding manufacturers of Hepatitis B Surface Antigen iodinated with ^{125}I. If justified, a specific proposal to extend this regulation to those test kits containing Hepatitis B Surface Antigen iodinated with ^{125}I will be published in the Federal Register.

The agency has carefully considered the economic effects of this rule and has determined that it is not a major rule as defined by Executive Order 12291. This determination is based on the fact that this rule will reduce the burden placed on industry by the current regulation.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 21 CFR 5.1; see 46 FR 26052; May 11, 1981)), Part 660 is amended to read as follows:

1. In § 660.2 by revising paragraph (f) to read as follows:

§ 660.2 General requirements.

* * * * *

(f) *Retention samples.* Each manufacturer shall retain representative samples of the product in accordance with § 600.13 of this chapter except for that which has been iodinated with radioactive iodine. Retention samples of Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I shall consist of a minimum of two complete finished packages of each lot of the diagnostic test kit and shall be retained for a period of at least 90 days from the date of manufacture.

2. By adding new § 660.6 to Subpart A to read as follows:

§ 660.6 Samples, protocols, official release.

(a) *Antibody to Hepatitis B Surface Antigen not iodinated with ^{125}I—(1) Samples.* Each manufacturer shall submit a sample of each filling of each lot packaged as for distribution,

including all ancillary reagents and materials, to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

(2) *Protocols.* Each manufacturer shall submit a protocol that consists of a summary of the history of manufacture of each filling of each lot, including all results of each test for which test results are requested by the Director, to the Director, Bureau of Biologics.

(3) *Official release.* The product must not be distributed by the manufacturer until written notification of offical release of each filling of each lot is received from the Director, Bureau of Biologics.

(b) *Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I*—(1) *Samples.* (i) Each manufacturer shall submit the following samples of lots of diagnostic test kits in finished packages, including all ancillary reagents and materials, to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205, within 1 working day after the manufacturer has satisfactorily completed all tests of the finished packaged material:

(*a*) One finished package of each lot of diagnostic test kits until written notification of official release is no longer required under paragraph (b)(3)(ii) of this section.

(*b*) One finished package of a lot of diagnostic test kits at periodic intervals of 90 days, beginning after written notification of official release is no longer required under paragraph (b)(3)(ii) of this section. The finished sample submitted at the 90-day interval shall be from the first lot of diagnostic test kits released by the manufacturer, under the requirements of § 610.1 of this chapter, after the 90-day interval. The finished package shall be identified as "surveillance sample" and shall include the date of manufacture.

(ii) Samples of any lot of diagnostic test kits may at any time be required to be submitted to the Director, Bureau of Biologics, if the Director finds that the product fails to maintain reliability in complying with the standards for this product.

(2) *Protocols.* For each sample of a lot of diagnostic test kits submitted as required in paragraph (b)(1) of this section, the manufacturer shall send a protocol that consists of a summary of the history of manufacture of the lot, including all results of each test for which test results are requested by the Director, Bureau of Biologics. The protocols submitted with the samples at periodic intervals as provided in paragraph (b)(1)(i)(*b*) of this section shall be identified by the manufacturer as "suveillance test results."

(3) *Official release.* (i) The manufacturer shall not distribute a lot of diagnostic test kits until written notification of official release is received from the Director, Bureau of Biologics except as provided in paragraph (b)(3)(ii) of this section. Official release is required for at least five consecutive lots of diagnostic test kits manufactured after licensure of the product.

(ii) After written notification of official release is received from the Director, Bureau of Biologics, for at least five consecutive lots of diagnostic test kits manufactured after licensure of the product, and after the manufacturer receives written notification that official release is no longer required, subsequent lots of diagnostic test kits may be released by the manufacturer pursuant to the requirements of § 610.1 of this chapter.

(iii) The manufacturer shall not distribute lots of diagnostic test kits that require sample submission under paragraph (b)(1)(ii) of this section until written notification of official release or notification that official release is no longer required is received from the Director, Bureau of Biologics.

Effective date. This regulation becomes effective on August 13, 1981.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: June 17, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20338 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 115

Payment of Sioux Benefits; Eligibility Criteria and Application Procedures Governing Benefits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is adding a new Part 115 to Subchapter J, Chapter I, Title 25 of the Code of Federal Regulations. This rule prescribes the eligibility criteria and application procedures governing payment of "Sioux benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act, and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). This revision of the Bureau's regulations is the result of a suit brought against the Bureau challenging the eligibility requirements for Sioux benefits as unconstitutionally discriminatory. These regulations will resolve the litigation by establishing non-discriminatory criteria for determination of "head of family" eligibility for Sioux benefits.

EFFECTIVE DATE: This rule becomes effective July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Sandra R. Etheridge, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C., 20240; telephone number (202) 343–9405.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of rulemaking authority delegated by the Secretary fo the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. This new part was published in the **Federal Register** as a proposed rule on January 9, 1981 (46 FR 2366). Interested persons were invited to submit comments by February 9, 1981. Only one comment was received which dealt with the wording of Section 115.4(b), pointing out that Sioux Indians who are members of other tribes reside on the Cheyenne River Indian Reservation but only members of the Cheyenne River Sioux Tribe are eligible for Sioux Benefits. Accordingly, where § 115.4(b) refers to Sioux Indians of the Cheyenne River Reservation, it has been changed to read "members of the Cheyenne River Sioux Tribe."

As indicated in the supplementary information section of the proposed rule, this rule could not be promulgated as a final rule until certain inconsistent decisions regarding payment of Sioux benefits issued by the General Accounting Office were modified or rescinded. GAO has issued a Comptroller General's Decision dated January 30, 1981, which overrules those prior decisions inconsistent with the proposed regulations, except that GAO has determined that all applications for benefits must be made and approved during the applicant's lifetime, regardless of the statute under which benefits are sought. The regulations have been modified accordingly to be consistent with the January 30, 1981 GAO Decision.

The information collection requirements contained in this Part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0004.

This rule is being made effective immediately upon publication in the **Federal Register** since it relieves a restriction, imposes no additional

burden on the affected parties and no purpose would be served by delaying its effective date. Therefore, the 30-day deferred effective date is dispensed with under the exceptions provided in subsection (d)(1), (3) of 5 U.S.C. 553 (1970).

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic impact on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. It imposes no new requirements.

The primary author of this document is John Saxon, formerly attorney, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240; telephone number (202) 343-9405.

Subchapter J of Chapter I of Title 25 of the Code of Federal Regulations is amended by the addition of a new Part 115 to read as follows:

Roy H. Sampsel,

Deputy Assistant Secretary, Indian Affairs.

PART 115—PAYMENT OF SIOUX BENEFITS

Sec.
115.1 Scope.
115.2 Purpose.
115.3 Definitions.
115.4 Eligibility.
115.5 Application procedure.
115.6 Administration.

Authority: Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 662, 45 Stat. 984; Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

§ 115.1 Scope.

The regulations in this Part govern the payment of "Sioux benefits" to allotted Sioux Indians under the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984; and to unallotted Sioux Indians on the Cheyenne River Indian Reservation under the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

§ 115.2 Purpose.

The purpose of these regulations is to implement the provisions of federal statutes which provide for the payment of "Sioux benefits" to Sioux Indians by setting forth the criteria governing eligibility for and entitlement to "Sioux benefits" and by establishing procedures governing application for and payment of "Sioux benefits."

§ 115.3 Definitions.

As used in this Part, the term—

(a) "Area Director" means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

(b) "Bureau" or "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(c) "Commissioner" means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) "Sioux benefits" means the allotment of stock and farming equipment plus $50.00 cash as provided for by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) "Sioux Indian" means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) "Single person" includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) "Head of a family" means only (1) a married person who meets the requirements of section 115.4(c)(1) or (2) (if living with his/her spouse) or section 115.4(c)(3) (if not living with his/her spouse), and (2) an unmarried person under the age of eighteen years who meets the requirements of section 115.4(c)(3).

(h) For the purpose of determining family support under sections 115.4(c)(2) and 115.4(c)(3), "family" means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

§ 115.4 Eligibility.

(a) Allotted Sioux Indians. The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576 § 14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 115.4(c));

(3) He/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in § 115.5); *and*

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(d)).

(b) Unallotted Sioux Indians. The Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and have not, in fact, been allotted lands under the provisions of such federal statutes. That Act has current application only to unallotted members of the Cheyenne River Sioux Tribe because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute a member of the Cheyenne River Sioux Tribe *is* eligible for Sioux benefits if—

(1)He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, § 1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and has not been allotted lands under the provisions of such federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 115.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 115.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(d)); *and*

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) Head of a Family. The following criteria apply in determining head of

family status under both sections 115.4(a) and 115.4(b).

(1) Except as provided in section 115.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not concur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payment made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this Part solely because of his status as a husband. The Bureau shall not presume that a wife is not a head of a family for purposes of this Part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this Part solely because of such status. The Bureau shall not presume that a Sioux woman marrried to a Sioux man in not a head of a family for purposes of this Part solely because of such status.

(d) Double benefits. The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that (1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian who, under prior law, was held to have a vested right to receive such benefits as of the date of death, or (2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

§ 115.5 Application procedure.

(a) Agency Superintendent. Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.

(b) Area Director. Within fourteen (14) days of receipt of an application from the Agency Superintendent, the Area Director shall approve or disapprove the application and notify, in writing, the applicant and the Agency Superintendent of such decision and, if denied, the reasons therefor. Failure of the Area Director to act within the specified time shall have the effect of approval of the application.

(c) Appeal. Approval of an application by the Area Director shall be final and conclusive. Disapproval of an application may be appealed to the Commissioner pursuant to the administrative review procedures of 25 CFR 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 Part 4, Subpart D. Approval of an application on administrative appeal or pursuant to judicial review shall relate back to the date of the Area Director's decision.

(d) Prior Applications.

(1) Eligibility for Sioux Benefits will be determined by an applicant's status as of the date of application, except that where an applicant's application was disapproved prior to the promulgation of these regulations under the provisions of previous Bureau regulations or policies, the applicant may reapply and, if he/she so requests, have his/her eligibility determined based upon his/her status as of the date of such prior application, which shall be deemed to be the date of the application, but nothing in this subsection shall be construed to allow any application to be made on behalf of a deceased Sioux Indian whose prior application was disapproved.

(2) Unallotted Sioux Indians of the Pine Ridge and Rosebud Reservations whose applications were submitted and disapproved prior to the termination of payment of Sioux benefits on each respective reservation may reapply for benefits under this subsection within one year of the effective date of this Part and receive payment if their eligibility under section 115.4(b) is established as of the date of such initial application.

(e) Information Collection. The information collection requirements contained in this Part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0004. The information is being collected to provide information necessary for the Bureau to determine eligibility for Sioux benefits. This information will be used to grant statutory benefits. The obligation to respond is required to obtain a benefit.

§ 115.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved during the lifetime of the applicant as provided by federal law.

(b) Payment of Sioux benefits shall be made in accordance with a budget or plan for expenditure submitted by the applicant and approved by the Agency Superintendent.

(c) The Commissioner shall annually compute the commuted monetary value of Sioux benefits to be effective on October 1 of that year and notify the affected tribes and Bureau agencies of such determination.

(d) The Area Director shall annually notify both the Cheyenne River Sioux Tribe and the Commissioner of the number of Sioux benefits remaining available to be paid under the provisions of the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

[FR Doc. 81-20511 Filed 7-13-81; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation which requires a new

initial hearing whenever a prisoner receives a new additional federal sentence. The modification removes the requirement for a new hearing in cases where the new sentence results from an offense committed while in the custody of the Bureau of Prisons (including escape and criminal acts committed while on escape) which the Parole Commission has already sanctioned through rescission procedures. However, the requirement for a new hearing remains for those prisoners previously continued to the expiration of their sentence who now have a newly extended sentence expiration date. The purpose of the amendment is to avoid the duplication of holding two hearings on the same criminal behavior where all relevant release factors have already been considered.

EFFECTIVE DATE: August 31, 1981.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, 5550 Friendship Boulevard, Bethesda, Maryland 20015, (301) 492–5959.

SUPPLEMENTARY INFORMATION:

28 CFR 2.28(c) now requires the Parole Commission to hold a new initial hearing whenever it is notified that a prisoner has received an additional concurrent or consecutive federal sentence. The question has been raised as to whether a new initial hearing is always necessary where a prisoner has already received a rescission hearing which covered the same behavior that led to the subsequent federal conviction and sentence, since the guidelines to be applied for both proceedings are identical. See 28 CFR 2.36(a). In the rescission process, the prisoner is afforded all the procedural rights of notice, disclosure, opportunity to be heard, and written reasons for the decision that are available at or after the initial hearing under 18 U.S.C. 4208.

Thus the Commission has amended its regulation at 28 CFR 2.28(c) to remove the mandatory provision for a new initial hearing where such hearing would merely be duplicative. The requirement for a new hearing remains where the new sentence extends the prisoner's mandatory release date and the decision after the rescission hearing was to continue the prisoner to the expiration of his sentence. Obviously, it would not be appropriate to simply extend the custody of the prisoner until the new mandatory release date without another prompt, full-scale hearing. A new hearing may also be scheduled, as a matter of the Commission's discretion, where the new conviction discloses aggravating circumstances not previously considered by the Commission, which might lead to a later presumptive parole date.

Therefore, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.28(c) is revised and set forth below.

§ 2.28 Reopening of Cases.

* * * * *

(c) *Additional sentences.* If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to consider the additional sentence and reevaluate the case. Such action shall void the previous presumptive or effective release date. However, a new initial hearing is not mandatory where the Commission has previously evaluated the new criminal behavior, which led to the additional federal sentence, at a rescission hearing under 28 CFR 2.34; except where the new sentence extends the mandatory release date for a prisoner previously continued to the expiration of his sentence.

* * * * *

I certify that this rule will not have a substantial economic impact on a significant number of small entities.

Dated: July 2, 1981.

Benjamin J. Malcolm,

Acting Chairman.

[FR Doc. 81-20692 Filed 7-13-81; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising its Paroling Policy Guidelines To: (1) place the offense of possession with intent to distribute more than one kilogram of 100% pure heroin (managerial or proprietary interest) in the Greatest II category; (2) place the offense of voluntary manslaughter in the Greatest II category; and (3) clarify that manufacturing of more than $100,000 of counterfeit currency (but not more than $500,000) is to be placed in the Very High category. The first two of these revisions reflect an adjustment of the guidelines to account for current decisional practices and experiences; the third is an editorial clarification.

EFFECTIVE DATE: The revised guideline table will be applied at initial parole and revocation hearings held on or after August 31, 1981.

FOR FURTHER INFORMATION CONTACT: Peter Hoffman, Office of Research, U.S. Parole Commission, 5550 Friendship Blvd., Bethesda, Maryland 20015. Tel: (301) 492–5980.

SUPPLEMENTARY INFORMATION:

1. Opiate Offenses

At 46 FR 14904 (March 3, 1981) the Commission proposed that the amount of drugs used to place opiate offenses in the Greatest I category be limited to one kilogram of 100% pure heroin (or equivalent amount), and that opiate offenses involving more than one kilogram of 100% pure heroin (or equivalent amount) be placed in the Greatest II category.

This proposal was made in order more accurately to reflect the Commission's current decision-making practices in cases of multi-kilogram heroin distribution or importation, when the offender played a managerial or proprietary role in the offense. The Commission's procedures permit decisions above the guidelines for offenses of unusual magnitude and sophistication [see 18 U.S.C. 4206(c) and 2 U.S. Code Cong. & Admin. News at 359 (1976)]. A review of recent parole decisions indicates that this reason is frequently invoked to render decisions above the Greatest I guidelines. A study of 76 large scale heroin conspiracy cases involving multi-kilo amounts of opiates which were referred for original jurisdiction consideration by the Commission found that all but one were continued above the guidelines because of the unusual magnitude and sophistication of the offense. While these orginal jurisdiction cases are not necessarily representative of all multi-kilo opiate cases, they do serve to illustrate a group of offenders for whom the Commission sitting as a body concluded that the "magnitude of the offense" constituted good cause to go outside the guidelines. Accordingly, the present revision of the rule draws a customary dividing line as to what the Commission normally considers "unusual magnitude" in large scale opiate cases.

Under the revised rule, as before, the Commission will base its quantity calculations either upon the amount of opiate actually seized from the offender (including any reliable evidence of prior transactions) or (in the case of an organized offense) upon the total estimated amount that the organization was responsible for distributing over the period of its existence, based on

frequency of transactions, number of operators, cashflow, transactions intercepted, and other indicative evidence. In all cases involving co-conspirators, the relevant amount is the total distributed by the organization, rather than the individual offender (provided that the offender had a managerial or proprietary role in the organization's operations).

Given the resilience of heroin importation and distribution networks that operate on this scale, and the enormous profit expectations of this sophisticated type of criminal, the Commission is especially concerned that its rules remain flexible enough to permit an adequate deterrent or incapacitative sanction in the light of the circumstances of each case. This can mean, depending upon the length of the sentence imposed, that release on parole may be found altogether inappropriate for such offenders.

Comment received from the public was favorable to this proposal. A typical comment was:

> Since the effect of drugs is so prevasive and insidious in our society, the people who traffic in drugs should be placed in the same severity category as those who commit murder. Until the drug traffickers and dealers learn that their activities will put them behind bars forever when they are caught, I fear we will see drug availability continuing to increase. Our society is ultimately doomed if drug usage continues to increase.

One prisoner, however, felt that heroin distribution should not be classed with "violent offenses." The Commission disagrees. While the use of or addiction to heroin does not in all cases result in obvious harm to the user or other criminal conduct, the frequency of violent crime committed by heroin users, the ruined physical and mental health of a large number of addicts, and the widespread social deterioration, suffering and loss caused by addiction to heroin, make the importation or distribution of that drug in wholesale quantities an indirect but major cause of violence and social harm that must be equated with the most serious offenses punished by our criminal law.

2. Voluntary Manslaughter

At 45 FR 84090 (December 22, 1980) the Commission proposed to raise the offense of voluntary manslaughter from the Greatest I category to the Greatest II category. This was in response to the Commission's experience following its decision in May of 1979 to lower the same offense from the Greatest II category, where it had hitherto been comprehended under the heading of "willful homicide." 44 FR 26540 (May 4, 1979).

What the Commission discovered was that its decision to lower the applicable severity rating misconceived the seriousness of the criminal behaviors that would be presented to it.

The problem has been twofold. First, many voluntary manslaughter cases did not fit the textbook definition of voluntary manslaughter that the Commission originally had in mind; that is, pleas to voluntary manslaughter are accepted in cases wherein there is no clear provocation by the victim causing a heat of passion, or sudden quarrel, but some other mitigating factor (e.g., a "diminished mental state") persuades the court to accept a plea of guilty to voluntary manslaughter. Second, the cases actually presented to the Commission which met the usual definition of the crime (adequate provocation or sudden quarrel) nonetheless appeared to the Commission, upon case-by-case examination, to be inherently more serious than the other offenses in the Greatest I category. Again, the frequency of voluntary manslaughter decisions above the Greatest I guidelines because of aggravating offense circumstances persuaded the Commission that its current category for this offense is below the correct norm.

Therefore, the Commission proposed and is now readopting its original severity rating for this offense. The Commission's observations at 45 FR 84090, as to the practical effect of this change with regard to the Commission's continuing intent to distinguish between murder and manslaughter in its case decisions, are incorporated in this document. No public comment was received concerning the Commission's revised proposal.

3. Counterfeiting

This change is a clarification of the present guidelines. In the current severity scale, the offense example of "counterfeiting (manufacturing)" appears in the "High" category, with the qualifier "not more than $100,000." The Commission intended that amounts greater than $100,000 be rated, by extrapolation, in higher categories. Since this intent has not been clear to all prisoners concerned (even though such a result seems logically compelled) the Commission now revises the "Very High" category to include manufacturing of counterfeit currency of more than $100,000 (but not more than $500,000). The Commission has not sought public comment on this change since it merely clarifies our present interpretation.

4. Implementation

These revised guideline ratings will be applied only to those prisoners whose initial hearings occur on or after August 31, 1981.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), Title 28, Code of Federal Regulations, § 2.20, is amended as set forth below:

1. In the Greatest I category remove the example of:

> Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)]

and replace that example with:

> Opiates, possession with intent to distribute/sale [managerial or proprietary interest and large scale (e.g., offense involving more than 50 grams but not more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)]

Add to the Greatest II severity category the following example:

> Opiates, possession with intent to distribute [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)]

As a conforming amendment, change the opiate offense example in the "Very High" category to read as follows:

> Opiates, possession with intent to distribute/sale [medium to a very large scale (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) unless the offense is described in Greatest I or Greatest II]

2. In the Greatest I category, remove the example of:

> Voluntary manslaughter [unlawful killing of a human being without malice; sudden quarrel or heat of passion]

and add to the Greatest II severity category the example:

> Voluntary manslaughter

3. In the "Very High" category, remove the offense example:

> Counterfeit currency or other medium of exchange [(passing/possession) more than $100,000 but not exceeding $500,000]

and replace with:

> Counterfeit currency or other medium of exchange [(passing/possession/manufacturing) amount more than $100,000 but not exceeding $500,000]

I certify that this rule will not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act.

Dated: July 1, 1981.

Benjamin J. Malcolm,

Acting Chairman, U.S. Parole Commission.

[FR Doc. 81-20569 Filed 7-13-81; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

28 CFR Part 16

Production or Disclosure of Material or Information

Correction

In FR Doc. 81-18052, appearing on page 32021 in the issue of Friday, June 19, 1981, the following material should have preceded the signature:

Part 16, Title 28 of the Code of Federal Regulations is amended by revising the Appendix to Subpart D to read as follows:

Appendix to Subpart D—Delegation of Authority

1. By virtue of the authority vested in me by Section 16.45 of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Privacy Act of 1974 is delegated to the occupant of the position of Chief, Freedom of Information-Privacy Acts Section, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent in Charge of each of the field offices of the Federal Bureau of Investigation for records in their custody and control.

2. This directive is effective June 9, 1981.

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

Office of the Secretary

29 CFR Parts 1, 4, 5 and 6

Further Deferral of Effective Dates of Regulations

AGENCY: Wage and Hour Division and Office of the Secretary, Labor.

ACTION: Notice of further deferral of effective dates of final rules.

SUMMARY: This notice further defers the effective dates of certain Labor Department regulations from July 15, 1981 and August 1, 1981 until August 15, 1981. This action is taken in order to complete the reconsideration of these rules in accordance with Executive Order 12291.

EFFECTIVE DATE: The effective dates are deferred until August 15, 1981. See the table below for more information.

ADDRESS: Henry T. White, Jr., Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Henry T. White, Jr., Telephone: (202) 523-8305.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 6, 1981 (46 FR 11253-11254) the Department of Labor published a notice deferring the effective dates of Parts 1, 4, 5, and 6 of Title 29 of the Code of Federal Regulations (29 CFR Parts 1, 4, 5, and 6) until March 30, 1981. This action was taken in response to a January 29, 1981 Memorandum from President Reagan in order to allow for a full and appropriate review of these rules. The effective dates of three of these regulations (29 CFR Parts 1, 5, and 6) were further delayed until July 15, 1981 in order to fully reconsider the regulations pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981). The effective date of Part 4 (29 CFR Part 4) was further delayed until August 1, 1981. See 46 FR 33515 (June 30, 1981).

This document will further defer the effective dates of all of these regulations until August 15, 1981.

During the period that the effective dates of these regulations have been deferred, the Department of Labor met with representatives of contractor groups, representatives of organized labor, and Federal contracting agencies. The purpose of these meetings was to share with these groups the Department's general notions as to how the regulations might be improved and to elicit any questions which the groups might have concerning the agency's tentative approach prior to the formal submission of the regulations and commencement of formal consultations under applicable Executive Orders discussed more fully below. Several groups thereafter submitted written comments, which the Department has analyzed in the course of reviewing the rules.

The Department also conducted a preliminary regulatory impact analysis under Executive Order 12291. The regulations reviewed and analyzed pursuant to Executive Order 12291 were those contained in the Janary 16 and 19, 1981, Federal Register.

As a result of this review and analysis described above, the Department of Labor has developed proposed regulations. The proposed regulations have been submitted to the Office of Management and Budget pursuant to Executive Order 12291. It is now apparent, however, that the intergovernmental review and consultation procedures required to be followed for proposed regulations of these types cannot be completed prior to July 15, 1981 and August 1, 1981, the dates on which the January 1981 rules are scheduled to go into effect.

Accordingly, the effective dates of 29 CFR Parts 1, 4, 5 and 6 are further deferred until August 15, 1981, to allow adequate time to complete the intergovernmental consultations and review of the proposed regulations mentioned above. The time required for such consultation constitutes good cause for this deferral. Furthermore, because these rules are scheduled to become effective very shortly, additional notice and public procedure on this change of effective dates is impracticable, unnecessary and contrary to the public interest and good cause exists for making this postponement effective immediately. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B).

The following chart contains a description of each of the rules being deferred by this notice:

Rule	Subject	Original publication of rule in final form	Previously scheduled effective date
1. 29 CFR Part 1	Procedures for Predetermination of Wage Rates	Jan. 16, 1981 (46 FR 4306)	July 15, 1981.
2. 29 CFR Part 4	Service Contract Act; Labor Standards for Federal Service Contracts	Jan. 16, 1981 (46 FR 4320) and Jan. 19, 1981 (46 FR 4886).	Aug. 1, 1981.
3. 29 CFR Part 5	Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hour and Safety Standards Act).	Jan. 16, 1981 (46 FR 4380)	July 15, 1981.

Rule	Subject	Original publication of rule in final form	Previously scheduled effective date
4. 29 CFR Part 6	Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts.	Jan. 16, 1981 (46 FR 4398)	July 15, 1981.

Authority

The statutory authority for this action is as follows:

1. As to 29 CFR Part 1: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of Part 1.

2. As to 29 CFR Part 4: 41 U.S.C. 31 *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

3. As to 29 CFR Part 5: 40 U.S.C. 276a—276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of Part 5.

4. As to 29 CFR Part 6: Sections 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a—276a–7; 76 State. 357–359, 40 U.S.C. 327–332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

Signed at Washington, D.C. this 9th day of July 1981.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary of Labor for Employment Standards.

[FR Doc. 81–20594 Filed 7–13–81; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Virginia

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Denial of petition for the withdrawal of approval of the Virginia State plan.

SUMMARY: The petitions for withdrawal of Virginia's State Plan were submitted in 1978 and 1979 and allege various deficiencies in the enforcement of occupational safety and health standards generally, and specifically with regard to the construction industry in Northern Virginia. Upon full consideration of the claims raised in the petitions and an examination of the Virginia State Plan, the petitions are hereby denied by the Assistant Secretary of Labor for Occupational Safety and Health.

EFFECTIVE DATE: July 7, 1981.

FOR FURTHER INFORMATION CONTACT: Peter Schultze, Project Officer, Office of State Programs, Occupational Safety and Health Administration, Room N–3613, 3rd and Constitution Ave., NW., Washington, D.C. 20210, 202–523–8085.

SUPPLEMENTARY INFORMATION: As provided in Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, a State desiring to assume responsibility for the development and enforcement of safety and health standards may submit to the Secretary of Labor a "State Plan" for such enforcement. If the Secretary, applying criteria set forth in section 18(c), 29 U.S.C. 667(c), finds that the Plan will provide for effective protection of employees, initial Federal approval may be granted. The Virginia State Plan was initially approved on September 28, 1976 (41 FR 42655). The plan is described at 29 CFR Part 1952, Subpart EE.

Under the provisions of 29 CFR 1955.5 OCAW, Fairfax County, Virginia, Board of Supervisors; the Virginia State AFL–CIO, and the Building and Construction Trades Department of the AFL–CIO petitioned the Department of Labor on February 21, 1978, November 8, 1979, December 11, 1979 and December 14, 1979, respectively, to withdraw approval of the Virginia Occupational Safety and Health Plan. The petitions generally allege that the Virginia Plan provides inadequate protection for the safety and health of employees in the State (45 FR 65625–65626 Oct. 3, 1980). In order to obtain more information regarding these allegations and the overall effectiveness of the Plan, written comments were requested on Friday, October 3, 1980. The OCAW petition was previously published for public Comment on June 13, 1978 (43 FR 25491).

In response to the request for public input into the adequacy of the Virginia State Plan OSHA received a total of 101 written comments. There were 97 letters which expressed support for the manner in which Virginia was conducting its occupational safety and health program. Those who commented in favor of the plan requested that the petitions requesting withdrawal of the Virginia Plan be denied. OSHA received 4 letters in support of the petitions, two of which were from the actual petitioners.

The OCAW petition alleges that Virginia's enforcement of safety and health standards is not as effective as Federal OSHA in that a State court denied the petitioner party status as the authorized employee representative for affected employees at a hearing of a contested case involving the Amoco Oil Co. Petroleum Products Marketing Terminal in Fairfax, Virginia.

Deficiencies associated with Virginia's judicial system form part of the basis for the petition by the Virginia State AFL–CIO. This petition also alleges that Virginia has failed to provide for enforcement of safety and health standards which is "as effective as" Federal enforcement and that the State does not adequately prosecute violations, particularly serious ones, of occupational safety and health standards.

Additional allegations of deficiencies in the Virginia Plan concern the protection provided construction workers in the State. The Fairfax County Board of Supervisors petition alleges that construction accidents resulting in death or serious injury possibly could have been avoided had the State's inspection program been effective. Specifically, the petition maintains that the three inspectors the State employed to inspect for construction safety and health violations in Northern Virginia are an insufficient number. The petition by the Building and Construction Trades Department of the AFL–CIO likewise alleges ineffective and insufficient enforcement in the construction industry generally.

The agency has analyzed the claims raised by the four aforementioned petitions in light of data obtained from Federal monitoring, comparison with Federal performance, information received in response to OSHA's request for public comments and other relevant factors. Upon full consideration, it is the decision of the Assistant Secretary that a withdrawal proceeding against the Virginia State Plan is not warranted at this time.

Decision

In accordance with 29 CFR 1955(b)(2), the petition for the withdrawal of the Virginia State Plan, submitted by Oil, Chemical and Atomic Workers International Union, Virginia State AFL-CIO, Building and Construction Trades Department of the AFL-CIO and Fairfax County Board of Supervisors are hereby denied. The denial of these petitions does not preclude the Assistant Secretary from taking future action on these issues or any issues regarding the Plan which may be raised by monitoring or evaluation. The denial also does not preclude the filing of future petitions by these or any other parties.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Charlottesville, Virginia this 7th day of July, 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81-20703 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 228 and 252

Minerals

AGENCY: USDA, Forest Service.

ACTION: Final rule.

SUMMARY: The Forest Service is amending the regulations on minerals management by creating a new Part 228, Minerals. It is transferring the verbatim text of Part 252 in its entirety to Subpart A. This change is not substantive; it is strictly editorial.

EFFECTIVE DATE: July 13, 1981.

FOR FURTHER INFORMATION CONTACT: Howard E. Banta, Director, Minerals and Geology Management, Forest Service—USDA, P.O. Box 2417, Washington, D.C. 20013; Phone (703) 235-8105.

SUPPLEMENTARY INFORMATION: The text of Part 252—Minerals, concerned with locatable minerals, is redesignated as Part 228, Subpart A, upon issuance of this rule. This rule also reserves Subparts B-D, Part 228. New regulations concerning leasable minerals will be entered in Subpart B. Forest Service regulations concerned with disposable mineral materials, now located in §§ 251.4 and 251.4(a), will be amended as necessary and redesignated to Subpart C.

Miscellaneous provisions concerning minerals now located in §§ 251.10, 251.11, 292.17, 292.18, and 293.14 will be amended as necessary and redesignated to Subpart D.

This amendment will serve two purposes:

(1) All sections of Forest Service regulations concerning minerals will be properly consolidated into one part, achieving a more orderly and effective representation of Forest Service regulations.

(2) It will allow correlation of the numbering of regulations on minerals with the numbering scheme being used for Forest Service directives, forms, files, etc.

Redesignation to Part 228 will be made effective for all Forest Service minerals regulations as they are written or revised.

Regulations pertaining to the exercise of reserved and outstanding rights remain in § 251.15.

In accordance with exceptions to rulemaking procedures in 5 U.S.C. 553 and Department of Agriculture policy (36 FR 13804), it has been determined that advance notice and request for comments are unnecessary.

This action has been reviewed pursuant to Executive Order 12291 and it has been determined that this document is not a major rule and does not require a regulatory analysis nor does it require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Accordingly, 36 CFR Chapter II is amended as follows:

§§ 252.1-252.15 [Redesignated as §§ 228.1-228.15]

1. In Part 252, §§ 252.1 through 252.15 are redesignated as §§ 228.1-228.15, Subpart A of new Part 228.

2. All references in new Part 228, Subpart A, to sections and paragraphs in former Part 252 are changed to refer to the corresponding sections and paragraphs in new Part 228, Subpart A.

3. The Table of Contents for Part 228 will read as follows.

PART 228—MINERALS

Subpart A—Locatable Minerals

Sec.
228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Plan of operations—notice of intent—requirements.
228.5 Plan of operations—approval.
228.6 Availability of information to the public.
228.7 Inspection, noncompliance.
228.8 Requirements for environmental protection.
228.9 Maintenance during operations, public safety.
228.10 Cessation of operations, removal of structures and equipment.
228.11 Prevention and control of fire.
228.12 Access.
228.13 Bonds.
228.14 Appeals.
228.15 Operations within National Forest Wilderness.

Subpart B—Leasable Minerals

Sec.
228.20-228.39 [Reserved]

Subpart C—Disposable Mineral Materials

Sec.
228.40-228.79 [Reserved]

Subpart D—Miscellaneous Minerals Provisions

Sec.
228.80-228.99 [Reserved]

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551).

John R. Block,

Secretary.

June 12, 1981.

[FR Doc. 81-20626 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-11-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. I

[FPR Temp. Reg. 62]

Agency Responsibility and Accountability for ADP Acquisitions Under GSA Delegations of Authority; Temporary Regulations

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation recognizes agency senior officials designated pursuant to the Paperwork Reduction Act of 1980 as responsible and accountable for automatic data processing (ADP) acquisitions made under GSA delegations of procurement authority. The basis for the regulation is the July 1, 1981 effectivity of the Paperwork Reduction Act provision (44 U.S.C. 3506(c)(4)). The intended effect is to conform pertinent GSA regulations to the cited provision.

DATES: Effective date: July 1, 1981. Expiration date: This regulation expires July 1, 1983, unless earlier revised or superseded. Comments are due: On or before September 30, 1981.

ADDRESS: Comments should be addressed to: General Services Administration (CPEP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate,

Office of Acquisition Policy (703) 557–8947.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 1, the following temporary regulation is added to the appendix of the end of the chapter to read as follows:

June 22, 1981.

To: Heads of Federal agencies

Subject: Agency responsibility for the conduct of and accountability for ADP acquisitions under GSA delegations of authority

Federal Procurement Regulations, Temporary Regulation 62

1. *Purpose.* This temporary regulation provides for the recognition of Federal agency responsibilities under Pub. L. 96–511 (the Paperwork Reduction Act of 1980) when submitting agency purchase requests and conducting automatic data processing (ADP) acquisitions made pursuant to a delegation of authority from the General Services Administration (GSA) under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759).

2. *Effective date.* This regulation is effective July 1, 1981.

3. *Expiration date.* This regulation expires July 1, 1983, unless earlier revised or superseded.

4. *Background.*

a. The Paperwork Reduction Act of 1980 provides that the head of each agency shall designate, by July 1, 1981, a senior official (officials in DOD) who reports directly to such agency head to carry out the responsibilities of the agency under the Act. This includes responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of procurement authority pursuant to the Brooks Act (Pub. L. 89–306). The provisions of the Brooks Act pertinent to this action are implemented by Subpart 1–4.11 of the Federal Procurement Regulations.

b. In a memorandum dated November 14, 1980, the Administrator of General Services informed heads of departments and agencies of an alternate procedure for initiating their larger computer acquisitions (45 FR 84151, December 22, 1980). These procedures are described in GSA Bulletin FPMR F–126. Agencies were requested to advise GSA in writing of the names and titles of those officials whom the agency had authorized to sign agency submissions under this method.

c. In view of the actions to be taken by agencies in implementing the designated senior official provisions of the Paperwork Reduction Act, GSA is adjusting applicable regulations to recognize these officials in regard to responsibility for the conduct of and accountability for ADP acquisitions under GSA delegations.

5. *Explanation of changes*

a. Section 1–4.1104 is amended by designating paragraph (a) as (a)(1) and adding subparagraphs (2) and (3) to provide for agency notification to GSA of officials who will be assigned to initiate and conduct acquisitions made under GSA delegations as follows:

§ 1–4.1104 Procurement authority.

(a)(1) To allow for the orderly implementation of a program for the economical and efficient procurement of ADPE, commercially available software, maintenance services, and related supplies, agencies are authorized to procure these items (i) in accordance with the provisions of this § 1–4.1104 provided that requirements are not fragmented in order to circumvent the established blanket delegation thresholds or (ii) when a specific delegation of procurement authority has been provided in accordance with the provisions of §§ 1–4.1105 and 1–4.1106. However, the applicable provisions of FPMR Subchapter F shall be complied with before initiating a procurement action.

(2) The provisions of Public Law 96–511 (the Paperwork Reduction Act of 1980) direct each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the Act. This designated senior official is assigned responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) (see 44 U.S.C. 3506(c)(4)).

(3) The designated senior official in each agency shall advise GSA in writing of the names and titles of those officials whom he or she has assigned (i) to initiate acquisition actions, and (ii) to conduct authorized acquisitions (see also §§ 1–4.1105 and 1–4.1107). The designated senior official shall maintain current listings. Listings should be addressed to GSA (CPS), Washington, D.C. 20405.

* * * * *

b. Section 1–4 1105 is amended by revising the preamble to provide that agency procurement requests must be submitted by the agency designated senior official or by an official assigned by the senior official as follows:

§ 1–4.1105 Request for procurement action.

If an agency determines that the conditions of the contemplated procurement are not covered by the provisions of § 1–4.1104, or if the conditions of the contemplated procurement change during the procurement process in such manner as to remove it from those provisions, four copies of the agency procurement request (APR) and other applicable documents shall be forwarded to the General Services Administration (CPS), Washington, DC 20405. The APR shall be signed by an official who has been assigned to initiate the acquisition action and shall specify the name of the official who has been assigned to conduct the procurement (see § 1–4.1104(a)). GSA will process only those submissions signed by authorized officials. Other submissions will be returned without action to the submitting office for resubmission by an authorized agency official. In addition, the APR shall contain the name and telephone number of an individual within the agency who shall act as the point of contact with GSA. The APR shall include, as applicable:

* * * * *

c. Section 1–4.1107 is revised to provide that GSA will consider the agency designated senior official to be responsible for the conduct of a specified procurement made under either a blanket or individual delegation of procurement authority as follows:

§ 1–4.1107 Federal agency responsibility when procurement is delegated by GSA.

When acting under a GSA delegation of procurement authority under either §§ 1–4.1104 or 1–4.1106, the agency designated senior official is responsible for compliance with applicable procurement policies, regulations, and, in particular, § 1–4.1109 and the specific terms of the delegation (see § 1–4.1104(a)).

d. With regard to the alternate information submission method authorized by the Administrator of General Services and described in GSA Bulletin FPMR F–126, the following provisions apply.

(1) The provisions set forth in subparagraphs a, b, and c of paragraph 5 of this regulation apply to submissions under the F–126 bulletin procedures.

(2) Agency listings of authorized officials submitted to GSA pursuant to paragraph 5 of the F–126 bulletin will not be honored unless submitted by the agency designated senior official.

(3) Agency submissions (F–126 bulletin, Attachment A format) dated on or after July 1, 1981, shall be signed by an official who has been assigned to initiate the acquisition action. The submission shall specify the name of the

official who has been assigned to conduct the procurement. Other submissions dated on or after July 1, 1981, will be returned, without action, to the submitting office for resubmission by an authorized official.

6. *Agency action.* Pending the issuance of a permanent amendment to the FPR, agencies shall follow the provisions in this temporary regulation. Timely agency submission of the listing of authorized officials will contribute to efficient implementation of the applicable portion of the Paperwork Reduction Act.

7. *Submission of comments.* Time does not permit the solicitation of comments prior to the issuance of this regulation. However, comments are invited concerning the effect or impact of this regulation and the policy and procedures that should be adopted in the future. Comments should be forwarded to the General Services Administration (CPEP), Washington, DC 20405, not later than September 30, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-20512 Filed 7-13-81; 8:45 am]

BILLING CODE 6820-81-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-4, 60-20, 60-30, 60-50, 60-60, 60-250, and 60-741

Government Contractors; Affirmative Action Requirements; Further Deferral of Effective Date of Regulations

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Notice of further deferral of effective date of final rule.

SUMMARY: This notice further defers the effective date of certain OFCCP regulations regarding affirmative action requirements from July 15, 1981, until August 26, 1981.

DATES: The effective date is deferred until August 26, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, Washington, D.C. 20210, Telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: On December 30, 1980, the Department Labor published a final rule (see 45 FR 86215; corrected January 23, 1981, at 46 FR 7332) revising the regulations at 41 CFR Chapter 60 which implement (1) Executive Order 11246, as amended, (2) section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and (3) section 503 of the Rehabilitation Act of 1973, as amended. The rule was scheduled to take effect on January 29, 1981. On January 28, 1981, a notice was published in the **Federal Register** (46 FR 9084) delaying the effective date of the rule until April 29, 1981, to allow the Department of Labor to conduct a full review of the regulation. Subsequently, in separate notices in the **Federal Register** on April 28, 1981, (46 FR 23742) and June 26, 1981, (46 FR 33033), the effective date of the regulations was deferred up to and until July 15, 1981.

During the period that the effective date of the regulation has been deferred, the Department of Labor met with representatives of contractor groups covered by the laws administered by OFCCP, representatives of public interest groups which are interested in the protections afforded under those laws, and with representatives of organized labor. The purpose of these meeting was to share with these groups the agency's general notions as to how the regulations might be improved and to elicit any questions which the groups might have concerning the agency's approach prior to the formal submission of the regulations and commencement of formal consultations under applicable Executive Orders discussed more fully below. Several groups thereafter submitted written comments, which the Department has analyzed in the course of reviewing the rules.

The Department also conducted a preliminary regulatory impact analysis under Executive Order 12291. For the most part, the regulations reviewed and analyzed pursuant to Executive Order 12291 were those contained in the December 30, 1980, **Federal Register.** However, the review and analysis did include some of the regulations in 41 CFR Chapter 60 which had not been amended by the December 30, 1980, final rule.

As a result of this review and analysis described above, the Department of Labor has developed a proposed regulation. The proposed regulation has been submitted to the Office of Management and Budget pursuant to Executive Order 12291 and to the Equal Employment Opportunity Commission pursuant to Executive Order 12067. It is now apparent, however, that the intergovernmental review and consultation procedures required to be followed for a regulation of this type cannot be completed prior to July 15, 1981, the date on which the December 30, 1980, rule is scheduled to go into effect. Accordingly, the December 30, 1980, rule's effective date is further deferred until August 26, 1981, to allow adequate time to complete the intergovernmental consultations and review procedures mentioned above.

This document will further defer the effective date of these regulations until August 26, 1981. The time required for such consultation constitutes good cause for this deferral. For this reason and because these rules are scheduled to become effective very shortly, additional notice and public procedure on this change of effective dates is impracticable, unnecessary and contrary to the public interest and good cause exists for making this postponement effective immediately. This finding is made pursuant to 5 U.S.C. 553 (b)(3)(B).

In addition and in connection with the Department's anticipated proposed rulemaking discussed above, published elsewhere in the **Federal Register** today is a notice of advanced rulemaking on the following questions: (1) methods for determining the availability of minorities and women (the "eight factor" analysis prescribed by 41 CFR 60-2.11(b)); (2) whether monetary relief (back pay) should be eliminated as a remedy under Executive Order 11246 and whether back pay may be used in some special way to induce contractors to comply with the Executive Order; (3) alternative methods for setting minority and female utilization goals for construction contractors; and (4) whether the nondiscrimination and affirmative action requirements for covered construction contractors should apply only to Federal and federally assisted construction work, to all work (both Federal and non-federal) in any geographic area in which the contractor has a Federal or federally assisted construction contract, or to all Federal and non-federal projects nationwide.

Signed at Washington, D.C., this 9th day of July 1981.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

Ellen M. Shong,

Director, OFCCP.

[FR Doc. 81-20613 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-27-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A-11, Supp. 12]

Changes to Federal Travel Regulations

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation extends the expiration date of FPMR Temporary Regulation A-11 containing changes to the Federal Travel Regulations, and Supplements 4, 8, 9, 10, and 11 thereto. It is necessary that the provisions contained in the supplements remain in effect until superseded by a forthcoming reissued edition of Federal Travel Regulations, FPMR 101-7.

DATES: Effective date: June 30, 1981. Expiration date: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Jones, Federal Travel Management Division (202-275-0651).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is listed in the appendix at the end of subchapter A.

June 30, 1981.

Federal Property Management Regulations

Temporary Regulation A-11.—Supplement 12

To: Heads of Federal Agencies.

Subject: Changes to Federal Travel Regulations.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A-11 and Supplements 4, 8, 9, 10, and 11 thereto.

2. *Effective Date.* This regulation is effective June 30, 1981.

3. *Expiration Date.* This regulation expires December 31, 1981, unless superseded or canceled on an earlier date.

4. *Explanation of changes.*

a. The expiration date for Temporary Regulation A-11 and Supplements 4, 8, 9, 10, and 11 thereto, which appears in paragraph 7 of Supplement 11, is extended to December 31, 1981.

b. Supplements 4, 8, 9, 10, 11, and 12 contain current amendments to the Federal Travel Regulations and remain in effect until incorporated into the forthcoming reissued edition of the Federal Travel Regulations, FPMR 101-7. Publication of the reissued edition is anticipated in the near future.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-20606 Filed 7-13-81; 8:45 am]

BILLING CODE 6820-AM-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[General Order 4, Revised; Docket No. 80-13]

Licensing of Independent Ocean; Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Stay of portion of final rule.

SUMMARY: The Commission's final rules in the proceeding relating to licensing of independent ocean freight forwarders contain a provision which prohibits the receipt of freight forwarder compensation by persons which are both licensed forwarders and also steamship carriers or agents, on shipments in which the licensee actually acted as carrier or agent (46 CFR 510.23(g)). The Commission now has decided to reconsider this provision and elsewhere in this issue to invite further comment thereon. This provision is stayed pending final resolution of the matter.

DATE: Stay is effective July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission published final rules in this proceeding May 1, 1981 (46 FR 24565). These rules contain a provision which prohibits the receipt of freight forwarder compensation by persons which are both licensed forwarders and also steamship carriers or agents on shipments in which the licensee actually acted as carrier or agent (46 CFR 510.33(g)). The Commission now has decided to reconsider this provision and by separate document has invited further comment thereon. The Commission also has determined that this provision is to be stayed pending final resolution of the matter.

Therefore, it is ordered, That the effect of § 510.33(g) of Title 46 CFR (46 FR 24574) is stayed pending final resolution of the further proposed rulemaking in this matter.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-20647 Filed 7-13-81; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 320 (Sub-No. 2)]

Market Dominance Determinations and Consideration of Product Competition

AGENCY: Interstate Commerce Commission.

ACTION: Change of effective date of notice of decision.

SUMMARY: After notice (45 FR 83342, December 18, 1980) and comment, the Commission determined to discontinue its market dominance presumptions and replace them with evidentiary guidelines published at 46 FR 35098, July 7, 1981. Evidence of geographic and product competition had been found relevant to the determination of market dominance. Also in the **Federal Register** of July 7, 1981, (46 FR 35105) the Commission removed the existing market dominance rules at 49 CFR 1109.1.

Due to an inadvertent error, both documents were published in the **Federal Register** before service to the parties was made on July 8, 1981. We are, therefore, extending the effective dates of the notice of decision and the removal of existing rules to thirty days from the date of service, rather than thirty days from publication in the **Federal Register.**

EFFECTIVE DATE: August 7, 1981.

FOR FURTHER INFORMATION CONTACT: Jane Mackall, (202) 275-7656, or Frank Gianfrancesco, (202) 275-7383.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-20647 Filed 7-13-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Twentieth Revised Service Order No. 1473.

SUMMARY: Twentieth Revised Service Order No. 1473 authorizes various railroads to use tracks and/or facilities of Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).

EFFECTIVE DATE: 12:01 a.m., July 10, 1981, and continuing in effect until 11:59 p.m., September 30, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: July 8, 1981.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William R. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for implementation of long range solutions for continued rail service over RI lines, and in consideration of a recent complaint by the Trustee regarding the absence of compensation for the use of his property by certain rail carriers, the Railroad Service Board (RSB) hereby reminds any carriers which haven't negotiated such compensation to do so in the interest of continued operations. Compensation to the Trustee is an integral part of the interim authority and an obligation of all interim operators as specified by paragraph (c) of the order.

Appendix A, to the previous order, is revised by adding at Item 20., the authority for the Brandon Corporation (BRAN) to operate between Clifton, Kansas, and Manhattan, Kansas, a distance of approximately 53 miles. Appendix A, to the previous order, is revised further by deleting at Item 14, part E., and changing part A., milepost 3.9 to milepost 2.7.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Service Order 1473

(a) *Various Railroads Authorized to use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

1. In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers, as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

1. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balance currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(b) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., July 10, 1981.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Public Law 96-254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

Agatha L. Mergenovitch,

Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (L&A):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

4. *Toledo, Peoria and Western Railroad Company (TP&W):*

A. Keokuk, Iowa

B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Chicago and North Western Transportation Company (C&NW):*

A. From Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. From Inver Grove (milepost 344.7) to Northwood, Minnesota

D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6)

E. From Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)

F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)

G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. From Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).

I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)

J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)

K. From Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids

O. From Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle, Indianola, Iowa

T. Omaha, Nebraska (between milepost 502 to milepost 504).

U. Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5).

6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*

A. From West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illionis Gas and Electric Company near Fruitland

B. Washington, Iowa

C. From Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

D. From Davenport to Iowa City, Iowa.

E. At Davenport, Iowa.

7. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Moline, Illinois

B. Rock Island, Illinois, including 26th Street yard

C. From Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex

D. From Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island Arsenal

8. *St. Louis Southwestern Railway Company (SSW):*

A. From Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.

B. At North Topeka and Topeka, Kansas.

9. *Little Rock & Western Railway Company:* From Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

10. *Missouri Pacific Railroad Company:* From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island (milepost 4.7).

11. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*

A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth.

B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas.

C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma.

D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina (including yard tracks), Kansas.

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only.

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at

Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.

I. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.

J. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

12. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

13. *Southern Railway Company:*

A. At Memphis, Tennessee.

14. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado.[1]

B. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

C. From Limon, Colorado (milepost 532) to Stratton, Colorado (milepost 473), with over-head rights between Stratton, Colorado and Colby, Kansas, in order to effect interchange with the Union Pacific.

D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado.

15. *Baltimore and Ohio Railroad Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

16. *Cedar Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

17. *Keota Washington Transportation Company:*

A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

B. At Vinton, Iowa (milepost 120.0 to 123.0).

C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

18. *The La Salle and Bureau County Railroad Company:*

A. From Chicago (milepost 0.60) and Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. From Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (subdivision 1A, milepost 14.8), at Blue Island Illinois.

C. From Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.

19. *The Atchison, Topeka and Santa Fe Railway Company:*

A. At Alva, Oklahoma.

20. *The Brandon Corporation:*

A. From Clifton, Kansas (milepost 197.0), to Manhattan, Kansas (milepost 143.0), a distance of approximately 53 miles.[2]

[FR Doc. 81-20530 Filed 7-13-81; 8:45 am]
BILLING CODE 7035-01-M

[1] Changed.

[2] Added.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and notice of public hearing.

SUMMARY: Pursuant to the Federal Plant Pest Act this document amends the Mediterranean fruit fly emergency regulations by adding portions of Alameda and Santa Clara Counties to the list of regulated areas in California (with these additions all areas in Alameda and Santa Clara Counties are now designated as regulated areas), and by adding all of San Mateo County California, to the list of regulated areas. This action is necessary as an emergency measure for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. The effect of this action is to impose restrictions on the interstate movement of regulated articles from these areas added to the list of regulated areas.

DATES: Effective date of amendment July 17, 1981. Written comments concerning this interim rule must be received on or before September 14, 1981. A public hearing concerning this interim rule and concerning final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held on August 13, 1981.

ADDRESSES: Written comment should be submitted to Thomas Lanier, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 635 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A public hearing concerning this interim rule and concerning final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held at Medfly Project Headquarters, Ralph Berry School, 14855 Oka Road, Los Gatos, CA 95030.

FOR FURTHER INFORMATION CONTACT: Shannon Wilson, Emergency Programs Coordinator, Plant Protection and

Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 610 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule would have an annual effect on the economy of less than $100,000; would not cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; would not cause significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrant publication without opportunity for a public comment period on this interim rule. Due to the possibility that Mediterranean fruit fly could be spread artifically to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Also, emergency circumstances make it impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this interim rule.

Certification under the Regulatory Flexibility Act

Dr. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from San Mateo County and from certain areas in Alameda and Santa Clara Counties in California. There are thousands of small entities that move such articles interstate from California and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the U.S. Department of Agriculture, it has been determined that fewer than 35 small entities move such articles interstate from the affected areas in Alameda, San Mateo, and Santa Clara Counties. Further, the overall economic impact from this action is estimated to be less than $100,000.

Public Hearing

As noted above, a public hearing to consider this interim rule and to consider a final rule to be published under the Plant Quarantine Act and the Federal Plant Pest Act will be held.

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of the rule. Any interested person may appear and be heard in person, by attorney, or other representative.

Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions concerning the rule.

The hearing will commence at 10 a.m. and end at 5 p.m. local time unless the presiding official otherwise specifies during the course of the hearing. Persons who wish to be heard are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 8:45 a.m. to 9:45 a.m. Those registered persons will be heard in the order of their registration. However, any other person who wishes to be heard or ask questions at the hearing will be afforded such opportunity, after the registered persons have presented their views. It is requested that duplicate copies of any written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to present a statement the opportunity to be heard.

Background

The Mediterranean fruit fly, *Ceratitis capitata* Wiedeman, is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. It can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Because of infestations of the Mediterranean fruit fly found in areas in California, emergency Mediterranean fruit fly regulations were published in the **Federal Register** on July 29, 1980 (45 FR 50318–50324), and emergency amendments to the regulations were published in the **Federal Register** on August 15, 1980 (45 FR 54302–54304), September 12, 1980 (45 FR 60402–60403), December 12, 1980 (45 FR 81728–81731), and on March 20, 1981 (46 FR 17753–17754). The regulations and amendments thereof became effective on the dates of publication and are set forth in 7 CFR 331.1 through 331.1–9. For the reasons explained below, it is further necessary to amend those regulations on an emergency basis pursuant to sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

For the purpose of preventing the artificial spread of the Mediterranean fruit fly to noninfested areas in the United States, the regulations restrict the interstate movement from the regulated areas in California of articles designated as regulated articles. Immediately prior to the effective date of this document, only portions of Alameda County and Santa Clara County were designated as regulated areas. However, it is necessary as an emergency measure to expand the regulated areas by adding those portions of Alameda and Santa Clara Counties which were not previously designated as regulated areas (with these changes all areas in Alameda and Santa Clara Counties are now designated as regulated areas), and by adding all of San Mateo County.

It is necessary to add San Mateo County to the list of regulated areas because heavy populations of Mediterranean fruit fly larvae recently have been found in that county. In addition to recent heavy populations of Mediterranean fruit fly larvae found in San Mateo County heavy populations of the larvae also have been found in the previously regulated area in Santa Clara County. This indicates that a population explosion of Mediterranean fruit flies is occuring in the Santa Clara Valley area.

Therefore, because of the possibility of a rapid natural spread of the flies and because of the difficulty of preventing movements of regulated articles accompanied by the flies in the Santa Clara Valley commuting area, it is also necessary to expand the regulated areas to include all of Alameda, San Mateo, and Santa Clara Counties.

Amendment to Regulations

Accordingly, the Mediterranean fruit fly regulations (7 CFR 331.1 *et seq.*), which, as noted above, became effective on July 29, 1980, and were amended on August 15, September 12, December 12, 1980 and March 20, 1981 (45 FR 50318–50324, 54302–54304, 60402–60403, 81728–81731, and 46 FR 17753–17754) are further amended by revising § 331.1–2(c) of the regulations (7 CFR 331.1–2(c)) to read as follows:

§ 331.1–2 Regulated areas.

* * * * *

(c) The areas described below are designated as regulated areas:

California

Alameda County. The entire county.
San Mateo County. The entire county.
Santa Clara County. The entire county.

(Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); Sections 105 and 106, 71 Stat. 32 and 33 (7 U.S.C. 150dd, 150ee); 37 FR 28464, 28477, as amended; 38 FR 19141)

Done at Washington, D.C., this 13 day of July 1981.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 81–20800 Filed 7–13–81; 12:18 pm]

BILLING CODE 3410–34–M

Proposed Rules

Federal Register
Vol. 46, No. 134
Tuesday, July 14, 1981

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1062, 1007, 1011, 1030, 1032, 1046, 1049, 1050, 1064, 1065, 1068, 1071, 1073, 1076, 1079, 1094, 1096, 1097, 1098, 1099, 1102, 1104, 1106, 1108, 1120, 1126, 1131, 1132 and 1138

[Docket Nos. A0-10-A54, et al.]

Milk in the St. Louis-Ozarks and Certain Other Marketing Areas Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1062	St. Louis-Ozarks	AO-10-A54
1007	Georgia	AO-386-A17
1011	Tennessee Valley	AO-251-A22-RO1
1030	Chicago Regional	AO-361-A18
1032	Southern Illinois	AO-313-A31
1046	Louisville-Lexington-Evansville	AO-123-A47
1049	Indiana	AO-319-A31
1050	Central Illinois	AO-355-A21
1064	Greater Kansas City	AO-23-A53
1065	Nebraska-Western Iowa	AO-86-A40
1068	Upper Midwest	AO-178-A36
1071	Neosho Valley	AO-227-A35-RO1
1073	Wichita, Kansas	AO-173-A37-RO1
1076	Eastern South Dakota	AO-260-A25
1079	Iowa	AO-295-A34
1094	New Orleans-Mississippi	AO-103-A41
1096	Greater Louisiana	AO-257-A29
1097	Memphis, Tennessee	AO-219-A37
1098	Nashville, Tennessee	AO-184-A42
1099	Paducah, Kentucky	AO-183-A37
1102	Fort Smith, Arkansas	AO-237-A31
1104	Red River Valley	AO-296-A30-RO1
1106	Oklahoma Metropolitan	AO-210-A43-RO1
1108	Central Arkansas	AO-243-A35
1120	Lubbock-Plainview	AO-328-A23
1126	Texas	AO-231-A48-RO1
1131	Central Arizona	AO-271-A23
1132	Texas Panhandle	AO-262-A33
1138	Rio Grande Valley	AO-335-A28

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would establish a new procedure for announcing Class II prices under the 29 milk orders in this proceeding. As adopted, a tentative Class II price for a particular month would be announced by the 15th day of the preceding month. The final Class II price for the month would be announced by the 5th day after the month and would reflect, if applicable, the use of the Class III price for that month as a "floor" under the Class II price. This would replace a procedure under which Class II prices for a month had been announced by the 5th day after the month. The decision is in response to a decision of a U.S. Appeals Court that declared the Class II price announcement procedure in these orders invalid. The adopted procedure is based on industry proposals considered at a public hearing held on August 12–14, 1980.

Also considered at the hearing was a proposal to change the procedure for announcing Class I prices under these orders. This decision concludes that the proposal should not be adopted.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculutre, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of U.S. Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued July 10, 1980; published July 15, 1980 (45 FR 47432).

Supplemental Notice of Hearing: Issued July 21, 1980; published July 25, 1980 (45 FR 49584).

Recommended Decision: Issued February 11, 1981; published February 18, 1981 (46 FR 12709).

Extension of Time: Issued March 9, 1981; published March 12, 1981 (46 FR 16270).

Extension of Time: Issued March 19, 1981; published March 25, 1981 (46 FR 18558).

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the respective marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Clayton, Missouri, on August 12–14, 1980, pursuant to notices issued July 10, 1980 (45 FR 47432) and July 21, 1980 (45 FR 49584).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on February 11, 1981, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. In Issue No. 1:

a. A paragraph has been added after the 5th paragraph.

b. Two paragraphs have been added after the 3rd paragraph of the findings titled "A. Basic Class II formula price."

c. Two paragraphs have been added after the 9th paragraph of the findings titled "B. Class II differential."

d. Five paragraphs have been added at the end of the issue.

2. In Issue No. 2, three paragraphs have been added at the end of the issue.

The material issues on the record of the hearing relate to:

1. Class II price announcement.
2. Class I price announcement.
3. Announcement of Class I and Class II butterfat differentials.

Background Statement

The provisions of the 29 orders for announcing Class II prices each month were declared legally invalid. In an action against the Department (*American Dairy of Evansville, Inc., et al., v. Robert Bergland, Secretary of Agriculture, et al.*), the U.S. Appeals Court for the District of Columbia Circuit ruled that the Class II price announcement procedure in the 29 orders is legally invalid due to inadequate findings when the procedure was established in the orders.

The Court ordered the Department to establish on the basis of further rulemaking procedures a method for announcing Class II prices and, pending the completion of the procedures to implement on an interim basis the same notice procedure used for announcing Class I prices. To carry out the Court's order, the Department announced on September 26, 1980, a method of determining Class II prices for the respective orders during the interim

period. Official notice is taken of the related document issued by the Department on that date (45 FR 65514).

Under this interim procedure, the Class II price for each month is announced by the Director of the Dairy Division, Agricultural Marketing Service (AMS) on the same day of the preceding month that the Class I price is announced. The Class II price is the Director's estimated of the average Minnesota-Wisconsin manufacturing milk price (3.5 percent butterfat content) for the month plus 10 cents.

This procedure is intended to continue as closely as possible the past relationship between the Class II and Class III prices while announcing Class II prices in a way that carries out the Court's order

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class II price announcement.* The 29 milk orders in this proceeding should provide that on or before the 15th day of the month the market administrators of the respective orders shall announce the tentative Class II price that is to be effective the following month. The Class II price for the month should be the Minnesota-Wisconsin (M–W) price for the second preceding month, as adjusted by an "updating" formula, plus a Class II differential computed from a 12-month moving average of past Class II differentials. The Class II price for any month should not be less than the Class III price for the month, and the Class II differential should, over time, average out to about the Class III price plus 10 cents. The use of the Class III price as a floor would require that a final Class II price be announced by the respective market administrators on or before the 5th of the following month when the Class III price for the month is known and it can be determined whether such price would apply as a "floor."

To achieve the foregoing, the respective orders should provide for a "basic Class II formula price" for the month, which would be the order's basic formula price (i.e., the M–W price) for the second preceding month plus or minus an amount computed from the "updating" formula. In essence, a tentative estimate of the M–W price for the preceding month would be derived from the mechanics of the updating formula. This would permit the Class II price to be based on selected dairy industry data for that month rather than for the second preceding month.

The updating formula would determine first the amounts by which the gross values of milk used to manufacture cheddar cheese and butter-nonfat dry milk for the first 15 days of the preceding month are greater than or less than the respective values of such milk for the first 15 days of the second preceding month, using yield factors provided by the Dairy Price Support Program. Then, the relative proportions of milk used in Minnesota and Wisconsin combined in the manufacture of cheddar cheese and butter-nonfat dry milk would be determined from data reported by the Department. From the foregoing data, a weighted average of the changes in gross values per hundredweight of milk would be computed.

The Class II price for the month would be the basic Class II formula price for the month plus a differential that would be the amount be which a 12-month moving average of the basic formula prices plus 10 cents exceeds a 12-month moving average of the basic Class II formula prices. This should result in Class II prices that on the average exceed Class III prices by 10 cents.

The basic Class II formula price and the tentative Class II price would be computed by the Dairy Division, AMS, and transmitted to the market administrators of the respective orders on or before the 15th day of the preceding month, enabling each market administrator to announce by that time the Class II price for the following month. The final Class II price would be announced on or before the 5th of the following month when it is determined whether such price would be "floored" by the Class III price for the month.

Certain minor modifications of the order provisions set forth in the recommended decision are necessary to accommodate the transition from the present method of determining Class II prices for the respective orders during the interim period, as described previously, to the use of the formula adopted herein for determining Class II prices. The modifications would provide that the "final" Class II prices, as determined through the "flooring" procedure, would not apply until the first month in which these amendments become effective. The Class II price that would be applicable during the first month in which the amendments become effective would be the Class II price determined by the Director of the Dairy Division in the previous month under the interim procedure. That price would not be "floored" by the Class III price for the month. Therefore, it is necessary to revise the "Class price" and "Announcement of class price" sections in each order to specify that the final Class II price shall apply in each month after the first month in which these amendments become effective.

Until the provisions were declared legally invalid by a Court, the 29 milk orders provided for the market administrator of each order to announce publicly on or before the 5th day of each month the Class II price for the preceding month. As indicated in the background section of this decision, an interim procedure is being followed by the Department pending the completion of this proceeding.

The Milk Industry Foundation, the International Association of Ice Cream Manufacturers, the National Milk Producers Federation and some of the individual members of the respective organizations proposed a procedure for announcing the Class II prices of the 29 milk orders that was largely the same as the procedure provided herein.

The Milk Industry Foundation (MIF) is a trade association representing fluid milk processors, some of which are regulated by the 29 milk orders in this proceeding. Members of the MIF operate some 750 milk processing plants and process about 75 percent of the fluid milk packaged in the United States. The MIF also represents members who manufacture various Class II products, including cottage cheese, yogurt, dips, dressings, and cream.

The International Association of Ice Cream Manufacturers (IAICM) is a trade association that represents manufacturers of frozen desserts, including some who are regulated by the 29 orders in question. Products processed include ice cream, ice milk, sherbets, mellorine, milkshakes and other Class II products. Members operate some 600 plants and manufacture about 85 percent of the frozen desserts manufactured in the United States.

The National Milk Producers Federation (NMPF) is an organization which represents dairy cooperative associations and federations of such associations. At the hearing NMPF represented 24 member cooperatives that market milk under the 29 milk orders. Many of the associations are processors and distributors of Class I and Class II products. With rare exceptions, the majority of the milk supplied to Federal milk order marketing areas originates from producers who are members of cooperative associations that are members of NMPF.

The proposals. The MIF/IAICM proposed that the Class II prices of the 29 milk orders in this proceeding be announced by the market administrators of the respective orders on or before the

15th day of the month prior to the month in which they apply. The associations proposed that the Class II price be based on a formula that updates the M–W price of the second preceding month, plus a Class II differential computed from a 24-month moving average of past Class II differentials to maintain a Class II price that averages 10 cents over the M–W price. Also, the resulting Class II price of any month could not be less than the Class III price for that month. The principal witness for the proposal acknowledged that this latter aspect of it would result in handlers not knowing the Class II price definitely until the 5th of the following month when it would be known whether the Class III price for the month would apply as a "floor."

The NMPF proposed a procedure for announcing Class II prices that was largely the same as the procedure proposed by the MIF/IAICM. The NMPF, however, would use a 12-month moving average of past Class II differentials for determining the Class II differential each month. At the hearing, a witness for NMPF modified the proposal to delete that portion of it that would have provided that the Class II price could not be less than the support price in any month that the support price is changed. As modified, the "floor" in all months would be the Class III price.

The MIF/IAICM case: A witness for the MIF/IAICM said that the 29 milk orders need to be changed as proposed because handlers are having difficulty in making price changes under the prevailing marketing conditions. He outlined how price changes are made, beginning with the notification of a milk price change by a handler and ending with a retail price change at a store. The witness said that the entire process requires at least 15 days from the time the Class II price is changed until it is reflected in the prices of Class II products at stores.

Other MIF/IAICM witnesses supported the above approach concerning the need to provide for advance notice in the 29 milk orders. An additional point they made was that the magnitude of Class II price increases in recent years has made it essential that handlers know the cost of Class II milk prior to processing and marketing Class II milk products. Otherwise, they said there is a great financial risk to handlers in pricing Class II products without knowing the cost of Class II milk.

The MIF/IAICM witnesses said that the proposed advance notice procedure would result in Class II prices almost identical to those announced under the invalidated procedure. They said that the proposed procedure was not intended to change the Class II price level which the Secretary has determined should be 10 cents over the Class III price. Consequently, they said, the proposal would not change returns to producers, would not increase costs to handlers and would not change costs to consumers.

Further, handler witnesses said that the proposal would not disadvantage handlers regulated by the 29 orders in competing with handlers regulated by other Federal orders, or with unregulated milk dealers. Handler witnesses who were thoroughly familiar with the production management of their firms said that a temporary misalignment between the Class II price and the price of concentrated ingredients which can be used in making Class II products would not result in the substitution of such ingredients for producer milk in making Class II products. There were a number of reasons cited. Many plants do not have the facilities, for example, to liquefy butter for use in ice cream mix and frozen dessert mixes. Also, temporary reformulation disrupts the normal supply arrangements that handlers have with cooperatives to receive milk for Class II use. Further, reformulation to use concentrated products results in product yield and quality problems that are not easily solved. The witnesses pointed out that the part of the proposal to floor the Class II price at the level of the Class III price would prevent any serious misalignment problems among markets and handlers which might otherwise result when Class III prices rise rapidly.

Another handler witness said that the proposal will contribute to orderly marketing. He said that producers and handlers will be able to plan production and marketing decisions more effectively than at present. In his view, producers will benefit because they will know the Class II price in advance of marketing their milk. He said that cooperatives and handlers will benefit because they will be able to establish and adjust resale prices with more precision than is presently the case regarding changes in ingredient costs.

The NMPF case. A witness for the NMPF said that a number of member cooperatives that supply milk to regulated handlers in the 29 Federal order markets also manufacture and distribute Class II products. He said that advance notice of Class II prices will benefit members who manufacture Class II products because they will know the cost of milk in time to price finished products with more precision than heretofore. Also, he said advance notice will give individual dairy farmers additional factual information to use in management decisions. He said that with appropriate adjustments of the Class II differential, returns to dairy farmers should remain virtually unchanged from the invalidated procedure.

The NMPF witness testified that the formula to update the M–W price of the second preceding month, which would compare product prices for the first 15 days of the preceding month with the first 15 days of the second preceding month to determine any changes in the value of milk, would adequately reflect such changes in value from month to month. He testified that the proposed updating formula uses the same product yield factors that are used in the dairy price support program. In his view, it would be difficult to justify and difficult for farmers and handlers to understand if the formula provided in the 29 orders and the price support program did not use the same yield factors. He said that by relating the yield factors in the advance notice formula with those used by the support program, conforming changes would be automatic in the orders if the support yield factors are changed, which heretofore has been infrequent.

In describing the operation of the advance notice proposal, the NMPF witness said that the formula updating the M–W price would be calculated on or before the 15th day of the month and a Class II differential would be added to yield the Class II price that would be effective the following month. In his view, advance notice requires that the Class II price for a particular month be tied to the manufacturing milk value for the preceding month. This, he claimed, is what the updating formula is intended to do. In this connection, a number of witnesses testified that the updating formula is not to be construed as a new value for manufacturing milk. In their view, the updating formula is merely a convenient mechanical means to update the M–W price and thereby reflect in the Class II prices any changes in the value of manufacturing milk. The NMPF witness said, however, that in months when manufacturing milk prices are rising the effect of the formula would be to reduce or eliminate the Class II differential, which would reduce Class II prices for producer milk. When manufacturing milk prices are falling, he noted, Class II prices could be high relative to Class III prices. For this reason the NMPF proposed using a 12-month moving average Class II differential. The witness indicated that this would result in a Class II differential which over the most recent

12 months would have resulted in a Class II price that was 10 cents over the M–W price.

The witness stressed that the Class II price under advance notice must be floored by the Class III price. He said that to permit the Class II price to fall below the Class III price would be inconsistent with the economic rationale underlying classified pricing. He said there would be no incentive for producers to sell milk below the Class III price. Flooring the Class II price as proposed, he said, would assure handlers that supplies will be made available for Class II use. It is noted that over the 30-months of data that were introduced concerning the proposal, it was observed that the Class III price would have been the floor in 9 of the months or about 30 percent of the time.

The witness said that the NMPF was not supporting its initial proposal to floor the Class II price at the level of the support price in those months that a change is made in the support level. He said that after due consideration the NMPF had concluded that such provision could cause unrealistic one-month changes that could result in marketing problems, particularly for handlers.

In this connection, he testified that the support price was raised on April 1, 1980. He said that if the Class II price had been floored by that increase for the month of April only, it would have jumped 50–60 cents for one month only and would have presented pricing problems to handlers. The NMPF witness reiterated the testimony of MIF/IAICM that flooring the Class II price at the level of the Class III price will prevent any misalignment problems among markets and handlers that would otherwise result when Class III prices are rising rapidly.

Additional support for the NMPF position. A witness for Dairymen, Inc. (DI), testified in support of the NMPF proposal for advance notice. In this connection, the witness stated that he favored using a 12-month moving average method of establishing the Class II differential. He said that a 12-month moving average differential as compared with a 24-month moving average would reflect more current marketing conditions. In his view, if a 24-month moving average were used, the adjustments would be so minor as to justify the use of a fixed differential instead of adjusting the Class II differential from month to month.

Another witness represented the individual member cooperatives of the Central Milk Producers Cooperative (CMPC). He supported the NMPF proposals for advance notice of the Class II price. Although the hearing notice contained a proposal by CMPC for the adoption of an alternative price announcement procedure under certain conditions, neither the witness nor other parties supported the proposal at the hearing.

Discussion of the issue. The hearing record reflects the dairy industry view that the industry's unanimous support for announcing the Class II price for a particular month by the 15th day of the preceding month is the clearest demonstration of the need for and the desirability of adopting the proposal. It was the view of hearing witnesses that the dairy industry is somewhat unique in that regulated handlers process and sell products without knowing the cost of the raw materials. To them, this is an unwarranted and unnecessary situation which creates undue business risks and other difficulties without generating any benefit whatsoever to anyone.

The unified view of the dairy industry is that the adoption of its proposal will contribute to more orderly marketing because producers and handlers will be better able to plan and effectuate their production and marketing decisions. Dairy industry witnesses testified that Class II manufacturers will benefit because the adoption of the dairy industry proposal will enable them to establish and adjust the resale prices of their products with more precision relative to changes in ingredient costs. They testified further that decisions regarding promotions, sales, advertising programs and other aspects of company operations are necessarily based on knowing one's costs.

Also, dairy industry witnesses testified that adoption of the dairy industry proposal will not have any inflationary or deflationary impact. They stated that handler costs, producer returns and consumer prices will not be affected.

The industry witnesses presented data to show that the adoption of the industry proposal will not have any significant impact on butterfat of skim milk costs and will not change the competitive positions between regulated or unregulated Class II manufacturers. The data they introduced into the record indicated that during the 2½ years prior to the hearing, the difference in the cost of nonfat solids in pool milk under the industry proposal and the provisions that were invalidated by the Court would have been four one-hundredths of a cent. The data indicated also that the impact of adopting the industry proposal would have been even less for butterfat than for nonfat solids. The industry witnesses concluded that since adoption of the industry proposal would not have any significant impact on costs, such adoption would not have any significant impact on competition.

Although there is extensive support for the proposal, the record is not clear that there is, in fact, a bona fide need for advance announcement of the Class II price. An important claim of proponents was that handlers and stores need advance price notice to make timely price changes when the ingredient costs of Class II products change. There was conflicting testimony, however, about whether chain stores in fact do buy Class II products in the manner claimed by handler witnesses. Also, handler witnesses had little knowledge about how chain stores price products. As noted previously, the adoption of the proposal will not assure handlers of knowing in advance what the Class II price will be. Dairy industry witnesses claimed also that handlers need advance price notice to enable them to price Class II products with more precision. They said this is necessary because handlers are losing money from making wrong pricing estimates. Yet, no handler presented any data to show that any of them actually had experienced the lost revenue claimed.

It is appropriate to note that the options that may be considered in this proceeding are limited. There was no testimony on any option other than a single dairy industry proposal. Furthermore, the normal option of maintaining the regulatory *status quo* is not available for consideration by the Department in this proceeding. This results because the Court declared invalid the price notice provisions that had been provided over the past decade in the 29 orders in this proceeding. The only alternative the Department would have were it to conclude that the dairy industry proposal for advance notice would not carry out the purposes of the Act would be to initiate procedures for terminating the 29 orders. However, the adoption of the dairy industry proposal is not likely to change returns to producers or the costs of handlers and consumers. Further, the record established that handlers are not likely to substitute manufactured ingredients for producer milk in making Class II products. Handlers were adamant in the belief that they would not be adversely affected competitively by the adoption of the dairy industry proposal.

It is concluded, therefore, that the adoption of the dairy industry proposal would not impair the continued maintenance of orderly marketing conditions for producers and that it would tend to effectuate the declared policy of the Act. Accordingly, a

procedure for announcing Class II prices in advance of the month in which they apply is adopted.

Adopted procedure. The procedure provided herein for announcing the Class II price for a month on or before the 15th day of the previous month is largely the same as that proposed by the dairy industry. It provides that the market administrator shall announce publicly on or before the 15th day of each month the Class II price for the following month. Such price would be provided to the administrators of the respective orders by the Dairy Division and determined from the method of computation specified in the orders.

As provided in the attached order, the announced Class II price for the month would be the sum of the following price components: (A) The basic Class II formula price; and (B) the Class II differential.

A. *Basic Class II formula price.* The basic Class II formula price, which would be used in computing the Class II price that is announced for the month, would be determined by the Dairy Division, AMS, on or before the 15th day of the preceding month. Under the formula provided herein, it would be computed by increasing or decreasing the M–W price of the second preceding month by an amount that reflects changes in the gross value of milk used to produce cheddar cheese (including returns from whey fat and whey solids-not-fat), butter, nonfat dry milk and edible whey powder during the first 15 days of the preceding month compared to the first 15 days of the second preceding month. The gross value of milk used to produce these products would be determined by multiplying the price of each product by a yield factor which represents the pounds of product that results from the manufacture of a hundredweight of milk. The yield factors used in the formula adopted herein would be those that are used under the Dairy Price Support Program for determining similar gross values. Whenever the yield factors are changed, the new yield factors would be used in the formula beginning with the effective date of the announced support price or announced purchase prices.

The yield factors used under the Price Support Program are for milk of average butterfat content of 3.67 percent, while prices under the Federal milk order program are announced for milk containing 3.5 percent butterfat. Milk containing higher proportions of butterfat yield more pounds of product per hundredweight of milk than does milk containing a lower butterfat content. However, using the Price Support Program yield factors in the adopted formula should not appreciably affect the basic Class II formula prices. Only changes in gross values of milk from one month to another would raise or lower the basic Class II formula price. These changes in gross values of milk should not be much different whether they are based on milk containing 3.67 percent butterfat or 3.5 percent butterfat.

The product prices that are used in the formula adopted herein would be those that are reported and published each week by the Dairy Division, AMS. The butter price would be that of the Chicago Mercantile Exchange for Grade A (92-score) butter. The cheddar cheese price would be that of the National Cheese Exchange for cheddar cheese in 40-pound blocks. The nonfat dry milk price would be the average price per pound (using the midpoint of any price range as one price) for high heat, low heat and Grade A nonfat dry milk for the Central States production area. If any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported. The price for whey powder would be the average price per pound (using the midpoint of any price range as one price) reported for edible whey powder (nonhygroscopic) for the Central States production area.

Borden, Inc. excepted to the use in the formula of the whey powder price reported for the Central States production area because, in exceptor's view, such price may not be as representative as whey values at "Grade B" cheddar cheese plants in Wisconsin and Minnesota. Exceptor stated that in view of this, the whey powder price that should be used in the formula should be one that is based on whey powder prices for plants that are included in the M–W series.

The record evidence has been reviewed in light of the exception. The only whey powder price that was discussed in testimony at the hearing was that which is based on prices reported for the Central States production area, and adopted for use in the formula. At the hearing, a witness for Borden, Inc., supported the use of this whey powder price in the formula. It is concluded that exceptor's change in preference at this stage of the proceeding is not based on record evidence. It cannot be ascertained from the record whether a whey powder price can be derived from plants that are included in the M–W price series. Accordingly, the exception is denied.

Based on yield factors used currently under the Price Support Program, a hundredweight of milk used to produce cheddar cheese yields 10.1 pounds of cheddar cheese, 0.25 pounds of butter and 5.5 pounds of whey powder. At the time of the hearing, under the Price Support Program, the price of whey powder increased the gross value of milk used to produce cheddar cheese only to the extent of that portion of the price of powder that exceeded 11 cents per pound. This was because the processing cost of drying the whey into powder was 11 cents. If the price of whey powder were less than 11 cents per pound, the processing costs would be absorbed in the price of cheddar cheese. If the price exceeded 11 cents, only that portion of the price that exceeded 11 cents would contribute to the gross value of milk.[1] Accordingly, in the formula adopted herein the gross value of a hundredweight of milk used to produce cheddar cheese would be the sum of the following computations:

1. The average daily price per pound of cheddar cheese during the first 15 days of each respective month would be multiplied by 10.1. The National Cheese Exchange meets on Friday morning for trading in cheddar cheese. Generally, the prices reported for each session establish the prices of cheddar cheese sold by the dairy industry during the following week. When Friday is a holiday, the Exchange meets on Thursday morning. In the formula adopted herein, a price reported for Friday (or Thursday) would be applied to that day plus each work-day of the following week prior to the day the Exchange meets. When there are work-days in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such work-day that precedes the first Friday. A work-day would be each Monday through Friday, except national holidays. This definition of work-day would apply also to the other product prices described in the following paragraphs. During a week that the Exchange does not meet, the price applied for the following week would be the last Exchange price that was established.

2. The average daily price per pound of butter during the first 15 days of each respective month would be multiplied by 0.25. The Chicago Mercantile Exchange also meets on Friday morning for trading in butter. When Friday is a holiday, the Exchange meets on

[1] Official notice is taken of "Dairy Market News" for the week of September 29–October 3, 1980, Volume No. 47, Report No. 40, which indicates that in the calculation of CCC purchase prices for dairy products effective October 1, 1980, the processing costs of drying whole cheese whey solids other than fat were increased to 13.5 cents per pound from the 11 cents cited above.

Thursday morning. Generally, the prices reported for each session establish the prices of butter sold by the dairy industry in the following week. In the formula provided herein, a price reported on Friday (or Thursday) would be applied to that day plus each work-day of the following week prior to the day the Exchange meets. When there are work-days in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such work-day that precedes the first Friday. During a week that the Exchange does not meet, the price applied for the following week would be the last Exchange price that was established.

3. The average daily price per pound of edible whey powder during the first 15 days of each respective month would be reduced by 11 cents (13.5 cents after October 1, 1980) and any amount remaining would be multiplied by 5.5. The whey powder price is determined by the Department on Thursday of each week and reflects the selling price of whey powder during the preceding 7-day period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, a price determined on Thursday (or Wednesday) would be applied to that day plus each previous work-day through the preceding Friday, or Thursday if the previous price reported had been on a Wednesday.

The gross value of a hundredweight of milk used to produce butter and nonfat dry milk would be determined in the following manner. The yield factors presently used by the Price Support Program indicate that one hundredweight of milk yields 4.48 pounds of butter and 8.13 pounds of nonfat dry milk. Thus, the average daily butter price per pound during the first 15 days of each respective month, as determined by the method described in (2) above, would be multiplied by 4.48.

Added to this value would be the value of milk used to produce nonfat dry milk. This would be computed by multiplying the average of the daily prices per pound of high heat, low heat and Grade A nonfat dry milk during the first 15 days of each respective month by 8.13. As with the whey powder prices, the prices of nonfat dry milk are determined on Thursday of each week and reflect the selling prices of nonfat dry milk during the preceding 7-day period. When Thursday is a holiday, the prices are determined on Wednesday. In the formula provided herein, the average of the prices of high heat, low heat and Grade A nonfat dry milk determined for Thursday (or Wednesday) would be applied to that day plus each previous work-day through the preceding Friday or Thursday if the previous price reported had been on Wednesday. As described previously, if any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported.

The next computation in the formula adopted herein determines the amounts by which the gross values of milk used to produce cheddar cheese and used to produce butter-nonfat dry milk during the first 15 days of the preceding month exceed or are less than the respective gross values during the first 15 days of the second preceding month. This would be done by subtracting the respective gross values during the first 15 days of the second preceding month from the respective gross values during the first 15 days of the preceding month.

The quantity of milk used to produce cheddar cheese in the States of Minnesota and Wisconsin greatly exceeds the quantity used to produce butter-nonfat dry milk. Accordingly, the changes in gross values described in the previous paragraph should be weighted by the relative proportions of milk used to produce cheddar cheese and butter-nonfat dry milk in these two States. This would be done by converting the quantity of American cheese (cheddar cheese accounts for over 70 percent of all American cheese) and, separately, the quantity of nonfat dry milk [2] produced in the two States combined, as reported and published by the Economics and Statistics Service of the Department for the third preceding month, into their respective milk equivalents (i.e., dividing the two-State quantity of American cheese produced by the 10.1 yield factor for cheddar cheese and dividing the corresponding quantity of nonfat dry milk produced by its yield factor of 8.13). The percentage that the milk equivalent for each separate product is of the total for the two products combined would be multiplied by the respective change in gross values, as described in the previous paragraph, to determine a weighted change in gross values for milk used to produce cheddar cheese and used to produce butter-nonfat dry milk. The weighted changes in gross values would be combined and this combined value would be used to adjust the second preceding month's M–W price. If the combined values for the first 15 days of the preceding month exceeds the corresponding value for the second preceding month, the M–W price would be increased. If it is lower, the M–W price would be reduced. The adjusted M–W price would be the basic Class II formula price for the month.

At the time of the hearing, the Economics and Statistics Service of the Department (ESS) was not publishing the two-State material that would be used in the updating formula provided herein. However, a memorandum provided by ESS was introduced as an exhibit and indicated that ESS would publish the data if it were needed for use in Federal milk orders.

B. *Class II differential.* In the formula adopted herein, the Class II differential would be an amount added to the basic Class II formula price each month to yield a Class II price that, on average, is 10 cents higher than the Class III price. It would be computed on or before the 15th day of the preceding month for use in determining the announced Class II price for the month. The differential would be the amount that the average M–W price plus 10 cents during the most recent 12-month period exceeds the average basic Class II formula price during the same 12-month period.

Discussion. The formula described above is a combination of the proposals supported at the hearing by different witnesses. As described previously in this decision, all parties supported the use of this type of formula for computing the monthly Class II price. The only divergence in views among the hearing participants was whether the butter and cheddar cheese prices used in the formula should be based upon Exchange prices or upon wholesale selling prices and whether the Class II differential should be based upon a 12-month average or a 24-month average comparison.

The MIF/IAICM, Land O' Lakes and witnesses for several proprietary handlers supported using the Exchange prices for determining the price of butter and cheddar cheese. Witnesses for these organizations stated that the prices for virtually all sales of butter and cheddar cheese throughout the country are based upon the weekly prices on the Exchanges. Further, they said, the Exchange prices more accurately reflect the value of milk that is used to produce butter and cheddar cheese than do the wholesale prices because the wholesale prices include premiums that reflect the added value of services which have nothing to do with the value of the milk used to produce the product (e.g., aging cheddar cheese, storage costs, service charges, etc.). In its post-hearing brief the members of Central Milk Producers Cooperative (Chicago Regional market)

[2] Nonfat dry milk is used in the computation because butterfat that is excess to fluid milk operations also is made into butter.

also supported using the Exchange prices.

The NMPF and one of its member cooperatives supported using "wholesale selling prices" for determining the price of butter and cheddar cheese. Witnesses for these organizations stated that wholesale prices reflect purchases of butter and cheese by the Government when it is purchasing these products under the Price Support Program. Further, they said that when supplies are short the wholesale prices reflect any premiums paid due to the tight supply-demand conditions. On balance, however, the witness for NMPF testified that the organization would have no major problem if Exchange prices were adopted for use.

The President of the National Cheese Exchange appeared as a witness and described the operation of the Exchange. He said that the Exchange is a nonprofit corporation at Green Bay, Wisconsin, with 44 members at the present time. The members who are present at the Friday morning trading sessions represent about 80–90 percent of all the cheese handled in the United States. Most members of the Exchange are assemblers or processors of cheese as opposed to producers of cheese. He said the rules of the Exchange are designed to assure that the trading is not "rigged." Only those types of cheese that are produced in large quantities and are held by a substantial number of people are traded on the Exchange.

The witness stated that the vast majority of cheese traded in the United States is sold through normal commercial channels. The Exchange, he said, operates as an alternative source of supply or as an alternative market for cheese. The trading sessions are about 30 minutes long, but if trading is active they continue until there is a standstill. This prevents someone from placing a bid or offer at the last few seconds of trading solely for the purpose of influencing the price that would be established for that session. If a bid or offer is made, trading continues until everyone who wants to fill a bid (sell cheese to the bidder) or cover an offer (buy cheese from the person who made the offer) has an opportunity to do so. Another witness stated that when a bid or offer is accepted by another trader this constitutes a sale and a price is established. Only an offer to sell cheese at a lower price can cause the market price to drop and, conversely, only a bid to buy cheese at a higher price can cause the market price to rise. At times when there are no bids or offers it usually means that member supplies of cheese are about in balance with demand or that the Government is buying substantial amounts of cheese under the Price Support Program.

Although no representative of the Chicago Mercantile Exchange presented testimony, one witness described the operation of the Exchange. The witness said that there are about 500 members of the Chicago Mercantile Exchange, all of whom could potentially trade in butter. He said even though only about six people show up at the Friday morning trading sessions, normally they represent the largest butter firms in the United States. Furthermore, he claimed that if any of the other 500 members felt that the Exchange price was too high or too low they could attend the next trading session and alter the price by bidding or offering butter. The actual trading operation of the Chicago Mercantile Exchange appears on the record to be very similar to the operation of the National Cheese Exchange. Again, on the butter Exchange a very small amount of product is actually traded. The witness said that trades on the butter Exchange in 1979 represented only about three-tenths of one percent of all the butter produced in the country.

The "wholesale selling price" method for determining butter and cheddar cheese price involves telephone surveys of wholesale buyers and sellers of the specific product by the Federal-State Market News Service. This is a voluntary program in which the Market News Service has certain contacts throughout the dairy industry who provide the price information that is published weekly by the Dairy Division, AMS, in "Dairy Market News." The record does not indicate the number of persons contacted each week or the specific information requested. One witness testified that the accuracy of the information supplied to the Market News Reporters is verified by comparing the price information furnished by the sellers with the price information furnished by the buyers. The published prices involve actual wholesale selling prices for each product as reported to Market News. With respect to butter and cheddar cheese, the wholesale prices include any premiums paid in excess of the Exchange prices that would reflect tight butter and cheese markets and sales to the Government under the Price Support Program.

Analysis of the record data shows that the use of either price series for butter and cheddar cheese in the formula would result in monthly basic Class II formula prices that are very similar or identical. Also, the record evidence established that the Exchange prices are used by the industry when actually buying or selling butter or other high-fat products and cheddar cheese. Record evidence indicates that it is the Exchanges that set the wholesale prices of butter and cheddar cheese. Most of the time the wholesale prices follow penny for penny any price changes that occurred on the butter and cheese Exchanges during the previous Friday session. Accordingly, it is appropriate that in the computation of the monthly basic Class II formula price the butter price be based upon the Chicago Mercantile Exchange price per pound of Grade A butter and the cheddar cheese price be based upon the National Cheese Exchange price per pound of cheddar cheese in 40-pound blocks, both prices as reported and published by the Dairy Division, AMS.

The NMPF excepted to the use in the formula of the Exchange prices for determining the butter and cheddar cheese prices. Exceptor reiterated the NMPF view stated at the hearing that the reported "Wholesale selling prices" for butter and cheddar cheese are more representative of the value of these products. Exceptor asked that the Department evaluate carefully the evidence on this point before issuing a final decision.

A witness for the NMPF expressed this view at the hearing and the evidence on this point was evaluated carefully in formulating the recommended decision. Exceptor cited no specific testimony in the record as a basis for changing the adopted formula. Accordingly, the exception is denied for the reasons stated previously in the decision.

All parties at the hearing supported the continuation of monthly Class II prices that average 10 cents higher than Class III prices. To achieve this objective they supported using a formula that would base monthly Class II differentials on the historical relationship between the Class III price (Minnesota-Wisconsin price) plus 10 cents and the basic Class II formula price. The NMPF, several of its cooperative association members and one proprietary handler supported using a 12-month comparison in computing the Class II differential while the MIF/IAICM supported using a 24-month comparison.

For the 18-month period of February 1979 through July 1980, Class II differentials based on the 12-month average comparison would have ranged from a low of 16 cents to a high of 27 cents (a spread of 11 cents) and averaged 20.8 cents. The 20.8 cent

average Class II differential results in part from inflation and from the updating techniques adopted herein, which caused the 12-month average of the M-W prices during this period to exceed the 12-month average of the basic Class II formula prices by 10.8 cents. The basic Class II formula price for a particular month is based on data for the preceding month and second preceding month and updates the Minnesota-Wisconsin price to only the 15th day of the preceding month. If inflation subsides in the future, the monthly Class II differentials would approach the intended 10-cent Class II differential.

Based on the 24-month average comparison, Class II differentials that would have applied to the same February 1979–July 1980 period would have ranged from a low of 18 cents to a high of 22 cents (a spread of 4 cents) and would have averaged 20 cents (10 cents of which is due to the factors described previously). As this comparison of the 12-month and 24-month averages indicates, the 12-month averages are more responsive to changes in the Minnesota-Wisconsin price series. Although over the entire 18-month period the average Class II differentials are within one cent of one another, the range in Class II differentials based on the 12-month average was 11 cents while the range based on the 24-month average was 4 cents. Thus, in times of rapid changes in the Minnesota-Wisconsin price series, the 12-month average would cause the Class II differentials to reflect such changes much sooner than the 24-month average. For this reason, it is appropriate to base the monthly Class II differentials on the 12-month average comparisons.

The MIF-IAICM and Borden, Inc., excepted to the procedure adopted in the recommended decision for computing the monthly Class II differential. As described previously, the Class II differential is the amount that would be added to the basic Class II formula price each month to yield a Class II price that, on the average, would be 10 cents higher than the Class III price (the M-W price). The differential would be the amount that the average M-W price plus 10 cents during the most recent 12-month period exceeds the average basic Class II formula price during the same 12-month period.

The MIF-IAICM exception stated that although the organizations do not object to using a 12-month average comparison in determining the Class II differential, they do object to using the basic Class II formula price in the 12-month comparison, rather than using the final Class II price. Exceptor said that if the basic Class II formula price were used in the comparison, the impact of flooring the Class II price at the Class III price level would not be taken into account with the result that the Class II differential would be larger than necessary. Exceptor stated that during the 35-month period from February 1978 through December 1980, the failure to use the final Class II prices in the calculation of the Class II differentials would have caused the Class II prices to average about 1 cent higher than the average of the M-W prices plus 10 cents. Exceptor stated that the record contains no justification for any price increase.

The exception of Borden, Inc., also was concerned about the possibility that the adopted formula for determining the Class II differential each month could result in Class II prices that average more than the M-W prices plus 10 cents. The exceptor stated that the witnesses who had testified on the advance Class II price issue wanted the same Class II prices, over time, that would have resulted from the M-W prices plus 10 cents. The time span exceptor envisioned was 12 or 24 months.

The Borden, Inc., exception indicated that there would be some months when the tentative Class II price would not equal the final Class II price. This would occur in those months when the final Class II price would be floored by the Class III price. In exceptor's view, the 12-month moving adjustment should reflect any amount that the final Class II price exceeds the tentative Class II price so that the average of the final Class II prices over a 12-month period would equal the average of the M-W prices plus 10 cents for the same period. Exceptor stated that this was the result intended by proponents. Otherwise, he said, the Class II differential resulting from the 12-month moving adjustment could be "overstated."

The formula adopted in this decision for computing the mothly Class II differential is the same as the formula proposed by proponents that included a 12-month comparison of the basic Class II formula prices and the M-W prices plus 10 cents. It would not be possible to use the final Class II price in the 12-month average comparisons that determine the Class II differential, as exceptors desire, because the Class II prices for a month (tentative and final) are based, in part, on the Class II differential. Additional steps would be required in the formula to have the monthly Class II differential reflect the amount added to the final Class II price by flooring such price at the Class III price level. However, such option was not among the proposals considered at the hearing. Neither was there any testimony about the possible mechanics for such an alternative. Further, the Class II prices resulting from the adopted formula averaged only 2 cents over the M-W prices plus 10 cents during the 30-month time series (February 1978 through July 1980) that was analyzed from record evidence. This was almost identical to the results from the statistical analysis that proponents entered into evidence to support the objective they wished to accomplish. Accordingly, the exceptions are denied.

2. *Class I price announcement.* The proposal to change the procedure for announcing Class I prices in the 29 markets is denied. Under the proposal, the Class I prices for a particular month would be announced on or before the 15th day of the preceding month. Class I prices would be determined by using a product price formula to update the second preceding month's M-W price and adding the Class I differentials specified in the respective orders.

Presently, the Class I price in each of the orders is announced for a particular month on or before the 5th day of the preceding month. The price is determined by adding a specified Class I differential to the second preceding month's M-W price for milk containing 3.5 percent butterfat. The M-W price represents the average price paid to dairy farmers for manufacturing grade milk delivered to manufacturing plants in the two-State area. Thus, changes in the value of manufacturing grade milk are not reflected in the Class I milk value until two months after they occur.

During periods of rapidly rising prices, such as have prevailed in recent years, this 2-month lag results in Class I prices that do not exceed manufacturing milk values by the full amount of the specified Class I differentials. the NMPF viewed this as an undesirable consequence of the present Class I pricing procedure in the Federal milk orders. Consequently, it proposed that the procedure for announcing Class II prices also be used for announcing Class I prices.

The NMPF witness stated that this change would result in the effective Class I differentials (the difference between the Class I price and the Class III price for the same month) more nearly reflecting the specified Class I differentials. He stated that the specified Class I differentials were found necessary in each of the respective orders to yield Class I prices that would bring forth a sufficient quantity of milk

for fluid use. Several witnesses representing individual cooperative association members of the Federation also testified in support of the proposal.

The NMPF's proposal, as submitted to the Department, applied to all 47 Federal orders. At the hearing, NMPF and the individual member cooperative associations that participated at the hearing supported adopting the proposal for the 29 orders of this proceeding and then holding another hearing to consider the proposal in the remaining 18 orders. The MIF/IAICM supported the proposed NMPF procedure for announcing Class I prices, but only if it were adopted in all 47 orders simultaneously. The witness representing these organizations said that if the proposed formula were adopted in the 29 orders before being adopted in the 18 other orders serious price misalignments could be created between adjacent orders in some months.

A witness representing a handler who operates distributing plants regulated by 8 of the 29 orders under consideration also supported the proposal concerning advance notice of the Class I price, but only if it is adopted in all orders simultaneously. He reiterated the view of other witnesses concerning price misalignments that would be created, and stated that his firm probably would have to change distribution patterns from month to month to cope with such a situation unless the change were adopted simultaneously for all orders.

The witness representing a handler who operates both distributing plants and supply plants regulated under several of the 29 orders and under several other orders as well testified that his company took no position concerning the issue.

The procedure for announcing the Class I prices of the 29 orders should not be changed on the basis of this record. Proponents did not describe any disorderly marketing conditions in any df the markets that are being caused either by the present procedure for announcing the Class I price or by any need to "correct" the Class I differentials of the respective orders. It is noted that any so-called "correction" of the Class I differentials could result in a level of Class I prices under the orders that is 9 to 10 cents per hundredweight higher than presently as long as the level of manufacturing milk prices continues to increase as in recent years. Proponents contended that the adoption of their proposal would not represent an increase in Class I prices but would merely reflect a correction in the Class I pricing provisions. Nevertheless, there could be unneeded production incentives under the proposal at a time when, as the record evidence indicates, each of the 29 markets has adequate supplies of milk for Class I use.

In this connection, producer witnesses stated that because of the double-digit rate of inflation in recent years the effective Class I differential has been lower in some months than the apparent margin cooperative associations could receive on milk used to manufacture hard products (e.g., butter, powder and cheese). The witnesses claimed that during certain months in recent years distributing plant operators in some markets had difficulty obtaining milk for Class I and Class II uses because of this. The witnesses, however, did not cite any specific instances in which handlers were short of milk for Class I uses. Further, although representatives of distributing plant handlers in each of the 29 markets were present at the hearing, not one testified that he could not obtain sufficient milk for his Class I needs.

A compelling need for establishing a new Class I price announcement procedure under the 29 orders is not demonstrated by the record evidence. Accordingly, the proposal is denied.

The National Milk Producers Federation, Central Milk Producers Cooperative, Dairymen, Inc., Mid-America Dairymen, Inc., and Land O' Lakes excepted to the denial of the proposal that was considered at the hearing for announcing Class I prices. The exceptors maintained that the adoption of the proposal would not increase effective Class I prices under the 29 orders because over-order prices have been necessary in each of the markets to assure adequate milk supplies. Exceptors claimed that any increase in the order Class I prices that may result from adopting the proposal would be offset by a corresponding reduction in over-order prices. In exceptors' view, additional "stability" in the 29 markets would result if reliance on over-order pricing could be reduced by adopting the same announcement procedure for Class I milk that was adopted for Class II milk.

Such claims do not provide a basis for adopting the proposed Class I price announcement procedure. Exceptors contended that cooperative associations would reduce over-order prices to the extent of the Class I price increases that would result. However, there is no assurance that over-order prices would be lowered. Further, there are no data in the record which indicate that increasing order Class I prices in these 29 markets would provide greater "stability," as exceptors claimed. To the contrary, the record evidence indicates that each of the 29 markets has adequate supplies of milk and, under the proposal, there could be an incentive for unneeded production which could lead to instability and disorderly marketing conditions. Accordingly, the exception of the aforementioned groups is denied.

The MIF–IAICM also excepted to the denial of the proposal which would use the same procedure for announcing Class I prices that was adopted for announcing Class II prices. Exceptors stated that they fully support using the same procedure for announcing both Class I and Class II prices, except that in computing the Class I prices such prices should not be floored by the Class III prices. Also, exceptors indicated that the proposed procedure should not be implemented for Class I pricing purposes until it can be included in all 47 milk orders simultaneously. These are the same views that the MIF–IAICM expressed at the hearing, and they were taken into account in formulating the recommended decision. Exceptors cited no specific testimony in the record as a basis for changing the tentative conclusions. Accordingly, the exception is denied for the reasons stated previously in this decision.

3. *Announcement of Class I and Class II butterfat differentials.* The proposal to announce the Class I and Class II butterfat differentials for the month on or before the 15th day of the preceding month and to make corollary changes in the orders relating to Class III butterfat differentials and producer butterfat differentials is denied.

Presently, a single butterfat differential applies in each of the 29 orders for adjusting prices to reflect the actual butterfat content of the milk being priced. This is stated in the orders as a producer butterfat differential and it is used to adjust the blend prices to producers. There are no separate handler butterfat differentials for adjusting class prices to handlers. The differential is the Chicago wholesale Grade A butter price for the month multiplied by 0.115 and rounded to the nearest one-tenth cent. It is announced by the 5th day after the end of the month in which it applies.

Land O' Lakes, Inc., (LOL) made the proposal for the advance announcement of Class I and Class II butterfat differentials. The LOL witness stated that the proposal would complement the other proposals considered at the hearing for the advance announcement of Class I and Class II prices because the butterfat differential must be known in advance for the other proposals to be of any significant value.

Proponent's witness cited two examples in which a change in the butterfat differentials would have had a

significant effect upon the cost of skim milk that is used to produce cottage cheese. In one of his examples he said the proposed Class II pricing formula would have resulted in an announced Class II price for May 1980 of $12.05 and for June of $11.88, a decrease of 17 cents. He said that under the present provisions, however, the order butterfat differentials increased from $.149 in May to $.158 in June. Thus, he concluded, a cottage cheese manufacturer who would have expected his price of milk to decrease 17 cents from May to June actually would have had a price decrease of 48.5 cents per hundredweight because cottage cheese basically is made from skim milk. His other example involved the months of July and August 1979 and illustrated similar results.

As proposed by proponent, the butterfat differential applicable to Class II milk in the month of May 1980 would have been the average price per pound of Grade A (92-score) butter as reported for the Chicago Mercantile Exchange during the first 15 days of April multiplied by 0.115. The butterfat differential applicable to Class II milk in the month of June 1980 would have been the comparable price of Grade A butter during the first 15 days of May multiplied by 0.115. Using that formula, the May Class II butterfat differential would have been 14.8 cents and the respective June butterfat differential would have been 14.9 cents. On this basis, the cost of skim milk to a cottage cheese manufacturer would have decreased 21 cents in June rather than 48.5 cents under the example cited by proponent. The LOL witness indicated that it is in this type of situation that it is desirable for processors to know in advance what the butterfat differential is for a particular month.

There is not a compelling basis on this record for adopting the advance announcement of Class I and Class II butterfat differentials. Neither handlers nor producers indicated that there were disorderly marketing conditions stemming from the present procedure of announcing a single butterfat differential after the end of the month based on the butter prices for that month. The record does reflect, on the other hand, an apparent reservation on the part of industry members about changing the present butterfat differential provisions. A proposal in the hearing notice, which was submitted by the National Milk Producers Federation, would have provided for the advance announcement of the producer butterfat differential. At the hearing, a witness for the organization stated that the group was abandoning its proposal since its members could not reach a consensus about the general issue of advance announcement of butterfat differentials. The record also raises some question about the practical effect that changing the announcement procedure for buttefat differentials would have on the pricing practices of handlers. A witness for the Milk Industry Foudation and the International Association of Ice Cream Manufacturers stated that not all processors use the same formula in allocating the total value of milk (i.e., the announced class price) between the skim milk and butterfat components or allocate costs to the various products in a manner that fully reflects the butterfat differential. The witness indicated that if handlers know the total cost of milk the handlers, individually, can allocate the cost between the fat and skim portions by whatever techniques they prefer.

It is noted that the proposal of Land O' Lakes would apply to all 29 markets under consideration. Proponent, however, operates in only several of these markets. There is no showing of broadly-based support for the proposal throughout the 29-market area. Under the circumstances described, it would not be appropriate to change the procedure for announcing butterfat differentials in the 29 markets on the basis of this record.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record was considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth therein, the requests to make sure findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an order amending the orders regulating the handling of milk in the aforesaid marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

January 1981 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas, except the Red River Valley marketing area, is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Red River Valley marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be January 1981.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard E. Arnold.

Signed at Washington, D.C., on: July 8, 1981.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order [1] amending the orders, regulating the handling of milk in certain specified marketing areas.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending each of the specific orders contained in the recommended decision issued by the Acting Administrator on February 11, 1981, and published in the **Federal Register** on February 18, 1981 (46 FR 12709) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to modifications in §§ .50(b) and .53 in each of the orders.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. Section 1062.19 is added and reserved and a new § 1062.20 is added to read as follows:§

§ 1062.19 [Reserved]

§ 1062.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1062.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pounds blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:.

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily prices for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1062.50(b) is revised to read as follows:

§ 1062.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1062.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1062.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1062.51a

* * * * *

3. A new § 1062.51a is added to read as follows:

§ 1062.51a Basic class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1062.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1062.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1062.53 is revised to read as follows:

§ 1062.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. A new § 1007.20 is added to read as follows:

§ 1007.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1007.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national

holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1007.50(b) is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1007.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1007.51a

* * * * *

3. A new § 1007.51a is added to read as follows:

§ 1007.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1007.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1007.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.19 is added and reserved and a new § 1011.20 is added to read as follows:

§ 1011.19 [Reserved]

§ 1011.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1011.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1011.50(b) is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1011.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1011.51a.

* * * * *

3. A new § 1011.51a is added to read as follows:

§ 1011.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1011.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1011.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective

gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) opf this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1011.52 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. A new § 1030.20 is added to read as follows:

§ 1030.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1030.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1030.50(b) is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* a tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1030.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1030.51a.

* * * * *

3. A new § 1030.51a is added to read as follows:

§ 1030.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1030.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1030.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of

the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. A new § 1032.20 is added to read as follows:

§ 1032.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1032.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the dily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such averge shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1032.50(b) is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this

section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1032.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1032.51a.

* * * * *

3. A new § 1032.51a is added to read as follows:

§ 1032.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1032.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1032.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Mulitply the butter price by the yield factor used under the Price Support program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.19 is added and reserved and a new § 1046.20 is added to read as follows:

§ 1046.19 [Reserved]

§ 1046.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1046.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1046.50(b) is revised to read as follows:

§ 1046.50 Class prices.

* * * * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1046.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1046.51a.

* * * * * * *

3. A new § 1046.51a is added to read as follows:

§ 1046.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1046.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1046.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Substract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.19 is added and reserved and a new § 1049.20 is added to read as follows:

§ 1049.19 [Reserved]

§ 1049.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1049.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The price used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Diary Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1049.50(b) is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1049.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1049.51a.

* * * * *

3. A new § 1049.51a is added to read as follows:

§ 1049.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1049.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1049.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor ued under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth

day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section if effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. A new § 1050.20 is added to read as follows:

§ 1050.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1050.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Diary Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey power (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey power for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1050.50(b) is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1050.5a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1050.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1050.51a.

* * * * *

3. A new § 1050.51a is added to read as follows:

§ 1050.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1050.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1050.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multipy the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in

each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceeding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day or each month the tentative Class II price for the following month.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.19 is added and reserved and a new § 1064.20 is added to read as follows:

§ 1064.19 [Reserved]

§ 1064.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1064.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1064.50(b) is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1064.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1064.51a.

* * * * *

3. A new § 1064.51a is added to read as follows:

1064.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1064.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values for hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1064.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) the gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) the gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute wieghting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.19 is added and reserved and a new § 1065.20 is added to read as follows:

§ 1065.19 [Reserved]

§ 1065.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1065.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. the prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1065.50(b) is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this

section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1065.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1065.51a

* * * * *

3. A new § 1065.51a is added to read as follows:

§ 1065.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1065.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section.

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1065.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.19 is added and reserved and a new § 1068.20 is added to read as follows:

§ 1068.19 [Reserved]

§ 1068.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1068.51a.

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1068.50(b) is revised to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Dirctor of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1068.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1068.51a.

* * * * *

3. A new § 1068.51a is added to read as follows:

§ 1068.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1068.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1068.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation, and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divided by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese, and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1071—MILK IN THE NEOSHO VALLEY MARKETING AREA

1. A new § 1071.20 is added to read as follows:

§ 1071.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1071.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar chesse price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar

cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1071.50(b) is revised to read as follows:

§ 1071.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1071.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the baic formula prices computed pursuant to § 1071.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1071.51a.

* * * * *

3. A new § 1071.51 as is added to read as follows:

§ 1071.51a. Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1071.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1071.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1071.53 is revised to read as follows:

§ 1071.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this

section is effective. the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1073—MILK IN THE WICHITA, KANSAS MARKETING AREA

1. Section 1073.19 is added and reserved and a new § 1073.20 is added to read as follows:

§ 1073.19 [Reserved]

§ 1073.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1073.51a:

(a) *Butter price.* "Butter price" means the simple average. for the first 15 days of the month. of the daily prices per pound of Grade A (92-score) butter The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday. except national holidays. For any week that the Exchange does not meet to establish a price. the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month. of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay. WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week. determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average. for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1073.50(b) is revised to read as follows:

§ 1073.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1073.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price:

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1073.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1073.51a.

* * * * *

3. A new § 1073.51a is added to read as follows:

§ 1073.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1073.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1073.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in

each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1073.53 is revised to read as follows:

§ 1073.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.19 is added and reserved and a new § 1076.20 is added to read as follows:

§ 1076.19 [Reserved]

§ 1076.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1076.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national-holdiays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1076.50(b) is revised to read as follows:

§ 1076.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1076.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1076.51a.

* * * * *

3. A new § 1076.51a is added to read as follows:

§ 1076.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1076.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1076.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divided by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.19 is added and reserved and a new § 1079.20 is added to read as follows:

§ 1079.19 [Reserved]

§ 1079.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1079.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1079.50(b) is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this

section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1079.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1079.51a.

* * * * *

3. A new § 1079.51a is added to read as follows:

§ 1079.57a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1079.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1079.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.19 is added and reserved and a new § 1094.20 is added to read as follows:

§ 1094.19 [Reserved]

§ 1094.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1094.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1094.50(b) is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall not be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1094.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1094.51a.

* * * * *

3. A new § 1094.51a is added to read as follows:

§ 1094.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1094.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1094.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfact dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yeild factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.19 is added and reserved and a new § 1096.20 is added to read as follows:

§ 1096.19 [Reserved]

§ 1096.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1096.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey power (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1096.50(b) is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1096.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1096.51a.

* * * * *

3. A new § 1096.51a is added to read as follows:

§ 1096.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1096.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1096.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Mulitply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth

day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. Section 1097.19 is added and reserved and a new § 1097.20 is added to read as follows:

§ 1097.19 [Reserved]

§ 1097.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1097.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92–score) butter. The prices used shall be those of the Chicago Mercantile Exchangee as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey power (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1097.50(b) is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1097.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1097.51a.

* * * * *

3. A new § 1097.51a is added to read as follows:

§ 1097.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1097.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1097.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply and positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in

each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. Section 1098.19 is added and reserved and a new § 1098.20 is added to read as follows:

§ 1098.19 [Reserved]

§ 1098.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1098.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Daily Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1098.50(b) is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1098.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1098.51a.

* * * * *

3. A new § 1098.51a is added to read as follows:

§ 1098.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1098.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1098.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section.

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.19 is added and reserved and a new §1099.20 is added to read as follows:

§1099.19 [Reserved]

§1099.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1099.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1099.50(b) is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this

section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1099.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1099.51a.

* * * * *

3. A new § 1099.51a is added to read as follows:

§ 1099.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1099.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1099.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing costs used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraphs (c) of this section.

4. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.19 is added and reserved and a new § 1102.20 is added to read as follows:

§ 1102.19 [Reserved]

§ 1102.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1102.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for the day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which averages shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfact dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day unitl the day such prices were previously reported. A

work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraphs (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1102.50(b) is revised to read as follows:

§ 1102.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1102.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1102.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula price computed pursuant to § 1102.51a.

* * * * *

3. A new § 1102.51a is added to read as follows:

§ 1102.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1102.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1102.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1102.53 is revised to read as follows:

§ 1102.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

1. Section 1104.53 is revised to read as follows:

§ 1104.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

1. A new § 1106.20 is added to read as follows:

§ 1106.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1106.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and

published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such averge shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1106.50(b) is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1106.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1106.51a.

* * * * *

3. A new § 1106.51a is added to read as follows:

§ 1106.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1106.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1106.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnestoa and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.19 is added and reserved and a new § 1108.20 is added to read as follows:

§ 1108.19 [Reserved]

§ 1108.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1108.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Divisions as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1108.50(b) is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1108.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1108.51a.

* * * * *

3. A new § 1108.51a is added to read as follows:

§ 1108.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1108.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1108.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

1. A new § 1120.20 is added to read as follows:

§ 1120.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1120.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1120.50(b) is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1120.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1120.51a.

* * * * *

3. A new § 1120.51a is added to read as follows:

§ 1120.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1120.51 for the second preceding month plus or minus the amount computed pursuant to paragraph (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1120.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1120.53 is revised to read as follows:

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. A new § 1126.20 is added to read as follows:

§ 1126.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1126.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey power for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1126.50(b) is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1126.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1126.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1126.51a.

* * * * *

3. A new § 1126.51a is added to read as follows:

§ 1126.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1126.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1126.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.19 is added and reserved and a new § 1131.20 is added to read as follows:

§ 1131.19 [Reserved]

§ 1131.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1131.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previosuly reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1131.50(b) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1131.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1131.51a.

* * * * *

3. A new § 1131.51a is added to read as follows:

§ 1131.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1131.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1131.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese.

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1131.53 is revised to read as follows:

§1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

1. Section 1132.19 is added and reserved and a new § 1132.20 is added to read as follows:

§ 1132.19 [Reserved]

§ 1132.20 Product prices.

The following product prices shall be used calculating the basic Class II formula price pursuant to § 1132.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and

published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the next price reported each week as the daily price for that day and for each following work-day until the price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Diary Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1132.50(b) is revised to read as follows:

1132.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1132.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1132.51a

* * * * *

3. A new § 1132.51a is added to read as follows:

§ 1132.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1132.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1132.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfact dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfact dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per

hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1132.53 is revised to read as follows:

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. A new § 1138.20 is added to read as follows:

§ 1138.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1138.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1138.50(b) is revised to read as follows:

§ 1138.50 Class price

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed to paragraph (b)(2) of this section, except that, for each month after the first month which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1138.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1138.51a.

* * * * *

3. A new § 1138.51a is added to read as follows:

§ 1138.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1138.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1138.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Progam for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundred-

weight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

United States Department of Agriculture—Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the said marketing area (7 CFR—Part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] *Record of milk handled and authorization to correct typographical errors.*

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of *January 1981.* hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] *Effective date.* This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) _____

(Seal)

By (Name) (Title) _____

(Address) _____

Attest _____

Date _____

[FR Doc. 81-20608 Filed 7-13-81; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6327, File No. S7-890]

Automatic Effectiveness of Post-Effective Amendments Filed by Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to the rule governing automatic effectiveness of post-effective amendments to registration statements filed by registered open-end management investment companies and unit investment trusts, other than insurance company separate accounts. The proposed amendments would provide that, under certain conditions, the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not prevent the prior amendment from becoming effective automatically. As a result, a registrant that had filed a post-effective amendment containing a prospectus that disclosed a material event could file another amendment to update the financial statements in the prospectus before the first amendment had become effective, and both amendments would become effective on the same day, sixty days after the filing of the first amendment. The Commission is proposing these amendments primarily to facilitate the process by which an open-end investment company updates its prospectus in order to use the prospectus as the equivalent of an annual report to shareholders.

DATE: Comments must be received on or before August 10, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-890. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2093, or Susan P. Hart, Attorney, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed amendments to paragraphs (b) and (d) of rule 465 [17 CFR 230.465] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.]. The proposed amendment to rule 465(d) would provide that the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not suspend the sixty-day waiting period initiated by the filing of the prior amendment, provided that the subsequent amendment was filed pursuant to paragraph (b) of rule 465 and that it designated as its effective date the same day as the anticipated effective date of the prior filing. Paragraph (b) of rule 465 would be amended to make the subsequent amendment eligible for filing under that provision. The proposed amendments to

[1] First and last sections of the order.

[2] Appropriate part number

[3] Next consecutive section number.

rule 465 would permit an investment company to file a post-effective amendment under paragraph (a) which contains an updated narrative portion of its prospectus but no updated financial statements, and then, before such amendment has become effective, to file a subsequent post-effective amendment pursuant to paragraph (b) containing updated financial statements in addition to the updated narrative. The two amendments would become effective simultaneously, the same day as the anticipated effective date of the amendment filed under paragraph (a). These proposed changes would facilitate the process by which an investment company brings its prospectus up to date when it has experienced a material event requiring disclosure under paragraph (a) but does not have complete or updated financial statements sixty days prior to the desired date of effectiveness.

Although the proposed amendments would not be provided exclusively for the use of such companies, they would make it easier for an open-end management investment company that wished to use its prospectus in lieu of the annual report to shareholders pursuant to revised rule 30d–1 [17 CFR 270.30d–1] under section 30(d) of the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a–29(d)], to bring the prospectus up to date within sixty days after the end of the fiscal year.[1]

Discussion

On August 25, 1980, the Commission adopted rule 465 under the 1933 Act to permit most post-effective amendments to registration statements filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, without affirmative action on the part of the Commission or its staff.[2] Under paragraph (b) of rule 465, certain routine filings become effective automatically without prior staff review. A post-effective amendment may be filed pursuant to paragraph (b) of the rule for any one or more of the three purposes listed in paragraph (b)(1): increasing the number or amount of securities offered pursuant to section 24(e)(1) of the 1940 Act [15 U.S.C. 80a–24(e)(1)]; registering an indefinite number or amount of securities pursuant to section 24(f) of the 1940 Act [15 U.S.C. 80a–24(f)] and rule 24f–2 thereunder [17 CFR 270.24f–2]; or bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)], and, in conjunction therewith, making such non-material changes as the registrant deems appropriate. A post-effective amendment containing disclosure about any of the six events listed in paragraph (b)(2) of the rule, or about any other material event requiring disclosure in the prospectus, must be filed pursuant to rule 465(a). These amendments are reviewed by the staff in advance of effectiveness and may be the subject of staff comments. In most cases such filings become effective on the sixtieth day after filing.

Paragraph (d) of rule 465 now provides that a post-effective amendment containing a prospectus shall not become effective under paragraph (a) (on the sixtieth day after it is filed) if a subsequent post-effective amendment relating to the same prospectus is filed before such amendment becomes effective. In effect, the filing of a subsequent amendment relating to the same prospectus supersedes the prior amendment. As a result, unless the staff advances the effective date of the subsequent amendment, no post-effective amendment relating to the registrant's prospectus can become effective automatically pursuant to rule 465 until sixty days after the filing of the subsequent amendment. This result obtains because any post-effective amendment relating to a prospectus filed during the pendency of a post-effective amendment filed pursuant to paragraph (a) of rule 465 would itself have to be filed pursuant to paragraph (a). Although rule 465(b)(1)(iii) permits annual updating post-effective amendments [3] to become effective upon (or shortly after) filing, a registrant that has a rule 465(a) filing pending would not be able to rely on rule 465(b) for a subsequent amendment relating to its prospectus, because it would not be able to make the representations required by paragraphs (b)(2) and (b)(3).[4] Those provisions require the registrant to represent that it has not experienced a material event, either one listed in the rule itself or one "requiring disclosure in the prospectus," since the *effective* date of its 1933 Act registration statement or most recent post-effective amendment thereto.

As a result of the operation of the rule, a registrant that must file pursuant to rule 465(a) but that does not have all the information necessary to bring its prospectus up to date as of sixty days before its desired effective date must either file a post-effective amendment under rule 465(a) sixty days before its desired effective date, supplying mission information in a subsequent post-effective amendment also filed under rule 465(a), or delay filing until all the information is available and then file a post-effective amendment under rule 465(a). In either event, to become effective on the desired date the registrant must request the staff to advance the effective date of the amendment. This result is undesirable for registrants in view of the Commission's statement, in the release proposing rule 465, that "the fact that a registrant's prospectus is, or is about to become, stale would not be considered sufficient reason for the Commission or staff to exercise its power to set an effective date earlier than sixty days after filing."[5]

The problems raised by this procedure were emphasized by the Commission's revision of rule 30d–1 under the 1940 Act to permit open-end management investment companies, *inter alia*, to use prospectuses in lieu of reports to shareholders. To take advantage of this option, a registrant must have its updated prospectus become effective and be transmitted to its shareholders within sixty days after the end of its fiscal year, in orde to transmit its report to shareholders on time.[6] A registrant that had to file under rule 465(a), however, would not have an effective prospectus until sixty days after filing. Accordingly, it would have to file its post-effective amendment no later than the end of the fiscal year. In order to update the prospectus, however, the post-effective amendment would need to contain current financial statements, which would generally not be ready until at least thirty days after the end of the fiscal year. Therefore, a registrant that wished to send a prospectus in

[1] Revised rule 30d–1 is being adopted on this date by the Commission in Investment Company Act Release No. 11850 published under Rules and Regulations in this issue.

[2] Securities Act Release No. 6229 [45 FR 57702, Aug. 29, 1980].

[3] That is, amendments filed to bring the financial statements and other information in the prospectus up to date pursuant to section 10(a)(3) of the 1933 Act.

[4] On the other hand, an amendment made only under paragraphs (b)(1)(i) or (b)(1)(ii) of the rule—to register additional shares or an indefinite number of shares—can be filed and become effective automatically while a paragraph (a) filing is pending, because it does not contain a prospectus. *See* General Instruction F.3. of Form N–1 [17 CFR 239.15, 274.11].

[5] Securities Act Release No. 6205 (April 3, 1980) [45 FR 24500, April 10, 1980].

[6] The Commission has extended the time period for mailing shareholder reports from forty-five to sixty days in order to provide more time for open-end companies to take advantage of this provision. The Commission determined that sixty days was the maximum period of time it could permit, in view of the requirement of section 30(d) of the 1940 Act that information in a shareholder report be "as of a reasonably current date."

place of an annual report would have to file, before the end of the company's fiscal year, an amendment under rule 465(a) containing an updated narrative portion of the prospectus but not updated financial statements. After the paragraph (a) amendment became effective, but within sixty days after the end of the fiscal year, the company would then make a separate filing under rule 465(b) containing the newly effective narrative plus updated financial statements, to become effective at such time as it could be used in lieu of the annual report. As a result, the company would, within a short period of time, have three separate prospectuses: the old one, the one with an updated narrative, and the fully updated one.

The Commission agrees with the commentators on proposed revised rule 30d-1 that this procedure is unduly cumbersome for a registrant that must file its annual updating amendment under rule 465(a). Comtemporaneously with the adoption of revised rule 30d-1, therefore, the Commission is proposing amendments to rule 465(d) to provide that, under certain circumstances, the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not suspend the sixty-day waiting period initiated by the filing of the prior amendment. The subsequent amendment would have to be filed pursuant to paragraph (b) of the rule, and would have to designate as its effective date the same day as the effective date of the prior amendment. The Commission is also proposing amendments to rule 465(b) to permit the subsequent amendment to be filed under that paragraph, despite the pendency of a filing under paragraph (a).

As applied to a registrant that wanted to use its prospectus in place of an annual report to shareholders, the proposed amendments to rule 465 would permit the registrant to file the updated narrative portion of its prospectus under paragraph (a) shortly before the end of its fiscal year. During the sixty-day waiting period, the registrant would file another amendment under paragraph (b) containing the updated financial statement (and such other non-material changes as the registrant deemed appropriate) and designating as its effective date the same day as the effective date of the prior filing. As a result, the registrant would have a fully updated prospectus become effective within sixty days after the close of the fiscal year, in time for the prospectus to be used in place of the annual report.

As was stated in the release adopting rule 465,[7] registrants can know at any time the date upon which their current prospectuses will become stale. Similarly, they can determine the date by which they must send their prospectuses to shareholders in lieu of an annual report under revised rule 30d-1. As a result, the Commission believes that, under the amendment being proposed herein, registrants that must file their new prospectuses under rule 465(a) will nonetheless be able to take advantage of the new integrated disclosure procedures described in Investment Company Act Release No. 11850, without the undue burden that might result absent the amendment.

Text of Proposed Amendments to Rule 465

It is proposed to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

1. By revising the introductory text of paragraphs (b), (b)(2) and (3), and paragraph (d) of § 230.465 to read as follows:

§ 230.465 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) Except as otherwise provided in this section, a posteffective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than twenty days after the date on which the amendment is filed, provided that the following conditions are met:

* * * * *

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to extent that such events have occurred since the effective date of the registrant's registration statment or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

* * * * *

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of the following three dates: (i) the effective date of the registrant's registration statement; (ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective; and

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to such prospectus. *Provided,* That such subsequent amendment is filed pursuant to paragraph (b) of this section, *And provided further,* That such subsequent amendment designates as its effective date the date on which the prior post-effective amendment shall become effective pursuant to paragraph (a). If another post-effective amendment relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, neither the prior amendment filed pursuant to paragraph (a) nor the amendment filed pursuant to paragraph (b) shall become effective pursuant to this section.

* * * * *

Regulatory Flexibility Certification

The Chairman of the Commission has certified that the proposed amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Statutory Authority

The Commission hereby proposes amendments to rule 465 for comment pursuant to the provisions of sections 7, 8 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h and 77s(a)].

[7] *See* note 2 *supra.*

By the Commission.

George A. Fitzsimmons,

Secretary.

July 8, 1981.

REGULATORY FLEXIBILITY CERTIFICATION

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rule 465 [17 CFR 230.465] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] set forth in Securities Act Release No. 6327, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the amendments propose changes in filing procedures for post-effective amendments which will reduce or have no effect on the costs involved in preparing and filing documents with the Commission.

Dated: July 8, 1981.

John S.R. Shad,

Chairman.

[FR Doc. 81-20506 Filed 7-13-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 54, and 301

[EE-7-78]

Individual Retirement Plans and Simplified Employee Pensions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to individual retirement plans and simplified employee pensions. Changes to the applicable law were made by the Employee Retirement Income Security Act of 1974, the Tax Reform Act of 1976, the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations would provide the public with the guidance needed to comply with these Acts and would affect institutions which sponsor individual retirement plans and simplified employee pensions. The regulations also affect employers and individuals who use these plans for retirement income.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 14, 1981. The amendments would have varying effective dates. The provisions relating to spousal individual retirement plans are generally effective for taxable years beginning after December 31, 1976. The provisions relating to simplified employee pensions are generally effective for taxable years beginning after December 31, 1978. The provisions defining "active participant" for individuals covered by defined benefit offset plans are effective for taxable years beginning after December 31, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-7-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Gift Tax Regulations (26 CFR Part 25), the Employment Tax Regulations (26 CFR Part 31), the Regulations on Pension Excise Taxes (26 CFR Part 54) and the Procedure and Administration Regulations (26 CFR Part 301) under sections 62, 219, 220, 404, 408, 409, 2503, 3121, 3306, 4973, 4974, and 6693 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2002(d) of the Employee Retirement Income Security Act of 1974 (88 Stat. 966), section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734), sections 152, 156(c) and 157 of the Revenue Act of 1978 (92 Stat. 2797, 2802, 2803), and sections 101(a)(10), (101)(a)(14)(A), 101(a)(14)(B), and 101(a)(14)(E)(ii) of the Technical Corrections Act of 1979 (94 Stat. 201-205). These 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).

On August 8, 1980, the **Federal Register** published final regulations relating to individual retirement plans under the Income Tax Regulations (26 CFR Part 1) under sections 219, 408, 409 and under the Pension Excise Taxes (26 CFR Part 54) under section 4974 (45 FR 52782). Also, because of subsequent statutory provisions, some of the proposed regulations published on February 21, 1975 (40 FR 7661) were withdrawn in connection with those final regulations. The preamble to those final regulations indicated that regulations under other statutory provisions relating to retirement plans would be reproposed at a later date. This document contains these reproposed amendments, other than those relating to the rollover rules under Code sections 402 and 403. The Service intends to repropose these rules at a later date in connection with the regulations under Code sections 402 (a) (5), (6) and (7), and 403 (a) (4), (6) and (8).

Spousal Individual Retirement Plans

Internal Revenue Code section 220 allows an individual to deduct amounts contributed to an individual retirement plan maintained for the individual's benefit and an individual retirement plan maintained for the benefit of the individual's non-employed spouse. The proposed regulations set forth the type of funding arrangements which must be used and additional limitations and restrictions the individual and spouse must meet in order for the individual to obtain this deduction.

Simplified Employee Pensions

Internal Revenue Code section 408 (k) sets forth rules for simplified employee pension ("SEP's"). The proposed regulations, §§ 1.408-7 through -9, indicate to employers and sponsoring institutions what requirements these arrangements must meet. Section 1.404 (h)-1 of the proposed regulations sets forth the special deduction limitations for employers under Code section 404 (h). Sections 1.219-1 (d) (4) and 1.219-3 of the proposed regulations set forth the rules governing the inclusion/deduction rules for employees for employer contributions to SEP's.

An employee will be allowed to deduct an employer contribution to a simplified employee pension. In general, the maximum amount the employee will be allowed to deduct is the lesser of 15 percent of compensation includible in gross income or $7,500. Proposed § 1.219-3 makes it clear that the deduction and the compensation are computed separately with respect to each employer's arrangement. Thus, an employee who has two or more employers can use only the compensation from the employer maintaining the simplified employee pension arrangement in computing the section 219 (b) (7) limitation. On the other hand, if two or more employers of an employee each maintain a simplified employee pension arrangement, the employee will be allowed to deduct each employer's contribution, up to the compensation and dollar limit applied separately to each employer. Special limitations apply to certain related employers under Code section 414 (b)

and (c) and to self-employed individuals.

Certain rules have been included to make SEP arrangements more administrable by employers and the Service. Under proposed § 1.408–7 (d) (1) (iii) an employer is not required to make a contribution to the SEP of an otherwise eligible employee who receives less than $200 compensation for a calendar year. This relieves employers of the burden of setting up SEP's to which very shall amounts of money will be contributed (the maximum deductible contribution would equal $30 (15% or $200)). This rule was published by the Service in Announcement 80–112, 1980–36 I.R.B. 35.

Further, under proposed § 1.408–7 (d) (2), employers may execute necessary documents on behalf of employees who are unwilling or unable to execute those documents or whom the employer is unable to locate. This remedial rule prevents an employer's SEP arrangement from being disqualified because of a recalcitrant employee or one who has left the employer's service and is unable to be located by the employer. (See also proposed § 1.408–9 (c) for possible reporting requirements in this instance.) Comments are requested as to what alternative remedial action, in lieu of execution on behalf of employees, employers would wish to take to avoid disqualification of their SEP arrangements. Comments also are requested on this proposed rule as to whether in a particular State there is any law that would preclude this action by the employer on the employee's behalf.

Employer contributions which exceed the amounts called for under the written allocation formula for the SEP arrangement are treated as if made to the employee's individual retirement account or individual retirement annuity, maintained outside the employee's SEP. It is contemplated that the employer, when it discovers the erroneous contribution, will notify the employee of the amount of the non-SEP contribution made in excess of the allocation formula. Because this amount may result in an excess contribution when made the employee may wish to take appropriate action in order to avoid IRA penalties. The normal IRA rules under Code section 219 apply in such a situation. This rule is proposed in order to prevent the entire SEP arrangement from being disqualified due to an inadvertent error on the part of the employer, such as an incorrect calculation of employee compensation. Under Code setion 408(k), the entire SEP arrangement could be disqualified on account of the excess contribution. This rule is proposed to provide relief in such cases. See proposed § 1.408–7(f) and the example of how the rule would operate in a particular case.

Proposed § 1.408–7(c)(2) contains a special rule clarifying the relationship between SEP's and salary reduction agreements. This rule makes it clear that employer contributions to an employee's individual retirement account or annuity that are made under a salary reduction agreement between the employer and employee are not treated as employer contributions to an employee's simplified employee pension. Thus, if the employee may elect either a contribution or current compensation, the contribution is treated as an employee contribution and, therefore, is not eligible for the favorable SEP arrangement rules.

Similarly, other contributions such as voluntary contributions made by the employee, or on behalf of the employee by the employer as the agent for the employee (such as by payroll withholding), are treated as employee contributions.

Even though the employer picks the insitution or substantially influences the employee's choice of the institution to which the employer makes the SEP contribution and which serves as trustee or sponsor for the employee's DEP, the SEP arrangement remains qualified under the Code. Further, this action by the employer is not a prohibition on withdrawal of funds within the meaning of Code section 408(k)(4)(B). The employer should, however, be aware that the Department of Labor may require special reporting for such action. (See 29 CFR 2520.104–48 (1980) and 29 CFR 2520.104–49 (1981).)

Proposed § 1.408–9 contains reporting requirements for SEP's. Employer who use the Service's Model Simplified Employee Pension Arrangement (Form 5305–SEP) and furnish the Model to their employees will satisfy the disclosure requirements relating to adoption of the SEP arrangement. Further, if the employer reports the amount of the SEP contribution on an employee's W–2, the annual reporting requirements will be satisfied. The Department of Labor also has reporting requirements for SEP's, which are in addition to the requirements of the Internal Revenue Service. (See 29 CFR 2520.104–48 (1980) and 29 CFR 2520.104–49 (1981).)

Employers who failed to make required contributions on behalf of employees for calendar year 1979 because the employees were no longer employed at the end of the employer's taxable year may make such "make up" contributions before January 1, 1981. This conforms to Announcement 80–112, 1980–36 I.R.B. 35. This relief is given because employers may not have anticipated the rules contained in that announcement and § 1.408–7(d) (1), (2) and (3), relating to which employees are entitled to receive an allocation. It is expected that employers who make such contributions will comply with the reporting requirements of § 1.408–9 (b) and file amended tax returns. Likewise, employees who receive such contributions are expected to file amended tax returns.

Other Amendments

Conforming and technical amendments made by the Tax Reform Act of 1976, the Revenue Act of 1978, and the Technical Corrections Act of 1979 have been made to the regulations under Code sections 62, 219, 220, 404, 408, 409, 415, 3121, 3306, 4973, 4974, and 6693.

Also, regulations are proposed which define "active participant" under section 219 (b) (2) for individuals who are covered with Federal or State benefits such as social security benefits. These rules were requested by commentators at the public hearing held July 19, 1979, on the reproposed active participant rules, and in other written comments on those proposed regulations published in the **Federal Register** on March 23, 1979 (44 FR 17754). This proposed rule allows employees to make IRA contributions when, in effect, they get no benefit from their employers' plans

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not consititute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written coments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is William D. Gibbs of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1, 25, 31, 54, and 301 are as follows:

Income Tax Regulations (26 CFR Part 1)

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

Paragraph 1. Section 1.62–1 is amended by revising paragraph (c)(13) to read as follows:

§ 1.62–1 Adjusted gross income.

* * * * *

(c) * * *

(13) Deductions allowed by sections 219 and 220 for contributions to an individual retirement account described in section 408 (a), for an individual retirement annuity described in section 408 (b), or for a retirement bond described in section 409;

Par. 2. Section 1.219–1 is revised by adding: (1) a new subdivision (iv) to paragraph (b) (2), and (2) new paragraphs (d) and (e) to read as follows:

§ 1.219–1 Deduction for retirement savings.

* * * * *

(b) *Limitations and restrictions.* * * *

(2) *Restrictions.* * * *

(iv) *Alternative deduction.* No deduction is allowed under subsection (a) for the taxable year if the individual claims the deduction allowed by section 220 (relating to retirement savings for certain married individuals) for the taxable year.

* * * * *

(d) *Time when contributions deemed made*—(1) *Taxable years beginning before January 1, 1978.* For taxable years beginning before January 1, 1977, a taxpayer must make a contribution to an individual retirement plan during a taxable year in order to receive a deduction for such taxable year. For taxable years beginning after December 31, 1976, and before January 1, 1978, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than 45 days after the end of such taxable year. A contribution made not later than 45 days after the end of a taxable year shall be treated as made on account of such taxable year if the indivudual specifies in writing to the trustee, insurance company, or custodian that the amounts contributed are for such taxable year.

(2) *Taxable years beginning after December 31, 1977.* For taxable years beginning after December 31, 1977, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). A contribution made not later than the time prescribed by law for filing the return for a taxable year (including extensions thereof) shall be treated as made on account of such taxable year if it is irrevocably specified in writing to the trustee, insurance company, or custodian that the amounts contributed are for such taxable year.

(3) *Time when individual retirement plan must be established.* For purposes of this paragraph, an individual retirement plan need not be established until the contribution is made.

(4) *Year of inclusion in income.* Any amount paid by an employer to an individual retirement account, for an individual retirement annuity or for an individual retirement bond (including an individual retirement account or individual retirement annuity maintained as part of a simplified employee pension plan) shall be included in the gross income of the employee for the taxable year for which the contribution is made.

(e) *Excess contributions treated as contribution made during subsequent year for which there is an unused limitation*—(1) *In general.* If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer, whether or not a deduction is actually claimed, shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) The amount of such excess, or

(ii) The amount of the excess contributions for such taxable year (determined under section 4973 (b)(2) without regard to subparagraph (C) thereof).

(2) *Amount contributed.* For purposes of this paragraph, the amount contributed—

(i) Shall be determined without regard to this paragraph, and

(ii) Shall not include any rollover contribution.

(3) *special rule where excess deduction was allowed for closed year.* Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 220 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(4) *Effective date.* (i) This paragraph shall apply to the determination of deductions for taxable years beginning after December 31, 1975.

(ii) If, but for this subdivision, an amount would be allowable as a deduction by reason of section 219 (c)(5) for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.

(5) *Examples.* The provisions of this paragraph may be illustrated by the following examples. (Assume in each example, unless otherwise stated, that B is less than age 70½ and is not covered by a simplified employee pension or a plan described in section 219 (b)(2).)

Example (1). (i) B, a calendar-year taxpayer, earns $8,000 in compensation includible in gross income for 1979. On December 1, 1979, B establishes an individual retirement account (IRA) and contributes $1,500 to the account. B does not withdraw any money from the IRA after the initial contribution. Under section 219 (b)(1), the maximum amount that B can deduct for 1979 is 15% of $8,000 or $1,200. B has an excess contribution for 1979 of $300.

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,000 contribution to his IRA for 1980.

(iii) Although B made only a $1,000 contribution to his IRA for 1980, under the rules contained in this paragraph, B is treated as having made an additional contribution of $300 for 1980 and will be allowed to deduct $1,300 as his 1980 IRA contribution.

Example (2). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,500 contribution to his IRA for 1980.

(iii) B will be allowed a $1,500 deduction for 1980 (the amount of his contribution). B will not be allowed a deduction for the $300 excess contribution made in 1979 because the maximum amount allowable for 1980 does not exceed the amount contributed.

Example (3). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,400 contribution to his IRA for 1980.

(iii) For 1980, B will be allowed to deduct his contribution of $1,400 and $100 of the excess contribution made for 1979. He will not be allowed to deduct the remaining $200 of the excess contribution made for 1979 because that would make his deduction for 1980 more than $1,500, his allowable deduction for 1980.

(iv) For 1981, B has compensation includible in gross income of $15,000. B makes a $1,300 contribution to his IRA for 1981.

(v) B will be allowed to deduct the remaining $200 and his $1,300 contribution for 1981.

Example (4). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,000 contribution to his IRA for 1980. B is allowed to deduct the $300 excess contribution for 1980 but fails to do so on his return. Consequently, B deducts only $1,000 for 1980.

(iii) Under no circumstances will B be allowed to deduct the $300 excess contribution made for 1979 for any taxable year after 1980 because B is treated as having made the contribution for 1980.

Example (5). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $15,000 and is an active participant in a plan described in section 219 (b) (2) (A).

(iii) B will not be allowed to deduct for 1980 the $300 excess contribution for 1979 because the maximum amount allowable as a deduction under sections 219 (b) (1) and 219 (b) (2) is $0.

Par. 3. Section 1.219–2 is amended by: (1) revising the first sentence of paragraph (b) (1); (2) renumbering paragraph (b) (2), (3), and (4) as paragraph (b) (3), (4) and (5), respectively, and adding a new paragraph (b) (2) before the renumbered paragraph (b) (3), (4) and (5); (3) revising paragraph (f) and (4) adding new examples (3), (4) and (5) after *Example (2)* in paragraph (h). These revised and added provisions read as follows:

§ 1.219–2 Definition of active participant.

* * * * *

(b) *Defined benefit plans*—(1) *In general.* Except as provided in subparagraphs (2), (3), (4) and (5) of this paragraph, an individual is an active participant in a defined benefit plan if for any portion of the plan year ending with or within such individual's taxable year he is not excluded under the eligibility provisions of the plan. * * *

(2) *Special rule for offset plans.* For taxable years beginning after December 31, 1980, an individual who satisfies the eligibility requirements of a plan under which benefits are offset by Social Security or Railroad Retirement benefits is not considered an active participant by virtue of participation in such plan for a particular plan year if such individual's compensation for the calendar year during which such plan year ends does not exceed the offset plan's breakpoint compensation amount for such plan year. Breakpoint compensation is the maximum compensation determined for the plan for a plan year tht any participant could earn and have a projected benefit from the offset plan of $0. For purposes of determining the projected plan benefit, the following assumptions are made: plan participation begins at age 25 and maximum credited service is earned for participation from age 25 to age 65 regardless of the participant's actual participation; plan benefits, including the offset, are based on W–2 earnings from the employer for such calendar year regardless of the definition of compensation on which plan benefits are based; and the projected Social Security Primary Insurance Amount (PIA) is computed under a formula that the Commissioner may, from time to time, prescribe for this purpose.

* * * * *

(f) *Certain individuals not active participants*—(1) *Election out of plan.* For purposes of this section, an individual who elects pursuant to the plan not to participate in the plan will be considered to be ineligible for participation for the period to which the election applies. In the case of a defined benefit plan, such an election shall be effective no earlier than the first plan year commencing after the date of the election.

(2) *Members of reserve components.* A member of a reserve component of the armed forces (as defined in section 261(a) of Title 10 of the United States Code) is not considered to be an active participant in a plan described in section 219(b)(2)(A)(iv) for a taxable year solely because he is a member of a reserve component unless he has served in excess of 90 days on active duty (other than military duty for training) during the year.

(3) *Volunteer firefighters.* An individual whose participation in a plan described in section 219(b)(2)(A)(iv) is based solely upon his activity as a volunteer firefighter and whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65) is not considered to be an active participant in such a plan for the taxable year.

* * * * *

(h) *Examples.* * * *

Example (3). (i) For plan year X the annual projected Social Security PIA is determined as follows:

Compensation range [1]	PIA formula [1]
$0 to $1,626	PIA = $1,464.
$1,627 to $2,160	PIA = .90 (compensation).
$2,161 to $13,020	PIA = .32 (compensation) + $1,253.
$13,021 to $22,900	PIA = .15 (compensation) + $3,466.
$22,901 and over	PIA = $6,901.

[1] These numbers are for illustrative purposes only.

(ii) V is a defined benefit plan which provides a normal retirement benefit of 1.5% of high five-year average earnings excluding overtime pay, minus 2% of Social Security PIA, the difference multiplied by years of plan participation up to a maximum of 30 years. V provides that individuals commence plan participation on their date of employment. Normal retirement age is 62. V's breakpoint compensation for the plan year ending in year X can be determined as follows:

I. Determine V's projected benefits:

An individual credited with 40 years of service (from age 25 to 65) would have a projected benefit of:

(30) (1.5% (compensation) − 2% (PIA))

or

45% (compensation) − 60% (PIA).

Note that in the determination of the projected benefit, the normal retirement age is assumed to be age 65 rather than the actual normal retirement age of 62, the participant is assumed to have 40 years of credited service, and the plan definition of compensation is assumed to be the same as is used to compute the Social Security benefit.

II. Determine V's formula compensation changepoints. The formula compensation changepoints are amounts where the projected benefit formula, expressed in terms of compensation, changes:

Since V's benefit formula applies uniformly to all compensation, the compensation changepoints are determined by the PIA portion only, and are

a. $1,626.

b. 2,160.

c. 13,020.

d. 22,900.

III. Determine which of the formula compensation changepoints first produces a projected benefit greater than O. This can be done by testing the projected benefit for compensation amounts equal to V's compensation changepoints:

a. Formula compensation changepoint equal to $1,626.

i. Projected benefit = 45% × 1,626 − 60% × 1,464 = 0.

V's compensation breakpoint, therefore, exceeds $1,626.

b. Formula compensation changepoint equal to $2,160.

i. Projected benefit = 45% × 2,160 − 60% × (90 × 2,160) = 0.

V's compensation breakpoint, therefore, exceeds $2,160.

c. Formula compensation changepoint equal to $13,020.

i. Projected benefit = 45% × 13,020 − 60% × (.32 × 13,020 + 1,253) = 2,607.

V's compensation breakpoint is, therefore, in the compensation range $2,161 to $13,020.

IV. Determine V's compensation breakpoint within the $2,161 to $13,020 compensation range.

V's compensation breakpoint can be determined by finding the greatest compensation that will result in a projected benefit of 0 for this compensation range:

a. 45% × compensation − 60% × (.32 × compensation + 1,253) = 0.

b. Eliminate the parentheses in equation a by multiplying each of the terms within the parentheses by − 60%. 45% × compensation − 19.2% × compensation − 751.80 = 0.

c. Add 751.80 to both sides of equation in b and combine the first two terms. 25.8% × compensation = 751.80.

d. Dividing both sides of the equation in c by 25.8%, V's breakpoint compensation for 1979 = $2,914.

V. Therefore, individuals whose W–2 earnings from the employer do not exceed $2,914 in year X are not considered active participants by virtue of participating in Plan V.

Example (4). For year X the annual projected Social Security PIA is determined as in *Example (3).*

T is a defined benefit plan which provides a normal retirement benefit equal to 20% of final average earnings plus 10% of such earnings in excess of $2,000 minus 45% of PIA, the net result reduced pro-rata for participation less than 15 years. Participation commences upon attainment of age 20. Normal retirement age is 65.

I. Determine T's projected benefit for year X.

An individual credited with 40 years of service (from age 25 to 65) would have projectd benefit of:

20% of compensation plus 10% of compensation in excess of $2,000, if any
minus
45% of PIA

II. Determine T's formula compensation changepoints.

$2,000 is a formula compensation changepoint, in addition to the four PIA changepoints, since T's benefit formula changes at this compensation amount. The five formula compensation changepoints are:

a. $1,626.
b. 2,000.
c. 2,160.
d. 13,020.
e. 22,900.

III. Determine which of T's formula compensation changepoints first produces a projected benefit greater than 0.

a. Compensation changepoint equal to $1,626.

i. Projected benefit = 20% × 1,626 + 10% × 0 − 45% × 1,424 = 0.

T's compensation breakpoint, therefore, exceeds $1,626.

b. Compensation changepoint equal to $2,000

i. Projected benefit = 20% × 2,000 + 10% × 0 − 45% × (.90 × 2,000) = 0.

T's compensation breakpoint, therefore, exceeds $2,000.

c. Compensation breakpoint equal to $2,160.

i. Projected benefit = 20% × 2,160 + 10% × (2,160 − 2,000) − 45% × (.90 × 2,160) = 0.

T's compensation breakpoint, therefore, exceeds $2,160.

d. Compensation changepoint equal to $13,020.

i. Projected benefit = 20% × 13,020 + 10% (13,020 − 2,000) − 45% × (.32 × 1 3,020 + 1,253) = 1,267.

T's compensation breakpoint, therefore, in the compensation range $2,160 to $13,020.

IV. Determine T's breakpoint compensation within the $2,160 to $13,020 range.

T's compensation breakpoint can be determined by finding the greatest compensation that will result in a projected benefit of 0 for this range:

a. 20% × comp. + 10% × (comp. − 2,000) − 45% × (.32 × comp. + 1,253) = 0.

b. Eliminating both parenthesis in equation a. by multiplying each of the terms within by the appropriate percentage.

20% × comp. + 10% × comp. − 200 − 14.4% × comp. − 563.85 = 0.

c. Add 763.85 to both sides of equation and combine remaining terms in equation b.

15.6% × comp. = 763.85.

d. Dividing each side of equation c. by 15.6%, T's breakpoint compensation for year X = $4,896.

V. Therefore, individuals whose W–2 earnings do not exceed $4,896 in year X are not considered active participants by virtue of participating in Plan T.

Example (5). Assume the same facts as *Example (4),* except that T also provides a minimum monthly benefit of $100 for participants with 15 or more years of plan participation. There is no compensation amount which will produce a projected benefit of $0. Therefore, all individuals who satisfy T's eligibility requirements are considered active participants.

Par 4. There are added after § 1.219–2 the following new sections:

§ 1.219–3 Limitation on simplified employee pension deductions.

(a) *General rule*— (1) *In general.* Under section 219(b)(7), if an employer contribution is made on behalf of an employee to a simplified employee pension described in section 408(k), the limitations of this action, and not section 219 (b)(1) and § 1.219–1(b)(1), shall apply for purposes of computing the maximum allowable deduction for that individual employee. The other rules of section 219 and §§ 1.219–1 and 1.219–2 apply for purposes of computing an individual's deduction except as modified by this section.

(2) *Employer limitation.* The maximum deduction limitation under section 219(a) for an employee with respect to an employer contribution to the employee's simplified employee pension under that employer's arrangement cannot exceed an amount equal to the lesser of—

(i) 15 percent of the employee's compensation from that employer (determined without regard to the employer contribution to the simplified employee pension) includible in the employee's gross income for the taxable year, or

(ii) The amount contributed by that employer to the employee's simplified employee pension and included in gross income (but not in excess of $7,500).

(3) *Special rules*—(i) *Compensation.* Compensation referred to in paragraph (a)(2)(i) has the same meaning as under § 1.219–1(c)(1) except that it includes only the compensation from the employer making the contribution to the simplified employee pension. Thus, if an individual earns $50,000 from employer A and $20,000 from employer B and employer B contributes $4,000 to a simplified employee pension on behalf of the individual, the maximum amount the individual will be able to deduct under section 219(b)(7) is 15 percent of $20,000, or $3,000.

(ii) *Special rule for officers, shareholders, and owner-employees.* In the case of an employee who is an officer, shareholder, or owner-employee described in section 408(k)(3) with respect to a particular employer, the $7,500 amount referred to in paragraph (a)(2)(ii) shall be reduced by the amount of tax taken into account with respect to such individual under section 408 (k)(3)(D).

(iii) *More than one employer arrangement.* Except as provided in paragraph (c), below, the maximum deduction under paragraph (a)(2) for an individual who receives simplified employee pension contributions under two or more employers' simplified employee pension arrangements cannot exceed the sum of the maximum deduction limitations computed separately for that individual under each such employer's arrangement.

(iv) *Section 408 rules.* Under section 408(j), for purposes of applying the $7,500 limitations under section 408(a)(1), (b)(1), (b)(2)(B) and (d) (5) (§ 1.408–2 (b)(1), § 1.408–3(b)(2) and § 1.408–4(h)(3)(i), respectively), the $7.500 limitations shall be applied separately with respect to each employer's contributions to a individual's simplified employee pension.

(b) *Limitations not applicable to SEP contributions*—(1) *Active participant.* The limitations on coverage by certain other plans in section 219 (b) (2) and § 1.219–1 (b)(2)(i) shall not apply with respect to the employer contribution to a simplified employee pension. Thus, an employee is allowed a deduction for an employer's contribution to a simplified employee pension even though he is an

active participant in an employer's qualified plan.

(2) *Contributions to simplified employee pensions after age 70½.* The denial of deductions for contributions after age 70½ contained in section 219(b)(3) and § 1.219–1(b)(2)(ii) shall not apply with respect to the employer contribution to a simplified employee pension.

(c) *Multiple employer, etc. limitations*—(1) *Section 414 (b) and (c) employers.* In the case of a controlled group of employers within the meaning of section 414 (b) or (c), the maximum deduction limitation for an employee under paragraph (a)(2) shall be computed by treating such employers as one employer maintaining a single simplified pension arrangement and by treating the compensation of that employee from such employers as if from one employer. Thus, for example, for a particular employee the 15 percent limitation on compensation would be determined with regard to the compensation from all employers within such group. Further, the maximum deduction with respect to such group could not exceed $7,500.

(2) *Self-employed individuals.* In the case of an employee who is a self-employed individual within the meaning of section 401(c)(1) with respect to more than one trade or business, the maximum deduction limitation for such an employee under paragraph (a)(2) shall not exceed the lesser of the sum of such limitation applied separately with respect to the simplified employee pension arrangement of each trade or business or such limitation determined by treating such trades or businesses as if they constituted a single employer.

(d) *Additional deduction for employee contributions.* If the maximum allowable deduction for an individual employee determined under paragraph (a) for employer contributions to that individual's simplified employee pensions is less than $1,500, the individual shall be entitled to an additional deduction for contributions to individual retirement programs maintained on his behalf. The additional deduction shall equal the excess, if any, of the section 219(b)(1) and § 1.219–1(b)(1) maximum deduction limitation over the maximum deduction limitation determined under paragraph (a). For purpose of determining the compensation limit of section 219(b)(1), employer simplified employee pension contributions shall not be taken into account. Thus, for example, if $1,000 is deductible by individual A for employer contributions under a simplified employee pension arrangement and A,s compensation, not including the $1,000 SEP contribution, is $10,000, than A would be entitled to an additional deduction of $500.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a calendar-year, cash basis taxpayer. It adopts a simplified employee pension agreement in 1980 and wishes to contribute the maximum amount on behalf of each employee for 1980. Individual E is a calendar-year taxpayer who is employed solely by Corporation X in 1980. Beginning in June 1980, Corporation X pays $100 each month into a simplified employee pension maintained on behalf of E. X makes a total payment to E's simplified employee pension during the year of $700. E's other compensation from X for the year totals $15,000. The maximum amount which E will be allowed to deduct as a simplified employee pension contribution is 15% of $15,000, or $2,250. Therefore, X may make an additional contribution for 1980 to E's simplified employee pension of $1,550. X makes this additional contribution to E's simplified employee pension in February of 1981. E's total compensation for 1980 includible in gross income is $15,000 + $2,250 or $17,250.

Example (2). (i) Corporation G is a calendar-year taxpayer which does not maintain an integrated plan is defined in section 408(k)(3)(E). It adopts a simplified employee pension agreement for 1980. It wishes to contribute 15% of compensation on behalf of each employee reduced by its tax under section 3111(a). The corporation has 4 employees, A, B, C, and D. D is a shareholder. The compensation for these employees for 1980 is as follows:

A=$10,000
B=20,000
C=30,000
D=60,000

(ii) The amount of money which the corporation will be allowed to contributed on behalf of each employee under this allocation formula and the amount of the employer contribution each employee will be allowed to deduct is set forth in the following table:

Employee	Compensation	Lesser of $7500 or 15% of Comp.	3111(a)[1] Tax	SEP[2] Contribution	Sec. 219(b)(7) deduction
A	$10,000	$1,500	$508.00	$992.00	$992.00
B	20,000	3,000	1,016.00	1,984.00	1,984.00
C	30,000	4,500	1,315.72	3,184.28	3,184.28
D	60,000	7,500	1,315.72	6,184.28	6,184.28

[1] The section 3111 (a) tax is computed by multiplying compensation up to the taxable wage base ($25,900 for 1980) by the tax rate (5.08% for 1980).
[2] Simplified Employee Pension.

Example (3). Corporations A and B are calendar year taxpayers. Corporations A and B are not members of a controlled group of employers within the meaning of section 414 (b) or (c). Individual M is employed full-time by Corporation A and part-time by Corporation B. Corporation A adopts a simplified employee pension agreement for calendar year 1980 and agrees to contribute 15% of compensation for each participant. M is a participant under Corporation A's simplified employee pension agreement and earns $15,000 for 1980 from Corporation A before A's contribution to his simplified employee pension. M also earns $5,000 as a part-time employee of Corporation B for 1980. Corporation A contributes $2,500 to M's simplified employee pension. The maximum amount that M will be allowed to deduct under section 219(b)(7) for 1980 is 15% of $15,000 or $2,250. The remaining $250 is an excess contribution because M cannot consider the compensation earned from Corporation B under § 1.219–3(a)(3)(i).

Example (4). Individual P is employed by Corporation H and Corporation O. Corporation H and O are not members of a controlled group of employers within the meaning of section 414 (b) or (c). Both Corporation H and Corporation O maintain a simplified employee pension arrangement and contribute 15 percent of compensation on behalf of each employee. P earns $50,000 from Corporation H and $60,000 from Corporation O. Corporation H and O each contributes $7,500 under its smplified employee pension arrangement to an individual retirement account maintained on behalf of P. P will be allowed to deduct $15,000 for employer contributions to simplified employee pensions because each employer has a simplified employee pension arrangement and the SEP contributions by Corporation H and O do not exceed the applicable $7,500–15 percent limitation.

§ 1.220–1 Deduction for retirement savings for certain married individuals.

(a) *In general.* Subject to the limitations and restrictions of paragraphs (c), (d) and (e) and the special rules of paragraph (f) of this section, there shall be allowed a deduction under section 62 from gross income of amounts paid for the taxable year of an individual by or on behalf of such individual for the benefit of himself and his spouse to an individual retirement account described in section 408(a), for an individual retirement annuity described in section 408(b), or for an individual retirement bond described in section 409. The amounts contributed to an individual retirement account, for an individual retirement

annuity, or for an individual retirement bond by or on behalf of an individual for the benefit of himself and his spouse shall be deductible only by such individual. The first sentence of this paragraph shall apply only in the case of a contribution of cash; a contribution of property other than cash is not allowable as a deduction. In the case of an individual retirement bond, a deduction will not be allowed if the bond is redeemed within 12 months of its issue date.

(b) *Definitions*—(1) *Compensation.* For purposes of this section, the term "compensation" has the meaning set forth in § 1.219–1(c)(1).

(2) *Active participant.* For purposes of this section, the term "active participant" has the meaning set forth in § 1.219–2.

(3) *Individual retirement subaccount.* For purposes of this section, the term individual retirement subaccount is that part of an individual retirement account maintained for the exclusive benefit of the individual or the individual's spouse and which meets the following requirements:

(i) The individual or spouse for whom the subaccount is maintained has exclusive control over the subaccount after deposits have been made,

(ii) The subaccount, by itself, meets the requirements of section 408(a), except that it is not a separate trust,

(iii) The trustee or custodian maintains records indicating the ownership of the funds, and

(iv) The individual and spouse do not jointly own the individual retirement account of which the subaccount is a part.

(c) *Types of funding arrangements permitted.* The deduction under paragraph (a) of this section shall be allowed only if one of the following types of funding arrangements is used:

(1) A separate individual retirement account, individual retirement annuity, or individual retirement bond is established or purchased for the benefit of the individual and a separate individual retirement account, individual retirement annuity or individual retirement bond is established or purchased for the individual's spouse.

(2) A single individual retirement account described in section 408(a) is established or purchased and such account has an individual retirement subaccount for the benefit of the individual and an individual retirement subaccount for the benefit of the spouse. The single individual retirement account cannot be owned jointly by the husband and wife.

(3) An individual retirement account described in section 408(c) is maintained by an employer or employee association and such account has arrangements described in subparagraphs (1) or (2).

(d) *Maximum deduction.* The amount allowable as a deduction under section 220(a) to an individual for any taxable year may not exceed—

(1) Twice the amount paid (including prior excess contributions) to the account, subaccount, annuity, or for the bond, established for the individual or for the spouse to or for which the lesser amount was paid for the taxable year,

(2) An amount equal to 15 percent of the compensation includible in the individual's gross income for the taxable year, or

(3) $1,750

whichever is the smallest amount.

(e) *Limitations and restrictions*—(1) *Alternative deduction.* No deduction is allowable under section 220(a) for the taxable year if the individual claims the deduction allowed by section 219(a) for the taxable year.

(2) *Individual or spouse covered by certain other plans.* No deduction is allowable under section 220(a) to an individual for the taxable year if for any part of such year—

(i) He or his spouse was an active participant (as defined in § 1.219–2), or

(ii) Amounts were contributed by his employer, or his spouse's employer, on the individual's or spouse's behalf for an annuity contract described in section 403 (b) (whether or not his, or his spouse's, rights in such contract are nonforfeitable).

(3) *Contributions after age 70½.* No deduction is allowable under section 220 (a) with respect to any payment which is made for a taxable year of an individual if either the individual or his spouse has attained age 70½ before the close of such taxable year.

(4) *Recontributed amounts.* No deduction is allowable under section 220 (a) for any taxable year of an individual with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), or 409(b)(3)(C).

(5) *Amounts contributed under endowment contracts.* The rules for endowment contracts under section 220 are the same as the provisions for such contracts under § 1.219–1(b)(3).

(6) *Employed spouses.* No deduction is allowable under section 220(a) if the spouse of the individual has any compensation (as defined in § 1.219–1(c)(1) determined without regard to section 911) for the taxable year of such spouse ending with or within the taxable year of the individual.

(f) *Special rules*—(1) *Community property.* Section 220 is to be applied without regard to any community property laws.

(2) *Time when contributions deemed made.* The time when contributions are deemed made is determined in the same manner as under section 219(c)(3). See § 1.219–1(d).

(g) *Excess contributions treated as contribution made during subsequent year for which there is an unused limitation*—(1) *In general.* If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer, whether or not a deduction is actually claimed, shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) The amount of such excess, or

(ii) The amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

For purposes of computing the maximum deduction under section 220(b)(1), the excess contribution for a previous year shall be treated as made for the current year.

(2) *Amount contributed.* For purposes of this paragraph, the amount contributed—

(i) Shall be determined without regard to this paragraph, and

(ii) Shall not include any rollover contribution.

(3) *Special rule where excess contribution was allowed for closed year.* Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 219 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). (i) H, a calendar-year taxpayer, earns $10,000 in compensation includible in gross income for 1979. H is married to W, also a calendar-year taxpayer, who has no compensation for 1979. For 1979, neither H nor W is covered by certain other plans within the meaning of section 220(b)(3). On November 24, 1979, H establishes an individual retirement account (IRA) for himself and an individual retirement account for W. H contributes $850 to each account. Neither H nor W withdraws any money from either account after the initial contribution. Under section 220(b)(1) the maximum amount that H can deduct for 1979 is 15 percent of the

compensation includible in his gross income or $1,500. H has made an excess contribution of $200 for 1979.

(ii) for 1980, H has compensation includible in gross income of $12,000. W has no compensation for 1980. For 1980, neither H nor W is covered by certain other plans, within the meaning of section 220(b)(3). No contributions are made to the IRA of H or W for 1980.

(iii) Although H made no contributions to either his or W's IRA for 1980, under the rules contained in this paragraph, H is treated as having made an additional contribution of $100 to his IRA and $100 to W's IRA for 1980 and will be allowed to deduct $200 as his 1980 IRA contribution.

Example (2). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, H has compensation of $15,000 includible in gross income and is not covered by any other plans within the meaning of section 219(b)(2). W also goes to work in 1980 and has compensation of $6,000, but is not covered by certain other plans within the meaning of section 219(b)(2). H will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 220(c)(6) because W has compensation for 1980. However, both H and W now meet the deduction standards of section 219 and each will be treated as having made a deductible contribution of $100 to their separate IRA's for 1980 under section 219(c)(5).

Example (3). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, H has compensation of $15,000 includible in gross income and is covered by certain other plans within the meaning of section 220(b)(3). W has no compensation for 1980 and is not covered by certain other plans within the meaning of section 220(b)(3). H will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 219(c)(5) or 220(c)(6) because H is covered by other plans for 1980 and has no allowable deduction under section 219 or 220.

(iii) W will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 219(c)(5) because W has no compensation for 1980 and thus no allowable deduction under section 219.

(h) *Effective date.* (1) This section is effective for taxable years beginning after December 31, 1976.

(2) If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 220(c)(6) and paragraph (g) for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.

Par. 5. There is added after § 1.404(e)–1A the following new section:

§ 1.404(h)–1 Special rules for simplified employee pensions.

(a) *In general.* (1) Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of section 404. Employer contributions to a simplified employee pension are subject to the limitations of subparagraphs (2), (3), (4) and (5). For purposes of this paragraph participants means those employees who satisfy the age, service and other requirements to participate in a simplified employee pension. For purposes of this paragraph, "compensation" means all of the compensation paid by the employer except either that for which a deduction is allowable under section 404(h) for simplified employee pensions or that for which a deduction is allowable under a plan that qualifies under section 401(a), including a plan that qualifies under section 404(a)(2) or 405.

(2) Employer contributions made for a calendar year are deductible for the taxable year of the employer with which or within which the calendar year ends.

(3) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.

(4) The amount deductible for a taxable year for a simplified employee pension shall not exceed 15 percent of the compensation paid to the employees who are participants during the calendar year ending with or within the taxable year.

(5) The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time subject to the 15 percent limit of subparagraph (4).

(b) *Effect on stock bonus and profit-sharing trust.* For any taxable year for which the employer has a deduction under section 404(h)(1), the otherwise applicable limitations in section 404(a)(3)(A) shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to participants in the stock bonus or profit-sharing trust.

(c) *Effect on limit on deductions.* For any taxable year for which the employer has a allowable deduction under section 404(h)(1), the otherwise applicable 25 percent limitations in section 404(a)(7) shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to participants in the stock bonus or profit-sharing trust.

(d) *Effect on self-employed individuals or shareholder-employee.* The limitations described in paragraphs (1), (2)(A), and (4) of section 404(e) or described in section 1379(b)(1) for any taxable year shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to an employee within the meaning of section 401(c)(1) or a shareholder-employee (as defined in section 1379(d)).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a calendar-year taxpayer. On January 2, 1980, it adopts a simplified employee pension arrangement. At the end of 1980, it determines that it has paid $230,000 to all of its employees. Eight of its employees met its eligibility provisions for contributions to simplified employee pensions and their compensation totaled $140,000 before any contributions were made to their simplified employee pensions. Corporation X will be allowed to deduct its contributions to its employees' simplified employee pensions, not to exceed 15% of $140,000 or $21,000.

Example (2). Corporation Y is a calendar-year taxpayer which maintains a simplified employee pension agreement and a profit-sharing plan. The corporation has 100 employees. For the taxable year of 1980, it makes contributions to the simplified employee pensions of 75 of its employees. These contributions are 10 percent of compensation received in 1980. These same 75 employees are also participants in the corporation's profit-sharing plan. These 75 employees had total compensation paid during 1980 of $1,125,000. The corporation can deduct $112,500 under section 404(h) as its contributions to the simplified employee pension agreement. The corporation must reduce the otherwise applicable allowable deduction for contributions to the profit-sharing plan on behalf of these employees by the $112,500.

Example (3). Corporation Z is a calendar-year taxpayer which maintains a simplified employee pension arrangement and a profit-sharing plan. The corporation has 100 employees. For the taxable year 1980, it make contributions to the simplified employee pensions of 75 of its employees. These contributions are 10 percent of compensation received in 1980. Twenty-five of these employees are also participants in the corporation's profit-sharing plan. Each of these 75 employees had compensation for the year of $15,000,or total compensation of $1,125,000. The corporation deducts $112,500 under section 404(h) as its contribution to the simplified employee pension arrangement. The corporation must reduce the otherwise applicable allowable deduction for contributions to the profit-sharing plan on behalf of the 25 employees by $37,500, the amount contributed to the simplified employee pensions on behalf of employees covered by the profit-sharing plan.

Example (4). Corporation K is a taxpayer with a taxable year of December 1—Novermber 30. On December 15, 1979, it adopts a simplified employee pension arrangement for its employees. It would like to make contributions to the plan on behalf of its employees for calendar year 1979. In order to make contributions to its employees' simplified employee pensions for calendar year 1979, the corporation must make the contributions by April 15, 1980. In order to

receive a deduction for its taxable year ending November 30, 1980, for the contributions for calendar year 1979, the corporation must make the contributions by April 15, 1980.

Par. 6. Section 1.408–2 is amended by revising paragraph (c)(3) to read as follows:

§ 1.408–2 Individual retirement accounts.

* * * * *

(c) * * *

(3) *Special requirement.* There must be a separate accounting for the interest of each employee or member (or spouse of an employee or member).

* * * * *

Par. 7. Section 1.408–3 is revised by adding new paragraphs (b) (6) and (f). These added provisions read as follows:

§ 1.408–3 Individual retirement annuities.

* * * * *

(b) * * *

(6) *Flexible premium.* (i) In the case of annuity contracts issued after November 6, 1978, the premiums under such contracts are not fixed. See paragraph (f) for the definition of an annuity contract under which "the premiums are not fixed."

(ii) In the case of a fixed premium individual retirement annuity or individual retirement endowment contract issued before November 7, 1978, the issuer of such contract may offer the holder of the contract the option of exchanging such contract for a flexible premium contract. If such an exchange is made before January 1, 1981, the exchange shall not constitute a distribution and shall be nontaxable.

* * * * *

(f) *Flexible premium annuity contract*—(1) *In general.* A flexible premium retirement annuity contract shall be considered a contract under which "the premiums are not fixed" if it provides the following.

(i) At no time after the initial premium for the contract has been paid is there a specified renewal premium required.

(ii) The contract must allow for the continuance of the contract (as a paid-up annuity) under its nonforfeiture provision if premium payments cease altogether.

(iii) The contract, if being continued on a paid-up basis (*i.e.*, if it has not been terminated by a payment in cash), will be reinstated at any date prior to its maturity date upon payment of a premium to the insurer.

(2) *Exceptions.* (i) The insurer may require that if a premium is remitted, it will be accepted only if the amount remitted is some stated amount, not in excess of $50.

(ii) The contract may provide that if no premiums have been received under the contract for two (2) full years and the paid-up annuity benefit at maturity of the plan stipulated in the contract arising from the premium paid prior to such two-year period would be less than $20 a month, the insurer may, at its option, terminate the contract by payment in cash of the then present value of the paid-up benefit (computed on the same basis specified in the contract for determining the paid-up benefit).

(3) *Permissible provisions.* A flexible premium contract will not be considered to have fixed premiums merely because—

(i) A maximum limit (which may be expressed as a multiple of the premium paid in the first year of the contract) is placed on the amount of the preimum that the insurer will accept in any year,

(ii) An annual charge is made against the policy value,

(iii) A fee (which may be composed of a flat dollar amount plus an amount equal to the required premium tax imposed by the state government) is charged upon the acceptance of each premium by the insurer, or

(iv) The contract requires a level annual premium for a supplementary benefit, such as a waiver of premium benefit.

Par. 8. Section 1.408–4 is amended by: (1) Adding new paragraphs (b)(3), (b)(4)(ii), and (c)(3)(ii); and (2) adding a new paragraph (h). These added provisions read as follows:

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

* * * * *

(b) *Rollover Contribution.* * * *

(3) *To section 403(b) contract.* Paragraph (a)(1) of this section does not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) The entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

(ii) No amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover,

(iii) The entire amount thereof is paid into an annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after the receipt of the payment or distribution, and

(iv) The distribution or transfer is made in a taxable year beginning after December 31, 1978.

(4) * * *

(ii) For taxable years beginning after December 31, 1977, paragraph (b)(1) of this section does not apply to any amount received by an individual from an individual retirement account, individual retirement annuity or retirement bond if at any time during the 1–year period ending on the day of receipt, the individual received any other amount from the individual retirement account, individual retirement annuity or retirement bond which was not includible in his gross income because of the application of paragraph (b)(1) of this section. This rule applies to each separate individual retirement account, individual retirement annuity, or retirement bond maintained by an individual. Thus, if an individual maintains two individual retirement accounts, IRA–1 and IRA–2, and rolls over the assets of IRA–1 into IRA–3, he is not precluded by this subdivision from making a tax-free rollover from IRA–2 to IRA–3 or any other IRA within one year after the rollover from IRA–1 to IRA–3.

(c) * * *

(3) *Time of inclusion.* * * *

(ii) For taxable years beginning after December 31, 1976, the amount of net income determined under subparagraph (2) is includible in the gross income of the individual in the taxable year in which such excess contribution is made. The amount of net income thus distributed is subject to the tax imposed by section 408(f)(1) for the year includible in gross income.

(h) *Certain contributions of excess contributions after due date of return for taxable year*—(1) *general rule.* In the case of any individual, if the aggregate contributions (other than valid rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed $1,750, section 408(d)(1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 or 220 for the taxable year for which the contribution was paid—

(i) If such distribution is received after the date described in section 408(d)(4),

(ii) But only to the extent that no deduction has been allowed under section 219 or 220 with respect to such excess contribution.

(2) *Excess rollover contribution attributable to erroneous information.* If the taxpayer reasonably relies on

information supplied pursuant to subtitle F of the Internal Revenue Code of 1954 for determining the amount of a rollover contribution, but such information was erroneous, subparagraph (1) of this paragraph shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

(3) *Special rule for contributions to simplified employee pension.* If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of subparagraph (1) shall be the lesser of the amount of such contributions or $7,500. See § 1.219–3 (a)(3)(iv) for a special rule where there is more than one employer.

(4) *Effective date.* (1) Subparagraphs (1) and (2) of this paragraph shall apply to distributions in taxable years beginning after December 31, 1975.

(ii) In the case of contribitions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1954 shall be applied as if such paragraph did not contain any dollar limitation.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). T, a calendar-year taxpayer, had been a participant in a government pension plan for 6 years prior to separation from service on July 31, 1976. The plan required T to make mandatory contributions and as of July 31, 1976, these mandatory contributions totaled $6,000. Upon T' separation from service, she was given the option of receiving back all of her mandatory contribution or leaving then with the plan. T elected to receive her mandatory contributions and attempted to roll over these amounts into an individual retirement account (IRA) in August of 1976. The trustee of the IRA accepted these funds and IRA was established. In March of 1977, T discovered that the funds she received from the government plan did not qualify for rollover treatment because they were employee contributions and withdrew all of the money from her IRA. T will not have to include any of the money withdrawn from the IRA in gross income for 1977 because the transitional rule of paragraph (h)(3)(ii) permits the withdrawal of all contributions which have not been allowed as deductions under section 219 or 220 made to IRA's for taxable years beginning before January 1, 1978, regardless of the amount of the contribution.

Example (2). (i) On April 1, 1980, A, a calendar-year taxpayer, receives a lump sum distribution satisfying the requirements of section 402(e)(4) (A) and (C) under the plan of A's employer. The distribution consists of $50,000 case. A made contributions under the plan totaling $8,000, and has received no prior distributions under the plan. However, on the form furnished to A by the employer on account of the distribution, A's contributions under the plan are listed as totaling only $4,500. A reasonably relied on this information.

(ii) A desires to establish an individual retirement account (as described in section 408(a)) with the cash received in the distribution. A desires to contribute the maximum amount permitted under the rollover rules. Under sections 402(a)(5)(B) and 402(a)(5)(D)(ii), A determines that the maximum rollover amount is $45,500, the total of the distribution ($50,000), less the amount listed as A's contributions under the plan ($4,500). The actual maximum rollover amount is $42,000, the total of the distribution ($50,000), less A's actual contribution under the plan ($8,000).

(iii) On May 23, 1980, A contributes $45,500 to an individual retirement account as a rollover contribution.

(iv) On May 1, 1981, A's employer furnishes A a corrected statement indicating that A's contributions under the plan were $8,000. On June 1, 1981, A withdraws $3,500 from the individual retirement account to correct the mistaken contribution. A will not have to include the $3,500 withdrawn from the individual retirement account in gross income for 1981 because the money was placed in the individual retirement account due to erroneous information furnished by the employer and reasonably relied upon by A and thus falls under the exception provided in section 408(d)(5)(B) to section 408(d)(1).

Par. 9. Section 1.408–6 is amended by removing paragraph (d)(4)(xi) and adding a new paragraph (b) to read as follows:

§ 1.408–6 Disclosure statements for individual retirement arrangements.

* * * * *

(b) *Disclosure statements for spousal individual retirement arrangements.* The trustee of an individual retirement account and the issuer of an individual retirement annuity shall furnish to the benefited individual of a spousal individual retirement arrangement a disclosure statement in accordance with paragraph (d). In the case of a spousal individual retirement arrangement that uses subaccounts, the benefited individual includes both the working and non-working spouse.

Par. 10. There are added after § 1.408–6 the following new sections:

§ 1.408–7 Simplified employee pension.

(a) *In general.* The term "simplified employee pension" means an individual retirement account or individual retirement annuity described in section 408 (a), (b) or (c) with respect to which the requirements of paragraphs (b), (d), (e), (g), and (h) of this section are met and the requirements of § 1.408–8 are met with respect to any calendar year.

(b) *Establishment of simplified employee pension.* In order to establish a simplified employee pension, the employer must execute a written instrument (hereafter referred to as the simplified employee pension arrangement) within the time prescribed for making deductible contributions. This instrument shall include: the name of the employer, the requirements for employee participation, the signature of a responsible official, and the definite allocation formula specified in section 408 (k)(5) and paragraph (f) of this section.

(c) *Variation in contribution*—(1) *Permitted variations.* An employer's total contributions to its employees' simplified employee pensions may vary annually at the employer's discretion.

(2) *Salary reduction.* Contributions made to a simplified employee pension under an arrangement under which the contribution will be made only if the employee receives a reduction in compensation or forgoes a compensation increase shall be treated as employer contributions to a simplified employee pension only if the arrangement precludes an individual election by the employee. If there is an individual election, then the contribution shall be treated as an employee contribution.

(d) *Participation requirements*—(1) *Age and service requirements.* This paragraph is satisfied with respect to a simplified employee pension arrangement for a calendar year only if for such year the employer contributes to the simplified employee pension on behalf of each individual who is an employee at any time during the calendar year who has—

(i) Attained age 25,

(ii) Performed service for the employer during at least 3 of the immediately preceding 5 calendar years, and

(iii) Received at least $200 compensation from the employer for the calendar year.

(2) *Execution of documents.* The employer may execute any necessary documents on behalf of an employee who is entitled to a contribution to a simplified employee pension if the employee is unable or unwilling to execute such documents or the employer is unable to locate the employee.

(3) *Required employment.* An employer may not require that an employee be employed as of a particular date in order to receive a contribution for a calendar year.

(4) *Nonresident aliens and employees covered by collective-bargaining agreements.* An employer may exclude from participation in the simplified employee pension arrangement employees described in section 410(b)(2)(A) or 410(b)(2)(C).

(5) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Corporation X maintains a simplified employee pension arrangement for its employees. Individual J worked for Corporation X while in graduate school in 1976, 1977, and 1978. J never worked more than 25 days in any particular year. In October of 1979, J began to work for Corporation X on a full-time basis. J earned $5,000 from Corporation X for 1979. J became 25 on December 31, 1979. Corporation X must make a contribution to a simplified employee pension maintained on behalf of J for 1979 because as of December 31, 1979, J had met the minimum age requirement of section 408(k)(2), had performed service for Corporation X in 3 of the 5 calendar years preceding 1979, and met the minimum compensation requirements of paragraph (d)(1)(iii).

(e) *Requirement of written allocation formula*—(1) *Requirement of definite written allocation formula.* Employer contributions to a simplified employee pension must be made under a definite written allocation formula which specifies—

(i) The requirements which an employee must satisfy to share in an allocation, and

(ii) The manner in which the amount allocated to each employee's account is computed.

(2) *Employer may vary formula.* An employer may vary the definite written allocation formula from year to year provided the simplified employee pension arrangement is amended by the permissible date for making contributions to indicate the new formula.

(f) *Treatment of contributions which exceed the written allocation formula*—(1) *General rule.* To the extent that employer contributions do not satisfy § 1.408–7(e)(1), the contributions shall be deemed to be contributions which are not made under a simplified employee pension arrangement except for purposes of section 408(a)(1), (b)(2)(B) and (d)(5). These contributions shall be deemed made to an individual retirement account or individual retirement annuity not maintained as part of a simplified employee pension arrangement.

(2) *Example.* This paragraph is illustrated by the following example:

Example. (i) Assume that in 1979 Corporation X adopts a simplified employee pension arrangement ("SEP Arrangement"). The arrangement calls for Corporation X to contribute the same percentage of each participant's compensation exclusive of SEP contributions to a simplified employee pension (Allocation Compensation). X has three employees, A, B and C, who satisfy the participation requirements of the SEP Arrangement. The compensation, the contributions to the individual simplified employee pension ("SEP") for A, B and C and the varying treatment of the contributions are set forth as follows:

Employee	Gross income	Net compensation before contribution	SEP–IRA contribution	Ratio of SEP–IRA contributions to net compensation (percent)
A	$11,000	$10,000	$1,000	10
B	11,500	10,000	1,500	15
C	57,500	50,000	7,500	15
Totals	80,000	$70,000	$10,000	

(ii) Under the special rule of this paragraph, because only 10 percent of compensation was allocated to A, and the allocation formula provides that the same percentage will be allocated to each participant, a certain portion of the contribution to B and C under the SEP shall be deemed made to IRA's that are not part of the SEP Arrangement.

(iii) To determine A's and B's Allocation Compensation the respective total compensation included in A's and B's gross income must be divided by 1.10 (1 plus the percentage of Allocation Compensation contributed to A under the SEP Arrangement). The excess of compensation included in gross income over Allocation Compensation is considered as a contribution under the SEP. The following table shows the result of this calculation:

Employee	Gross income	Allocation compensation [1]	SEP–IRA contribution	Deemed IRA contribution [2]
A	$11,000	$10,000	$1,000	$0
B	11,500	10,455	1,045	455
C	57,500	52,273	5,227	2,273
Totals	80,000	72,728	7,272	2,728

[1] Gross income divided by 1.10.
[2] Also included in Allocation Compensation.

(iv) Under section 404(h) for purposes of computing Corporation X's deduction, only the $7,272 is considered as a contribution to a SEP Arrangement described in section 408(k) under the special rule. The allowable 404(h) deduction equals $10,909 (15% of the excess of total compensation of $80,000 over the SEP contribution of $7,272 or 15% of $72,728). The other $2,728 is payment of compensation and subject to the deduction rules of section 162 or 212. Similarly, the $2,728 would not be considered as an employer SEP contribution for purposes of exemption from FICA and FUTA taxes under sections 3121 and 3306.

(v) The effect of treating the $2,273 as a contribution to SEP's for purposes of section 408 (a)(1), (b)(2)(B) and (d)(5) is to not disqualify the individual retirement arrangement of C for accepting non-SEP contributions in excess of $1,500 and to allow C to withdraw the excess contribution of $2,273 without including that amount in income under section 408(d)(1).

(g) *Permitted withdrawals.* A simplified employee pension meets the requirements of this paragraph only if—

(1) Employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(2) There is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

See section 408 (d) for rules concerning the taxation of withdrawals from individual retirement accounts and annuities. See section 408(f)(1) for penalties for premature withdrawals from individual retirement accounts and annuities.

(h) *Section 401 (j) plan.* The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year unless the employer maintains during any part of such year a plan—

(1) Some or all of the active participants in which are employees (within the meaning of section 401(c)(1)) or shareholder-employees (as defined in section 1379(d)), and

(2) To which section 401(j) applies.

§ 1.408–8 Nondiscrimination requirements for simplified employee pensions.

(a) *In general.* The requirements of this section are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions of its employees do not discriminate in favor of any employee who is—

(1) An officer,

(2) A shareholder, within the meaning of paragraph (b)(2),

(3) A self-employed individual, or

(4) Highly compensated.

(b) *Special rules.* (1) For puroses of this section, employees described in subparagraph (A) or (C) of section 410 (b)(2) shall be excluded from consideration.

(2) An individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(c) *Contributions must bear a uniform relationship to total compensation*—(1) *General rule.* Contributions shall be considered discriminatory unless employer contributions to its employees' simplified employee pensions bear a uniform relationship to the total compensation (not in excess of the first $100,000) of each employee maintaining a simplified employee pension. A rate of contribution which decreases as compensation increases shall be considered uniform.

(2) *Definition of compensation.* For purposes of this section, the term "compensation" has the meaning set forth in § 1.219–1, and is determined without regard to the employer contributions to the simplified employee pension arrangement.

(3) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Corporation X maintains a simplified employee pension arrangement which allocates employer contributions in the manner described below. First, contributions made by June 30 of each year are allocated in proportion to compensation paid from January 1 to June 30. Second, contributions made between July 1 and December 31 are allocated in proportion to compensation paid during the same period.

In 1980, the salaries paid, and contributions allocated are shown below:

Participant	Compensation[1]	Allocation[2]	Compensation[3]	Allocation[4]
A	10,000	500	10,000	1,000
B	10,000	500	1,000	100
C	10,000	500	15,000	1,500

[1] Jan. 1, 1980 to June 30, 1980.
[2] June 30, 1980.
[3] July 1, 1980 to Dec. 31, 1980.
[4] Dec. 31, 1980.

For 1980, A, B, and C received allocations equal to 7.5 percent, 5.45 percent, and 8 percent of compensation, respectively. These contributions are discriminatory because they do not bear a uniform relationship to total compensation.

(d) *Treatment of certain contributions and taxes*—(1) *General rule.* (i) Except as provided in this paragraph, employer contributions do not meet the requirements of this section unless such contributions meet the requirements of this section without taking into account contributions or benefits under Chapter 2 of the Internal Revenue Code (relating to tax on self-employment income), Chapter 21 (relating to Federal Insurance Contribution Act), Title II of the Social Security Act, or any other Federal or State law ("Social Security Taxes"). If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid under section 3111 (a) (relating to tax on employers) with respect to an employee may, for purposes of this section, be taken into account as a contribution by the employer to an employee's simplified employee pension. If contributions are made to the simplified emplyee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under section 1401 (a), and the taxes which would be payable under section 1401 (a) by such owner-employees but for paragraphs (4) and (5) of section 1402 (c), are taken into account as contributions by the employer on behalf of such owner-employees. The amount of such taxes shall be determined in a manner consistent with § 1.401–12(h)(3).

(ii) If contributions are made to the simplified employee pension of a self-employed individual who is not an owner-employee, the arrangement may be integrated. In such a case, the portion of the earned income of such individual which does not exceed the maximum amount which may be treated as self-employment income under section 1402(b)(1) shall be treated as "wages" under section 3121(a)(1) subject to the tax imposed by section 3111(a) and such tax shall be taken into account as employer contributions.

(iii) An employer may take into account as contributions amounts not in excess of such Social Security taxes. Thus, an employer may integrate using a rate less than the maximum rate of tax under section 3111 (a) or compensation less than the maximum amount specified as wages under section 3121 (a).

(2) *Integrated plan defined.* For purposes of subparagraph (1), the term "integrated plan" means a plan which meets the requirements of section 401(a), 403(a), or 405(a) but would not meet such requirements if contributions or benefits under Chapter 2 (relating to tax on self-employment income), Chapter 21 (relating to Federal Insurance Contributions Act), Title II of the Social Security Act, or any other Federal or State law were not taken into account.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation M adopts a simplified employee pension arrangement. The corporation would like to contribute 7.5% of an employee's first $10,000 in compensation and 5% of al compensation above $10,000. The simplified employee pension arrangement which Corporation M adopts will not be considered discriminatory within the meaning of paragraph (c) of this section because the rate of contribution decreases as compensation increases.

Example (2). Corporation L adopts a simplified employee pension plan. It wishes to contribute to the simplified employee pension of each employee who is currently performing service. The corporation would like to contribute to the simplified employee pensions 5% of the total compensation of each employee who has completed up to 5 years of service and 7% of the total compensation of each employee who has completed more than 5 years of service. The simplified employee pension plan which Corporation L adopts will be considered discriminatory within the meaning of paragraph (c) of this section because the employer contributions do not bear a uniform relationship to each employee's total compensation.

§ 1.408–9 Reports for simplified employee pensions.

(a) *Information to be furnished upon adoption of plan.* (1) An employer who adopts a definite written allocation formula for making contributions to an employee's simplified employee pension shall furnish the employee in writing the following information:

(i) A notice that the simplified employee pension arrangement has been adopted,

(ii) The requirements which an employee must meet in order to receive a contribution under the agreement,

(iii) The basis upon which the employer's contribution will be allocated to employees, and

(iv) Such other information that the Commissioner may require.

(2) The information in subparagraph (1) must be furnished to an employee no later than a reasonable time after the later of the time the employee becomes employed or the time of the adoption of the simplified employee pension arrangement.

(3) The Commissioner may relieve employers from furnishing any or all of the information specified in subparagraph (1).

(b) *Information to be furnished for a calendar year.* (1) For each calendar year, the employer shall furnish to the employee a written statement indicating the amount of employer contributions made to the employee's individual retirement account or individual retirement annuity under the simplified employee pension arrangement. This requirement is satisfied if the information is on the employee's W–2 for the calendar year for which the contribution is made. Amounts described in § 1.408–7(f)(1) which are not considered made under the simplified employee pension arrangement should not be included.

(2) The information required to be furnished by subparagraph (1) shall be furnished to the employee no later than the later of 30 days after the contribution or January 31 following the calendar year for which the contribution was made.

(c) The Internal Revenue Service may require reports to be filed with the Service with respect to employees who cannot be located by the employer (see § 1.408–7(d)(2)). Such reports shall include such information and shall be filed in the time and manner as the Commissioner specifies.

(d) *Effective date.* The provisions of this section are effective for calendar years beginning after December 31, 1978.

Par. 11. Section 1.409–1 is amended by adding "or 220" after 219 each place it appears and by revising paragraph (c) to read as follows:

§ 1.409–1 Retirement bonds.

* * * * *

(c) *Rollover.* The first sentence of paragraph (b)(1) of this section shall not apply in any case in which a retirement bond is redeemed by the registered owner before the close of the taxable year in which he attains the age of 70½ if he transfers the entire amount of the proceeds of such redemption to—

(1) An individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (other than an endownent contract described in § 1.408–3 (e)), or

(2) An employees' trust which is described in section 401 (a) which is exempt from tax under section 501 (a), an annuity plan described in section 403 (a), or an annuity contract described in section 403 (b), for the benefit of the registered owner.

on or before the 60th day after the day on which he received the proceeds of such redemption. This paragraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401 (c)(1) at the time contributions were made on his behalf under the plan). This paragraph does not apply in the case of a transfer to an annuity contract described in section 403 (b) unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such annuity contract.

Par. 12. Section 1.415–8 is amended by adding at the end thereof new paragraph (i).

§ 1.415–8 Combing and aggregating plans.

* * * * *

(i) *Special aggregation rule for simplified employee pension.* For purposes of section 415 and this section, any contribution made by an employer to a simplified employee pension (as defined in section 408 (k)) of an individual for a calendar year shall be treated as an employer contribution to a defined contribution plan maintained by that employer. This paragraph shall apply to taxable years beginning after December 31, 1980.

Gift Tax Regulations

26 CFR Part 25

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

Par. 13. There is added after § 25.2503–4 the following new section:

§ 25.2503–5 Individual retirement plan for spouse.

(a) *In general.* For purposes of section 2503 (b), and payment made by an individual for the benefit of his or her spouse—

(1) To individual retirement account described in section 408 (a),

(2) To an individual retirement subaccount described in § 1.220–1(b)(3),

(3) For an individual retirement annuity described in section 408(b), or

(4) For a retirement bond described in section 409,

shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220 for the taxable year for which the contribution is made. Thus, for example, if individual A paid $900 to an individual retirement account for 1980 on behalf of A's spouse, B, of which $875 was deductible, $875 would not be a gift of a future interest.

(b) *Effective date.* Paragraph (a) of this section is effective for transfers made after December 31, 1976.

Employment Tax Regulations

26 CFR Part 31

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

Par. 14. Section 31.3121(a)(5)–1 is amended by adding at the end thereof a new paragraph (d). This new paragraph reads as follows:

§ 31.3121(a)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

* * * * *

(d) *Payments to a simplified employee pension.* The term "wages" does not include any payment made after December 31, 1978 by an employer on behalf of an employee to a simplified employee pension described in section 408(k) if at the time of the payment it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment.

Par. 15. Section 31.3306(b)(5)–1 is amended by adding at the end thereof a new paragraph (d). This new paragraph reads as follows:

§ 31.3306(b)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

* * * * *

(d) *Payments to a simplified employee pension.* The term "wages" does not include any payment made after December 31, 1978 by an employer on behalf of an employee to a simplified employee pension described in section 408(k) if at the time of the payment it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment.

Pension Excise Tax Regulations

26 CFR Part 54

PART 54—PENSION EXCISE TAXES

Par. 16. There is inserted in the appropriate place the following new section:

§ 54.4973–1 Excess contributions to certain accounts, contracts and bonds.

(a) *In general.* Under section 4973, in the case of an individual retirement account (described in section 408(a)), an individual retirement annuity (described in section 498(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A), or an individual retirement bond described in section 409, a tax equal to 6 percent of the amount of excess contributions (as defined in paragraph (c) or (d) of this section) to such account, annuity or bond is imposed.

(b) *Individual liable for tax*—(1) *Individual retirement plans.* In the case of an individual retirement account, individual retirement annuity or individual retirement bond the tax imposed by section 4973 shall be paid by the individual to whom a deduction is or would be allowed with respect to contributions for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate.

(2) *Custodial accounts under section 403(b)(7)(A).* In the case of a custodial account treated as an annuity contract under section 403(b)(7)(A), the tax imposed by section 4973 shall be paid by the individual for whose benefit the account is maintained.

(c) *Excess contributions defined for individual retirement plans.* For purposes of section 4973, in the case of individual retirement accounts, individual retirement annuities, or individual retirement bonds, the term "excess contributions" means the sum of—

(1) The excess (if any) of—

(i) The amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a valid rollover contribution described in section 402(a)(5); 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), 409(b)(3)(C)), over

(ii) The amount allowable as a deduction under section 219 or 220 for such contributions, and

(2) The amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) The distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(ii) The distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(iii) The excess (if any) of the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed (determined without regard to sections 219(c)(5) and 220(c)(6)) to the accounts or for the annuities or bonds for the taxable year. For purposes of this paragraph, any contribution which is distributed from the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

(d) *Excess contributions defined for custodial accounts under section 403(b)(7)(A).* For purposes of section 4973, in the case of a custodial account referred to in paragraph (b)(2) of this section, the term "excess contributions" means the sum of—

(1) The excess (if any) of the amount contributed for the taxable year to such account (other than a valid rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(b)(3)(C)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) The amount determined under this subsection for the preceding taxable year, reduced by—

(i) The excess (if any) of the lesser of (A) the amount excludable from gross income under section 403(b) or (B) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(ii) The sum of the distributions out of the account (for the taxable year) which are included in gross income under section 72(e).

(e) *Special rules.* (1) The tax imposed by section 4973 cannot exceed 6 percent of the value (determined as of the close of the individual's taxable year) of the account, annuity or bond.

(2) In the case of an endowment contract described in section 408(b), the tax imposed by section 4973 is not applicable to any amount allocate under § 1.219–1(b)(3) to the cost of life insurance under the contract.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). On April 20, 1979, A, a single individual, establishes an individual retirement account (IRA) and contributes $1,500. On January 11, 1980, A determines he has compensation for 1979 within the meaning of section 219(c) and the regulations thereafter of $8,000. Under section 219, the maximum amount allowable as a deduction for retirement savings available to A is $1,200. On April 15, 1980, A files his income tax return for 1979 taking a deduction of $1,200 for his contribution to his IRA, and as of such date there had been no distribution from the IRA. Under section 4973, A would have $300 of excess contribution in his account for 1979 [($1,500–$1,200) + 0] and A would be liable for an excise tax of $18 on such excess contribution.

Example (2) Assume the same facts as in Example (1). Assume further that on July 1, 1980, A contributes $1,500 to his account. On January 9, 1981, A determines that he has compensation for 1980 of $12,000. Under section 219, the maximum amount allowable to A as a deduction for retirement savings is $1,500 for 1980. On April 15, 1981, A files his income tax return for 1980 taking a deduction of $1,500 for his contribution to his IRA. As of such date, there had been no distribution from the account. Under section 4973, A would have $300 of excess contributions in his IRA for 1980 [($1,500 − $1,500) + ($300 − $ 0)] and would be liable for an excise tax of $18 on such excess contribution.

Example (3) Assume the same facts as in Example (1) and (2). Assume further that on July 1, 1981, A contributes $1,000 to his account. On January 9, 1982, A determines that he has compensation for 1981 of $15,000. Under section 219, the maximum amount allowable as a deduction to A as a deduction for retirement savings is $1,500 for 1981. On April 15, 1982, A files his income tax return for 1981 taking a deduction of $1,000 for his 1981 contribution to his IRA and an additional deduction of $300 under section 219 (c)(5). A will have no excess contributions in his IRA for 1981 because he made no excess contributions for 1981 and the previous year's excess contribution has been eliminated by the underutilization (section 4973 (b)(2)(C)) of 1981's allowable contribution.

Example (4) Assume the same facts as in Examples (1) and (2). Assume further that on July 1, 1981, A contributes $1,500 to his account. On December 1, 1981, A withdraws $300 from his IRA. On January 9, 1982, A determines that he has compensation for 1981 of $15,000. Under section 219, the maximum amount allowable as a deduction to A as a deduction for retirement savings is $1,500 for 1981. On April 15, 1982, A files his income tax return for 1981 taking a deduction of $1,500 for his 1981 contribution to his IRA. A will have no excess contributions in his IRA for 1981 because he made no excess contributions for 1981 and the previous year's excess contribution has been eliminated in a distribution described in section 408 (d)(5).

Example (5) On February 1, 1979, H, an individual, establishes an IRA for himself and one for his nonworking spouse W. He contributes $875 to his account and $775 to his wife's account. On January 31, 1980, H determines that he has compensation for 1979 within the meaning of section 220 (c) and the regulations thereunder of $20,000. Under Section 220 (b)(1), the maximum amount allowable as a deduction for retirement savings to A is $1,550. On April 15, 1980, H files a joint income tax return for 1979 and takes a deduction of $1,550 for his contribution to the IRA of himself and his spouse. As of such date, there had been no distribution from either IRA. Under section 4973, H would have $100 of excess contributions in his account for 1979 [($1,650 − $1,550) + 0] and H would be liable for an excise tax of $6 on such excess contribution.

Example (6) Assume the same facts as in Example (5). Assume further that on June 1, 1980, H contributes $875 to his account and $875 to his wife's account. On January 31, 1981, H determines that he has compensation for 1980 within the meaning of section 220 (c) and the regulations thereunder of $20,000. Under section 220 b)(1), the maximum amount allowable as a deduction for retirement savings is $1,750. On April 15, 1981, H files his income tax return for 1980 taking a deduction of $1,750 for his contribution to the individual retirement account of himself and his wife. As of such date, there had been no distribution from either account. Under section 4973, H would have $100 of excess contributions in his account for 1980 and would be liable for an excise tax of $6 for such excess contribution.

Example (7) Assume the same facts as in Example (5). Assume further that on June 1, 1980, A contributes $1,000 to his account and nothing to his wife's account. On January 31, 1981, A determines that he has compensation for 1980 within the meaning of section 219 (c) of $22,000. On April 15, 1981, H files his income tax return for 1980 and takes a $1,000 deduction under section 219 (a) for the 1980 contribution to his IRA and a $100 deduction under section 219 (c)(5) for the 1979 excess contribution. Under section 4973, H would have $0 excess contributions for 1980 because the previous year's excess contribution has been eliminated under section 4973 (b)(2) (C).

Example (8) On March 1, 1979, a custodial account under section 403 (b)(7) (A) is established for the benefit of T who is otherwise eligible to have such an account established and a contribution of $7,000 is made to such account by A's employer which

is a tax-exempt organization described in section 501 (c)(3). The amount excludible from T's gross income in 1979 under section 403 (b) is $4,000 and the amount permitted to be contributed for 1979 under section 415 is $5,000. Under section 4973, T would have an excess contribution of $3,000 [($7,000 − $4,000) + 0] in his account for 1979 and would be liable for an excise tax of $180.

Par. 17. A new paragraph (d) is added to § 54.4974–1 to read as follows.

§ 54.4974–1 Excise tax on accumulations in individual retirement accounts or annuities.

* * * * *

(d) *Waiver of tax in certain cases*—(1) In general. If the payee described in section 4974(a) establishes to the satisfaction of the Commissioner that—

(i) The shortfall described in section 4974(a) in the amount distributed during any taxable year was due to reasonable error, and

(ii) Reasonable steps are being taken to remedy the shortfall, the tax imposed by section 4974(a) may be waived.

(2) *Reasonable error.* Examples of reasonable error leading to an underdistribution include: erroneous advice from the sponsoring organization or other pension advisors or organizations which misled the payee, attempts by the payee to apply the required formula which led to a miscalculation, or misunderstanding of the formula.

Procedure and Administration Regulations

26 CFR Part 301

PART 301—PROCEDURE AND ADMINISTRATION

Par. 18. Section 301.6693–1 is revised by changing its title, adding after paragraph (a)(2) a new paragraph (a)(3), and amending paragraph (e). Section 301.6693–1, as revised, reads as follows:

§ 301.6693–1 Penalty for failure to provide reports and documents concerning individual retirement accounts, individual retirement annuities and simplified employee pensions.

(a) *In general.* * * *

(3) *Simplified employee pensions.* An employer who makes a contribution on behalf of an employee to a simplified employee pension who fails to furnish or file a report or any other document required under section 408(l) or § 1.408–9 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

* * * * *

(e) *Effective date.* This section shall take effect on January 1, 1975, except for paragraph (a)(3) which is effective for years beginning after December 31, 1978.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 81–20595 Filed 7–13–81; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Ch. II

Arctic National Wildlife Refuge Oil and Gas Exploration

ACTION: Notice of intent to propose rulemaking, prepare an environmental impact statement (EIS), and Notice of public meetings.

SUMMARY: The Director of U.S. Geological Survey (USGS) is seeking public views and comments to assist in drafting regulations and in scoping the EIS on exploration activities within the coastal plain of the Arctic National Wildlife Refuge. Written comments and views are requested with regard to relevant questions concerning both actions of this program.

DATES: Comment date: Comments must be submitted on or before September 1, 1981.

Meeting Dates

August 13, 1981—Anchorage, Alaska
August 17, 1981—Fairbanks, Alaska
August 19, 1981—Kaktovik, Alaska
August 20–27, 1981—Arctic Village and Barrow, Alaska
September 1, 1981—Washington, D.C.

ADDRESSES: Written comments are to be submitted to Chief, Conservation Division, USGS, 600 National Center, Reston, Virginia 22092.

Public Meeting Locations

An opportunity to present oral statements on the program will be accorded in public meetings to be held on August 13, 1981, at the Anchorage Federal Building, Room C–109, 701 "C" Street, Anchorage, Alaska, at 7 p.m., at the Fairbanks Federal Building, Room 236, 101 12th Avenue, Fairbanks, Alaska, at 7 p.m. on August 17, 1981; and at the Main Interior Building Auditorium, Washington, D.C., at 1 p.m., on September 1, 1981. Additional public meetings are scheduled to be conducted at Kaktovik on August 19, 1981, at a location and time to be announced later and at Arctic Village and Barrow from August 20 to August 27, 1981.

FOR FURTHER INFORMATION CONTACT: John Haugh, Branch of Onshore Environmental Management, U.S. Geological Survey, 650 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, phone (703) 860–7531 or FTS 928–7531, or Joe Dygas, U.S. Geological Survey, Box 259, Anchorage, Alaska 95510, phone (907) 271–4356, with regard to the EIS and regulations, or Gerald Garner, Arctic National Wildlife Refuge, U.S. Fish and Wildlife Service, Federal Building, 101 12th Avenue, Fairbanks, Alaska 99701, phone (907) 452–1951 with regard to the baseline fish and wildlife study.

SUPPLEMENTARY INFORMATION:

Public Meetings

Oral statements at these meetings will be limited to 5 minutes. Individuals will be alloted time for the specific meeting requested in the order the requests are received. To the extent that time is available, after presentation of oral statements by those who have given advance notice, the presiding officer will give others present an opportunity to be heard in the order that their name appears on the meeting register.

Section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) provides for the submission of a Secretarial report and recommendations to the Congress on the oil and gas potential and future development of the Arctic National Wildlife Refuge Coastal Plain. To aid in preparing that report, the Congress authorized a limited exploration program consisting of surficial geology and geophysical surveys as a means of identifying the location and estimating the probable extent of oil and gas resources that may underlie the coastal plain of the refuge.

Prior to approving any exploration plan, various studies must be initiated and final regulations published. Specifically, the Secretary is directed to prepare a baseline study on the fish and wildlife values of the coastal plain and to continue gathering information during the study period. Lead responsibility for the baseline study is assigned to the Director, U.S. Fish and Wildlife Service (USFWS). No later than December 2, 1982, the Secretary is to publish guidelines by regulation and is to file an EIS on exploration activities. Lead responsibility for drafting the regulations and the EIS is assigned to the Director, USGS. The USFWS will serve as a cooperating agency in preparing the EIS. Both Bureaus will be working closely in preparing the regulations.

The regulations are to include necessary restrictions to protect fish and wildlife and their habitats and the environment of the study area.

Exploration activities are to be limited to surficial geology and geophysical exploration. Although Congress intended for these activities to be carried out by industry, ANILCA provides for the Federal Government to explore the area if industry declines to do so and/or if it is determined that additional data is necessary for report purposes. All data and information obtained as a result of industry exploration is to be submitted to the Secretary. However, certain types of information will be held confidential for a specified period of time.

An EIS is to be prepared on exploration activities. As such, the EIS will also pertain to rulemaking for the approval of exploration plans. The EIS and the baseline study will serve as the principal documents for developing the substantive regulatory requirements, i.e., stipulations or conditions and restrictions to assure that subsequent exploration activities are carried out in an environmentally acceptable manner. Current plans are to publish the proposed rules and to file the draft EIS by March 1982 and to publish the final rules and to file the final EIS by July 1982. No exploration can take place until a plan has been approved. ANILCA prohibits the approval of exploration plans prior to December 2, 1982, and once a plan is received, the Department must act on it within 120 days.

Information Requested

The purposes of this notice are to obtain public views and comments on structuring proposed rules for governing exploration and for scoping the EIS. Scoping is a procedure for identifying significant environmental issues prior to drafting the EIS. To be most helpful, the comments should be as specific and as carefully documented as possible and should focus on the following questions:

What information should be required in the exploration plan in addition to that specifically required in Section 1002(e)?

Should the entity performing the field exploration be required to post a bond, and, if so, for how much?

Should the regulations reflect general operating stipulations and provide the authority to impose site-specific stipulations based on the review of the plan or, in the alternative, should the regulations be very detailed and specific about all the operating stipulations that would be imposed and the acceptability of a plan reviewed solely in that context?

What procedures should be established to assure that there is no unnecessary duplication of exploration activities?

Should seismic exploration activities be limited to the winter field season?

Is the use of the vibroseis technique the most efficient means for collecting quality seismic data considering environmental and cost concerns?

What additional Federal, State, and local permits need to be considered and can those requirements be incorporated in the exploration plan approval process?

How should the following terms relating to geological and geophysical data be defined

—raw data?
—processed data?
—analyzed data?
—interpreted data?

If Congress directs that the area be leased, should processed, analyzed, and interpreted data and information obtained under the exploration program be held confidential for more than 2 years following the related lease sale and, if so, for how much longer?

Should raw data collected under this program be held confidential before being released to the public and, if so, for how long?

How should exploration data collected by industry, when subject to release, be made available to the public?

What are the principal environmental, wildlife, and other surface resource concerns associated with approving surface geologic investigations and geophysical exploration activities?

Are there areas in the coastal plain study area which should be temporarily or permanently closed to exploration activities? If so, what are these areas and why should these restrictions be imposed?

What alternatives should be addressed in the EIS?

Dated: July 8, 1981.

Eddie R. Wyatt,

Acting Director, Geological Survey.

[FR Doc. 81-20527 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 773

[OPTS-47004; TSH-FRL 1809-7]

Dichloromethane, Nitrobenzene and 1,1,1-Trichloroethane; Proposed Test Rule

Correction

In FR Doc. 81-16724, at page 30300 in the issue of Friday, June 5, 1981, make the following corrections:

(1) On page 30300, in the first column, the preamble section, the paragraph designated as "ADDRESSES", second paragraph, line two, correct the document control number to read "OPTS-47004".

(2) On page 30303, first column, third full paragraph designated as "g.", the first line, first word, correct *"Reproduction"* to read *"Reproductive"*.

(3) On page 30303, last column, first full paragraph designated as "b.", line ten, correct "invertebrates" to read "vertebrates".

(4) On page 30308, in the first column, first paragraph, line three from the end of the paragraph, insert the word "time" after the word "these".

(5) On page 30318, second column, § 773.1500 (d)(4)(i)(B), line seven, correct "0.28" to read "0.028".

(6) On page 30319, first column, § 773.3050 (d)(1)(ii)(C), line two, insert "to & PA" after "submitted".

BILLING CODE 1505-01

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Ch. 60

Government Contractors; Affirmative Action

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Labor aniticipates proposing on or before August 26, 1981, revisions to certain OFCCP regulations regarding affirmative action requirements for Government contractors including federally assisted construction contractors. In addition to that rulemaking proceeding, the Department also is interested in the reaction of the public to certain issues affecting the contract compliance program. Accordingly, this advance notice of proposed rulemaking is being published to elicit the views of the public on these issues prior to proposing a rule. The proposal resulting from this advance notice is not expected to be published until sometime subsequent to the August 26, 1981, proposal mentioned above.

DATES: Comments will be received until September 14, 1981.

ADDRESS: Comments should be sent to James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:
James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, Washington, D.C. 20210, Telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: On December 30, 1980, the Department of Labor published a final rule (see 45 FR 86215; corrected January 23, 1981, at 46 FR 7332) revising the regulations at 41 CFR Chapter 60 which implement (1) Executive Order 11246, as amended, (2) section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and (3) section 503 of the Rehabilitation Act of 1973, as amended. The rule was scheduled to take effect on January 29, 1981. On January 28, 1981, a notice was published in the **Federal Register** (46 FR 9084) delaying the effective date of the rule until April 29, 1981, to allow the Department of Labor to conduct a full review of the regulation. Subsequently, in separate notices in the **Federal Register** on April 28, 1981, (46 FR 23742) and June 26, 1981, (46 FR 33033), the effective date of the regulations was deferred up to and until July 15, 1981. Published elsewhere in the **Federal Register** today is a notice further delaying the effective date of the regulation until August 26, 1981.

During the period that the effective date of the regulation has been deferred, the Department of Labor met with representatives of contractor groups covered by the laws administered by OFCCP, representatives of public interest groups which are interested in the protections afforded under those laws, and with representatives of organized labor. The purpose of these meetings was to share with these groups the agency's general notions as to how the regulations might be improved and to elicit any questions which the groups might have concerning the agency's approach prior to the formal submission of the regulations and commencement of formal consultations under applicable Executive Orders discussed more fully below. Several groups thereafter submitted written comments, which the Department has analyzed in the course of reviewing the rules.

The Department also conducted a preliminary regulatory impact analysis under Executive Order 12291. For the most part, the regulations reviewed and analyzed pursuant to Executive Order 12291 were those contained in the December 30, 1980, **Federal Register**; however, the review and analysis did include some of the regulations in 41 CFR Chapter 60 which had not been amended by the December 30, 1980, final rule.

As a result of the review and analysis, the Department of Labor has developed a proposed regulation. The proposed regulation has been submitted to the Office of Management and Budget pursuant to Executive Order 12291 and to the Equal Employment Opportunity Commission (EEOC) pursuant to Executive Order 12067. It is not apparent, however, that the intergovernmental review and consultation procedures required to be followed for a regulation of this type cannot be completed prior to July 15, 1981, the date on which the December 30, 1980, rule is scheduled to take effect. Accordingly, that rule is being deferred until August 26, 1981, as mentioned above.

In addition, the Department of Labor has determined that certain issues should be submitted to the public for comment prior to proposing a rule in the **Federal Register** for comment. EEOC also suggested this approach in addition to making other recommendations which the Department is considering. These issues are described below and specific questions on which the Department seeks comments are set forth. However, the Department is interested in any comments or suggestions the public may have but the public specifically is requested to address the questions framed herein. Supporting data and rationale for positions taken in comments are specifically requested. Any subsequent rulemaking proceedings resulting from this advance notice will proceed separately from the regulation we expect to propose on or before August 26, 1981.

I. The "8-Factor Analysis"

The basic method of conducting the numerical aspects of affirmative action programs has not changed since publication of Part 60-2 (Revised Order 4) in 1970. The center of the numerical approach, contained in § 60-2.11(b), is an analysis of the availability of minorities and women drawn from consideration of eight factors. The 8-factor analysis has been criticized because some of the factors are not easily quantified; data regarding some others are often not available in a reliable form; and others may not be relevant to the availability of women and minorities for employment in each situation.

Goals and timetables are critical elements of contractors' affirmative action programs. Changes to the 8-factor availability analysis would, therefore, have a significant impact upon contract compliance. Accordingly, the Department, in addition to considering the results of studies on the subject, is requesting comment on the 8-factor analysis and feasible alternatives. For the convenience of the user, the eight factors are set forth as follows:

Determining Minority Availability

(1) The minority population of the labor area surrounding the facility;

(2) The size of the minority unemployment force in the labor area surrounding the facility;

(3) The percentage of the minority workforce as compared with the total workforce in the immediate labor area;

(4) The general availability of minorities having requisite skills in the immediate labor area;

(5) The availability of minorities having requisite skills in the area in which the contractor can reasonably recruit;

(6) The availability of promotable and transferable minorities within the contractor's organization;

(7) The existence of training institutions capable of training persons in the requisite skills; and

(8) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Determining Female Availability

(1) The size of the female unemployment force in the labor area surrounding the facility;

(2) The percentage of female workforce as compared with the total workforce in the immediate labor area;

(3) The general availability of women having requisite skills in the immediate labor area;

(4) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(5) The availability of women seeking employment in the labor or recruitment area of the contractor;

(6) The availability of promotable and transferable female employees within the contractor's organization;

(7) The existence of training institutions capable of training persons in the requisite skills; and

(8) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

Comment is sought on the following questions and on any additional issues regarding the 8-factor analysis that the public thinks should be considered.

1. Which of the current eight factors should be retained as now written, which should be altered (and how), and which should be dropped entirely?

2. The 1980 Census should provide considerably improved information about the participation of women and minorities in various occupational groups. How should use of the 1980 Census be incorporated into the analysis of availability?

3. A consistent problem in determining availability is the currency of data. What methods should contractors and OFCCP use to update data each year?

4. Should OFCCP consider establishment of standardized job groups (e.g., the occupational categories for which information was gathered for the 1980 Census)? If so, will there be problems in establishing current data for these categories?

5. Should contractors attempt to establish some comparative value or "weight" to each of the several factors considered? The regulations do not require contractors to assign "weights" to the various factors, but the Federal Contract Compliance Manual permits OFCCP compliance staff to accept "weighting" as a method for determining availability. What consideration, if any, should be given to quantitative comparisons—such as "weighting"—of factors used to determine availability? Should OFCCP require a weighted factor analysis or some other specific system? If no one system is required, what evidence should contractors be expected to produce to demonstrate the reliability and integrity of the system which they adopt?

6. In assessing availability, what consideration should be given to factors reflecting the potential availability (e.g., the number of minorities or women in training programs) in addition to current availability (e.g., requisite skill data)? How can potential availability be calculated and demonstrated?

7. If the availability analysis is limited to factors describing current availability, what steps, if any, can the contractor undertake to increase the participation of women and minorities in occupations in which they traditionally have not been employed?

II. Back Pay

Some contractors have questioned the appropriateness of back pay as a remedy under the Executive Order program. In addressing this matter, the Department is seeking comments from the public on the issue generally but specifically invites comments on the following questions.

1. Should OFCCP comtinue to utilize back pay in its resolution of complaints or findings of noncompliance under the Executive Order program?

2. If back pay is not utilized under the Executive Order program, what other vehicles are available which would serve as an adequate incentive to promote compliance in the contractor universe?

3. Is it appropriate to use the back pay remedy selectively? If so, under what circumstances (e.g., a contractor which has corrected employment practices and provided other relief, such as seniority adjustment, but has not provided back pay would not be held liable for monetary relief in a subsequent compliance review)?

4. Is there a role for training programs or monetary relief such as bonuses or incentive pay under the Executive Order program (e.g., to promote transfers by employees from lower paying or less desirable jobs into better paying and more desirable jobs) which may be more appropriate than back pay?

5. In instances where an OFCCP compliance review or complaint investigation demonstrates that a person or persons has or have suffered actual loss of wages as a direct result of a proscribed discriminatory employment practice, should back pay be recovered for such person(s)? If not, what type of relief should OFCCP obtain for such person(s)?

III. Executive Order Coverage of a Construction Contractor's Nonfederally Funded Construction Projects

On October 3, 1980, OFCCP published a final rule clarifying the requirement that a covered construction contractor's total workforce was to be protected under 41 CFR Part 60–4 even though some of the contractor's employees may perform work on nonfederal or nonfederally assisted construction contracts, and even though nonfederally involved work may occur in geographical areas in which the contractor has no Federal or federally assisted consturction contracts. One of the reasons for covering all of a construction contractor's workforce based on a single covered contract is that prior experience under the Executive Order program demonstrated that during the time of a compliance review, some contractors would move minority workers from noncovered jobs to covered jobs in an effort to show that they were complying with the Executive Order.

The Department seeks comments on the following questions:

1. What difficulties do covered contractors experience as a result of having their entire workforce protected?

2. What justifications are there for not covering a construction contractor's entire workforce?

3. Should a distinction be drawn between nonfederally involved contracts performed in a geographical area where the contractor also is performing federally involved work, and nonfederally involved contracts performed in areas where the contractor has no federally involved work?

4. If only the contractor's federally involved work is covered, how can the Department ensure that contractors do not transfer minority and female workers between covered and noncovered work to give an appearance of compliance?

IV. Female and Minority Utilization Goals for Construction Contractors.

Goals and timetables for the participation of females in the construction industry were established for the first time in the April 7, 1978, **Federal Register** (43 FR 14888). The goal was 3.1% from April 1, 1978, until March 31, 1979; 5.1% from April 1, 1979, until March 31, 1980; and 6.9% from April 1, 1980, until March 31, 1981. On December 30, 1980 (45 FR 58750), the 6.9% goal was extended until further notice.

These goals were based upon the participation rate of women in the craft and kindred experienced civilian labor force as reflected in the 1970 census. This group of workers was considered to be an availability pool of females for construction work because it included occupations having working conditions, skills and educational requirements similar to those found in the construction industry. According to the 1970 census, females constituted 5% of the experienced civilian labor force in craft and kindred occupations. It was assumed that construction contractors could meet the 5% female utilization in 2 years. Since utilization of women was 1.2%, at that time, this meant that construction contractors would have to improve female utilization by 3.8% (5% minus 1.2%) in order to meet the 5%. Since this increase was spread over a two-year period, construction contractors would have to improve their female utilization by 1.9% per year (3.8% divided by 2). The first year's goal of 3.1% was reached by adding current utilization (1.2%) to the expected increment (1.9%). The two other incremental goals were constructed in the same manner, namely by adding the 1.9%.

Some construction contractors have achieved the 6.9% female goal. However, the OFCCP has received numerous complaints from other contractors that the goal level is unrealistically high. A number of contractors state that they cannot find enough qualified women to

meet the goal. On the other hand, OFCCP has received comments from women stating that they never would have been able to get jobs in construction absent the female construction goal.

Preliminary research by OFCCP does indicate difficulty with using the traditional requisite skill approach to availability for women in construction. A limited study of women currently working in construction showed that they came from a variety of backgrounds; more than a third were previously in clerical/sales occupations, for example. The public is therefore requested to comment upon factors which could be used as a basis for developing goals for women in the construction industry.

1. Is there a better data base than the Dicennial Census of the Population for determining goals for women? If so, what is it?

2. Should the Department consider the total civilian labor force as the availability pool for women for the construction trades or should it use a more specific labor pool (e.g., experienced civilian labor force in other occupations such as the number of women in construction related apprenticeship or other training programs)?

3. Should the Department base the goals for women on calculations other than their percent of participation in a particular labor pool?

4. What other methods are there for increasing the availability of women in construction work?

On October 3, 1980 (45 FR 65976), the OFCCP published revised goals for minority participation in Federal and federally assisted construction work. For the first time goals were established for all areas of the country. Goals were established for each Standard Metropolitan Statistical Area (SMSA) and for each outlying area. Rural areas have been standardized into Economic Areas (EA), as defined by the Bureau of Economic Analysis, U.S. Department of Commerce. In addition, a single goal was established for all trades in each SMSA and EA in place of the separate goals which previously existed for the individual crafts under hometown or imposed plans. This new goal was based upon the minority representation in the experienced civilian labor force for each area.

OFCCP has received separate comments from different groups that the minority goal levels are both too high and too low. Two bases are offered for the goals being too high. First, it is claimed that it is unreasonable to apply the same goal to an entire EA. One part of an EA may be near an urban area with a relatively high minority availability while a remote part of the EA may have very few minorities in the immediate area. Since the goal represents an averaging of the entire area, it is claimed that it overstates availability for remote areas and understates it for areas near urban centers. It is also claimed that it is unrealistic to establish the same goals for skilled crafts as for laborers.

Persons who claim that the goals are too low point to the fact that, in some instances, the single goal established for an SMSA is lower than the previous goal established for some crafts under hometown or imposed plans.

OFCCP is requesting the public to comment upon its experience with the single minority goals for SMSAs and EAs.

1. What evidence is there that persons are or are not willing to travel from urban to rural areas for construction jobs?

2. Is the single goal for a particular area unreasonably high for skilled craft jobs? If so, what alternatives exist?

3. Is the minority experienced civilian labor force an adequate data base for determining the availability of minorities for construction work?

4. Should the census data be refined to take into account vocational and/or experience levels of construction workers and the impact such refinements would have on minority availability?

Signed at Washington, D.C., this 9th day of July 1981.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

Ellen M. Shong,

Director, OFCCP.

[FR Doc. 81-20614 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-27-M

FEDERAL MARITIME COMMISSION

46 CFR 510

[General Order 4, Revised; Docket 80-13]

Licensing of Independent Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Further Notice of Proposed Rulemaking.

SUMMARY: In a Proposed Rulemaking dated March 17, 1980, the Commission requested comments about possible conflicts of interest between the duties of a freight forwarder and those of a carrier or carrier's agent with respect to eligibility to be licensed as a forwarder. The final rule, published at 46 FR 24565, May 1, 1981, contains a § 510.33(g) which prohibits the receipt of freight forwarder compensation by persons which are both licensed forwarders and also steamship carriers or agents, on shipments in which the licensee actually acted as carrier or agent. Elsewhere in this issue the Commission stays the effectiveness of this portion of the final rule. This document serves further notice of proposed rulemaking in order to ensure adequate notice to all interested parties and to encourage comment.

DATES: Comments on or before August 13, 1981.

ADDRESS: Inquiries and comments (original and fifteen copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Telephone (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission instituted a rulemaking on March 17, 1980 to revise General Order 4, which governs the licensing and operations of independent ocean freight forwarders. The Notice of Proposed Rulemaking contained a section entitled "Basic requirements for licensing: eligibility." In the Supplementary Information accompanying the proposed rule, there appeared the following explanation of the proposed subsection entitled "Oceangoing common carriers":

> This subsection incorporates provisions of present section 510.22(a). While the eligibility for licensing of such carriers is retained, the Commission is most concerned about possible conflicts of interest between the duties of a forwarder and those of a carrier or carrier's agent. The Commission requests comments on this problem for possible future action.

The final version of this subsection appeared as § 510.33(g) in the final rule, and prohibits the receipt of freight forwarder compensation by persons which are both licensed forwarders and also steamship carriers or agents thereof, on shipments in which the licensee also acted as carrier or agent.

The Commission has received a petition for reconsideration of the final rule, on the ground that insufficient notice was given of the rule ultimately adopted. Petitioners argue that the Notice of Proposed Rulemaking made no mention of any restriction on compensation, and that it requested comment only on the issue of eligibility of licensee/carriers or licensee/agents in light of possible conflicts of interest.

The failure of the Commission to suggest that it was considering a restriction on forwarder compensation, Petitioners argue, constituted inadequate notice.

The Commission considers that its Notice of Proposed Rulemaking was more than adequate to alert the public to the possibility of the action taken in the final rule. The restriction on compensation by forwarder/agents was encompassed in the broader subject matter raised in the Notice of Proposed Rulemaking, *i.e.*, conflicts of interest and license eligibility of forwarder/agents. In this sense, the final rule was a less restrictive version of the original proposal.

Nevertheless, the Commission has determined to notice § 510.33(g) of its final rule for further comment. The Commission wishes to explore completely the merits of the restrictions on forwarder compensation to licensee/agents, by ensuring the awareness of the rule by the interested public, and obtaining the benefit of the widest possible range of comments from those who may be affected.

Elsewhere in this issue the effect of § 510.33(g) of 46 CFR (46 FR 24574) is stayed pending final resolution of this matter.

By the Commission.*

Francis C. Hurney,

Secretary.

[FR Doc. 81-20646 Filed 7-13-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-352]

Use of the Subsidiary Communications Authorization for Utility Load Management; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission. .

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: Action taken herein extends the time for filing comments and replies to comments to a *Notice of Proposed Rulemaking*, Docket No. 81-352, which proposes to amend the Commission's FM Subsidiary Communications Authorization (SCA) rules to permit SCA use for utility load management.

The action taken herein was requested by McKenna, Wilkinson and Kittner.

DATE: Comments are due on or before August 7, 1981 and replies to comments are due on or before August 22, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Norman Plotkin, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: .

[BC Docket No. 81-352; [46 FR 31290; 6-15-81)]

Order Extending Time for Filing Comments to Notice of Proposed Rulemaking

Adopted: July 1, 1981.

Released: July 8, 1981.

In the matter of amendment of § 73.293 and § 2.106 of the Commission's rules concerning use of the Subidiary Communications Authorization for utility load management.

By the Chief, Policy and Rules Division:

1. On May 21, 1981 the Commission adopted a *Notice of Proposed Rulemaking*, Docket No. 81-352, which proposes to amend its FM Subsidiary Communication Authorization (SCA) rules to permit SCA use for utility load management purposes. This Notice was released on June 8, 1981 with comments permitted on or before July 8, 1981 and reply comments on or before July 23, 1981.

2. On June 29, 1981, McKenna, Wilkinson and Kittner (NWK), on behalf of various clients, filed a motion for a sixty (60) day extension of time in which to file comments and reply comments in the above captioned proceeding.

3. In its motion for a sixty (60) day extension of time, MWK states that this additional time would permit its clients to analyze and comment more thoroughly on both the utility load management purpose of this Notice and the broader, possible non-broadcast uses of SCA's . We are of the opinion that, while an extension of time would be in the public interest to permit fuller comment on utility load management use of SCA, an extension of sixty (60) days is not warranted by the specific and narrow issue dealt with in this Notice and would delay Commission action to the possible detriment of the public. Comments on the larger issues to which requestor refers can more appropriatedly be addressed in a possible future rule/making relating to multiple uses of FM SCA's. We are therefore granting thirty (30) days additional time.

4. Accordingly, it is ordered, that the time for filing comments and replies to comments to the above referenced *Notice of Proposed Rulemaking*, Docket No. 81-352, is extended to and including August 7, 1981 for comments and August 22, 1981 for replies.

5. This action is taken pursuant to authority found in section 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules and Regulations.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-20603 Filed 7-13-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79-256; RM-3118]

FM Broadcast Station in Lockhart, Texas; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Request for Supplemental Information; Extension of reply comments.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding concerning the proposed assignment of an FM channel to Lockhart, Texas. Counsel for petitioner, Hicks Communications, Inc., states that he was just retained and that additional time is needed to review the previous filings and to prepare informed reply comments.

DATE: Reply comments must be filed on or before July 13, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of 73.202(b), Table of Assignments, FM Broadcast Stations. (Lockhart, Texas), [BC Docket No. 79-256; RM-3118]

Order Extending Time for Filing Reply Comments

Adopted: June 29, 1981.

Released: July 7, 1981.

By the Chief, Policy and Rules Division:

1. On April 1, 1981, the Commission adopted a *Request for Supplemental Information*, 46 FR 22770, published April 21, 1981, in the above-captioned proceeding. By *Order* released June 5,

*Chairman Alan Green, Jr. did not participate.

1981, the time for filing comments and reply comments thereto was extended to and including June 10, and July 1, 1981, respectively.

2. The comments having been timely filed, we now have before us for consideration a Motion for Extension of Time filed by counsel for Hicks Communications, Inc. ("Hicks"), on June 25, 1981, requesting an extension of time to and including July 13, 1981, in which to file reply comments. Counsel states that it has recently been engaged to represent Hicks, and due to the complexity and lengthy background of this proceeding [which is one of several rule making proceedings relating to pending applications by various FM stations in Houston, Texas, proposing to relocate their facilities to a common transmitter site], additional time is needed to review the previous filings and prepare a response. Moreover, counsel states that comments filed by the parties were served on the former counsel for Hicks and were received by it only recently.

3. We are of the view that under the foregoing circumstances, additional time is warranted to afford all parties a moderate period in which to formulate the reply comments. Such extension will assure development of a sound and comprehensive record on which to base a decision herein.

4. Accordingly, it is ordered, that the time for filing reply comments in BC Docket No. 79–256 (RM–3118), is extended to and including July 13, 1981.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-20609 Filed 7-13-81; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 46, No. 134
Tuesday, July 14, 1981

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 AGRICULTURE

Agricultural Stabilization and Conservation Service

1980 Crop Upland Cotton Program; National Program Acreage, Allocation Factor, and Payment Rate for 1980 Crop of Upland Cotton

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of revision of national program acreage and announcement of the allocation factor and payment rate for the 1980 crop of upland cotton.

SUMMARY: The purpose of this notice is to announce a revision of the national program acreage, allocation factor, and payment rate for the 1980 crop of upland cotton. These actions are taken in accordance with the provisions of Sections 103(f)(4), 103(f)(7), and 103(f)(8) of the Agricultural Act of 1949, as amended, which provide the authority for these determinations.

EFFECTIVE DATE: July 13, 1981 (date of filing with the Director, Office of the Federal Register).

ADDRESS: Production Adjustment Division, ASCS–USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7873. The Final Impact Statement describing the options considered in developing this Notice of Determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a "major rule." This notice of determination has been classified as not a "major rule" since its annual effect on the economy will not exceed $100 million or more.

The title and number of the federal assistance program that this notice applies to are: Title—Cotton Production Stabilization; Number 10.052, as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Section 103(f)(4) of the Agricultural Act of 1949, as amended, requires that payments be made on each crop of upland cotton at a rate equal to the amount by which the higher of (1) the average price for the calendar year that includes the first five months of the marketing year, or (2) the loan level determined under Section 103(f)(1) of the 1949 Act, is less than the established price. In addition, Section 103(f)(8) of the 1949 Act requires that the Secretary of Agriculture determine an allocation factor for each crop of upland cotton for use in determining the percentage of harvested acres eligible for payment on each farm. The allocation factor is determined by dividing the national program acreage by the number of acres which the Secretary estimates will be harvested.

Section 103(f)(7) of the 1949 Act requires the Secretary to establish a national program acreage for each of the 1978 through 1981 crops of upland cotton. The 1949 Act also authorizes the Secretary to revise the national program acreage for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. The Secretary is required to announce the revised national program acreage as soon as it has been determined.

A notice of proposed determination was published in the **Federal Register** at 44 FR 54077 requesting comments on the establishment of program provisions for the 1980 crop of upland cotton. A notice of determination was published at 44 FR 75687 in which all comments received regarding the 1980 upland cotton program were discussed. This document sets forth the final determinations with regard to these issues.

A national program acreage of 11,602,285 acres was published on December 21, 1979 (44 FR 75687). The Secretary has determined that the national program acreage shall be revised prior to determining the allocation factor because projections of domestic use, exports, imports, and carryover, and the estimated national weighted average of farm program yields have changed since the initial determination. The revised national program acreage, allocation factor, and deficiency payment rate are based on mechanical adjustments made according to formulas defined by statute.

Accordingly, the revised national program acreage, allocation factor, and payment rate for the 1980 crop of upland cotton are determined to be the following:

Determinations

Revised National Program Acreage for 1980-Crop Upland Cotton. It is hereby proclaimed that the final revised national program acreage for the 1980 crop of upland cotton shall be 11,894,104 acres. This determination is based on the following data:

1. Estimated domestic consumption, 1980–81 (480 lb. net weight bales)	5,700,000
2. Plus estimated exports, 1980–81 (480 lb. net weight bales)	6,000,000
3. Minus estimated imports, 1980–81 (480 lb. net weight bales)	35,000
4. Plus adjustment to increase stocks to desired level (480 lb. net weight bales)[1]	2,036,000
5. Times 480 lbs. per bale	6,577,440,000
6. Divided by estimated weighted average of farm program yields (lbs. per acre)	553
7. Equals: national program acreage (acres)	11,894,104

[1] Desired carryover of upland cotton stocks is 5,000,000 bales. The carryover on August 1, 1980, was 2,962,000 bales. Thus, the stock adjustment is 2,038,000 bales.

Allocation Factor for 1980-Crop Upland Cotton. It is hereby proclaimed that the allocation factor for the 1980 crop of upland cotton shall be 90 percent. This determination is based on the following data:

1. 1980 revised national program acreage	11,894,104
2. Divided by the 1980 estimated harvested acreage	13,143,000
3. Equals the 1980 national allocation factor	.90

Payment rate for 1980-Crop Upland Cotton. It is hereby proclaimed that the payment rate for the 1980 crop of upland cotton is 0. This determination is based on the following data:

1. 1980 national established price (cents per pound)	58.4
2. Minus the higher of the 1980 calendar year average price or the loan rate (cents per pound) [1]	73.3
3. Equals the 1980 payment rate	0

[1] The national weighted average price received by farmers for calendar year 1980 is 73.3 cents per pound. Since this is higher than the loan level of 46.0 cents per pound, the calendar year average price is used in the determination of the payment rate.

Signed at Washington, D.C. on July 7, 1981.

John R. Block,

Secretary.

[FR Doc. 81-20839 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Appointments of Individuals To Serve as Members of the Performance Review Board; Senior Executive Service

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that notice of the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the U.S. Commission on Civil Rights for the rating year beginning October 1, 1980, and ending September 30, 1981.

Lorenzo Casanova, Associate Administrator for Safety, Federal Highway Administration, DOT

Caroline Gleiter, Assistant Staff Director for Program and Policy Review, USCCR

Lawrence B. Glick, Solicitor, USCCR

John Hope III, Deputy Staff Director for Regional Programs, USCCR, (Chair)

Harriett Jenkins, Director of Equal Employment Programs, NASA

Louis Nunez,

Staff Director.

[FR Doc. 81-20496 Filed 7-13-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 177]

Resolution and Order Approving the Application of the Industrial Development Commission of the Town of Windsor Locks, Connecticut, for a Foreign-Trade Zone in Windsor Locks, Within the Hartford Customs Port of Entry.

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Industrial Development Commission of the Town of Windsor Locks, a municipal public agency, filed with the Foreign-Trade Zones Board (the Board) on January 26, 1981, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Windsor Locks, within the Hartford Customs port of entry, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD

WASHINGTON, D.C.

GRANT

TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN THE TOWN OF WINDSOR LOCKS, CONNECTICUT, WITHIN THE HARTFORD CUSTOMS PORT OF ENTRY

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Industrial Development Commission of the Town of Windsor Locks (the Grantee) has made application (filed January 26, 1981) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Windsor Locks, within the Hartford Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 71 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the Commencement of any other manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto

by its Chairman and Executive Officer at Washington, D.C., this 8th day of July 1981, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 81-20588 Filed 7-13-81; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Initiation of Countervailing Duty Investigation Sodium Gluconate From the European Economic Community

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: We are initiating a countervailing duty investigation to determine whether the European Economic Community (EC) is subsidizing its manufacturers, producers or exporters of sodium gluconate. We are notifying the U.S. International Trade Commission (ITC) of this action so it may determine whether imports of this merchandise are materially injuring, or threatening to materially injure, a U.S. industry. If both investigations proceed normally, the ITC will announce its preliminary determination by July 31, 1981, and we will announce ours by September 9, 1981.

EFFECTIVE DATE: (Date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Case History

On June 16, 1981, we received a petition from counsel representing Pfizer, Inc. New York, New York. Complying with the filing requirements of section 355.26 of the Department of Commerce's Regulations (19 CFR 355.26), the petition alleges that the EC is subsidizing its manufacturers, producers or exporters of sodium gluconate, and that imports of this merchandise to the Uniterd States are materially injuring a U.S. industry.

Scope of Investigation

The merchandise covered by this investigation is sodium gluconate currently provided for in item number 437.5250 of the Tariff Schedules of the United States Annotated.

The petition alleges that the EC is providing a subsidy for the production and exportation of sodium gluconate. More specifically, the petition alleges that the EC has granted a production subsidy to certain products derived from starch, and to glucose derived by direct hydrolysis from maize groats and meal. The petition also alleges that the EC has granted export restitution payments, which are an export subsidy, to its manufacturers, producers or exporters of sodium gluconate as a salt of gluconic acid.

Critical Circumstances

The petition also alleges that critical circumstances exist within the meaning of section 355.29 of the Department of Commerce's Regulations (19 CFR 355.29) by reason of massive imports over a relatively short period. However, the petition relies upon a comparison of imports during the first quarters of the last two years to support this allegation. A comparison of imports during the first quarter of 1981 with imports for each quarter of 1979 and 1980 reveals that imports for the second quarters of 1979 and 1980 were at similar levels to the first quarter of 1981 and the imports for the fourth quarter of 1980 were at the lowest level since the first quarter of 1979. Therefore, we determine that critical circumstances do not exist as regards imports of sodium gluconate from the EC.

Initiation of Investigation

After conducting a summary review of the petition, we have found that its information reasonably supports its allegations. Therefore, in accordance with section 702(c) of the Tariff Act of 1930, as amended, (19 U.S.C. 1671a) (the Act) we are initiating a countervailing duty investigation to determine whether the EC is giving its manufacturers, producers or exporters of sodium gluconate certain benefits that are subsidies within the meaning of section 771(5) of the Act.

ITC Notification

Section 702(a) of the Act also requires us to notify the ITC of this action and to give it the information we used to reach this decision. We will make available to the ITC all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 7, 1981.

[FR Doc. 81-20589 Filed 7-13-81; 8:45 am]

BILLING CODE 3510-25-M

Rice 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 (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00056. Applicant: Rice University, Department of Chemistry, P.O. Box 1892, Houston, Texas 77001. Article: Excimer Laser, EMG 101. Manufacturer: Lambda-Physik GmbH, West Germany. Intended use of article: See Notice on page 18564 in the **Federal Register** of March 25, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatrus 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 (1) an average power of four watts, (2) a pulse energy of 150 millijoules for XeCl and (3) a repetition rate of 0.1-30 hertz. The National Bureau of Standards advises in its memorandum dated May 19, 1981 that (1) the combined capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or appratus of equivalent scientific value to the foreign article for the applicant's intended use.

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)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-20515 Filed 7-13-81; 8:45 am]

BILLING CODE 3510-25-M

California Institute of Technology; 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 (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00073. Applicant: California Institute of Technology, 1201 East California Blvd., Pasadena, California 91125. Article: Model 200/98 Superconducting magnet and Cryostat. Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: See Notice on page 18566 in the **Federal Register** of March 25, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (September 26, 1980).

Reasons: The foreign article provides a magnetic field strength of 4.7 tesla with a wide bore of 89 millimeters. The National Bureau of Standards advises in its memorandum dated May 22, 1981 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use since no domestic manufacturer was both willing and able to provide an equivalent instrument at the time of order.

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 of order.

(Catalog of Federal Domestic Assistant Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-20516 Filed 7-13-81; 8:45 am]

BILLING CODE 3510-25-M

University of California; 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 (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00015. Applicant: University of California, Department of Physics, 2405 Bowditch Street, Berkeley, CA 94720. Article: 6(ea.) Fine Beam Tube and Helmholz Coils with Holder. Manufacturer: Leybold-Heraus GmbH, West Germany. Intended use of article: See Notice on page 9686 in the **Federal Register** of January 29, 1981.

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 the capability to conduct classical change/mass (e/m) experiments. The National Bureau of Standards advises in its memorandum dated May 28, 1981 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument of 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)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-20517 Filed 7-13-81; 8:45 am]

BILLING CODE 3510-25-M

Rocky Mountain Eye Foundation et al.; Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00228. Applicant: Rocky Mountain Eye Foundation, 2405 Broadway, Boulder, CO 80302. Article: Ophthalmo-Microsurgical Unit—Type A. Manufacturer: Optische Werke GmbH., West Germany. Intended use of article: The article is intended to be used as part of a facility developed to demonstrate that better ophthalmological surgical care can be provided and with less morbidity and less costs, superior results and at reduced costs. The facility will also serve as a location for clinical and basic investigation in surgery. Procedures under investigation include cataract extraction, intraocular lens implantation, glaucoma procedures, corneal transplantations, strabismus surgery, etc. Current investigations also include studies on the development of obsidian and glass blades as surgical cutting instruments to be used in microsurgery. The facility is also available for instruction of doctors in

training and for nurses and other assistants. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00229. Applicant: Tulane University School of Medicine. 1430 Tulane Avenue. New Orleans. LA 70112. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss. West Germany Intended use of article: The article is intended to be used for studies of biologic specimens (tissue samples, blood, tissue cultures and cell fractions). All experiments have as their objective making morphologic observations of high resolution electron micrographs. Specimens will be compared to earlier observations of samples of normal and diseased tissue. Examples include examination of nerves damaged by toxins, study of lysosomes in tissue culture cells, drug induced reactions in liver cell organelles and changes in kidney glomeruli. In some studies the objective is the morphologic observation, and in others the electron microscopic studies are correlated with functional and biochemical studies. The article will also be used for training in electron microscopy procedures. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00230. Applicant: The University of Michigan, Ann Arbor, MI 48109. Article: Small Angle X-ray Camera with Accessories. Manufacturer: Anton Paar Corp., Austria. Intended use of article: The article is intended to be used for the study of supported metal catalysts, polymers, and solutions of polymers. Investigations will be conducted to correlate the activities of catalysts, the mechanical and chemical properties of the polymers with the molecular structure and devise ways of improving the performance of these materials by changing the microstructure. In addition, the article will be used in Chemical Engineering doctoral thesis research, ChE 995, to teach students to do independent research and prepare them for academic and industrial research careers. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00232. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, AZ 85705. Article: Repair of Klystron VRB 2113A30. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver. This receiver is used in conjunction with a microwave antenna to measure the intensity polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00233. Applicant: Wilkes-Barre General Hospital, River & Auburn Streets. Wilkes-Barre, PA 18764. Article: Therac 20 Saturne Linear Accelerator with Accessories. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use of article: The article is intended to be used for studies in the radiation therapy dosimetry review program of the Northeast Center for Radiological Physics, which is a part of the Cancer Control Program. The article will also be used as an essential tool in a physicians' training program. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00234. Applicant: University of Florida, College of Engineering, Department of Materials Science & Eng., Gainesville, Florida 32611. Article: Electron Microscope, Model JEM 200CX with Accessories: Manufacturer: Japan Electron Optical Lab., Ltd., Japan. Intended use of article: The article is intended to be used widely in Materials Science and Engineering, from physical metallurgy to corrosion to ceramic processing to glasses, biomaterials, and polymers. Research projects to be conducted will include studies of the following:

1. The nucleation of point defects and heterogeneous precipitation.
2. Strengthening effects in intermetallic Ni(Mo-Al) alloys.
3. SnO_2 supported Pt catalysts.
4. Electrotransport in pure and doped Au films.
5. Ultrafine dispersion of metal-rich clusters in polymer matrices.

Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00235. Applicant: Yale University. Department of Molecular Biophysics and Biochemistry. P.O. Box 6666, New Haven, CT 06511. Article: Nuclear Magnetic Resonance Spectrometer, Model WH–360E with Wide Bore Superconducting Cryomagnet. Manufacturer: Bruker-Physik, A.B., West Germany. Intended use of article: The article is intended to be used to extend high resolution nmr studies of intact cells and other membrane bound systems in vivo so as to answer specific questions about metabolism and regulation with this non-invasive measurement. Studies will concentrate on suspension of cells, following the paths developed recently in the laboratory of the principal investigator and elsewhere. It is planned to study glycolysis in E. Coli, Yeast and Erhlich Ascites Tumor cells, in an attempt to extend the understanding of control and regulation. In rat liver cells it is planned to study the distribution of ^{31}P metabolites between the mitochondria and cytoplasm. In addition, the article will be used in undergraduate, graduate or postgraduate training. Application received by Commissioner of Customs: May 5, 1981.

Docket No. 81–00236. Applicant: University of California, Los Angeles, 405 Hilgard Avenue. Los Angeles, CA 90024. Article: Treatment Planning System, Model TP 11/44. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use of article: The article is to be used to study the factors involved in the obtainment of accurate dose distributions within the human body for use in radiation therapy treatment planning. Treatment plans using computer tomography scan as input for density corrections in the human body will be compared with plans based on conventional practice assumptions of uniform density except for lungs. The article will also be used in the following medical physics graduate courses.

Radiological Sciences 202E
Radiological Sciences 202F
Radiological Sciences 203
Radiological Sciences 202D

Application received by Commissioner of Customs: May 14, 1981.

Docket No. 81–00237. Applicant: Ohio University. Department of Zoology and Microbiology. Irvine Hall, Athens, OH 45701. Article: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in conducting research of the following:

1. Effects of age on neuromuscular interactions.
2. Histogenesis of chick sympathetic ganglion: catecholaminergic cells.
3. Excitation-contraction coupling: morphological investigations into the t-system, the SR and the glycocalyx.
4. Structural studies of cellular filaments.
5. Pseudomonas plasmid Rpl expression in Caulobacter: a study of plasmid-encoded gene products.
6. Structure of sperm DNA.

Application received by Commissioner of Customs: May 14, 1981.

Docket No. 81–00238. Applicant: The Johns Hopkins University. Charles & 34th Streets, Baltimore, MD 21218. Article: Cathode Ray Tube Display Phosphor P4, CRT 38 CM Diagonal Magnetic Deflection Designed for use in Vision Research. Manufacturer: Joyce Electronics Ltd., United Kingdom.

Intended use of article: The article is intended to be used for vision psychophysical measures of spatial contrast sensitivities and spatial line spread function for different spatial orientations. Investigations will be conducted to understand the basic properties of visual processing in the spatial domain and determine how these properties change in visual system disease. Application received by Commissioner of Customs: May 14, 1981.

Docket No. 81–00239. Applicant: Arizona State University Tempe. AZ 85281. Article: Ultra-High Resolution Goniometer Cartridge. Model JEM 200CX–BLGH1. Manufacturer: Japan Electron Optical Labs., Ltd., Japan. Intended use of article: The article is intended to be used in the study of a wide range of inorganic materials including semiconductors, metals, ceramic oxides and minerals. The structure of these materials on the scale of atomic dimensions will be studied. The experiments will include high resolution imaging and the study of diffraction patterns and electron energy loss spectra to determine the structure of materials. In addition, the article will be used in the education of a few graduate students involved in research with the HB5 scanning transmission electron microscope. Application received by Commission of Customs: May 11, 1981.

Docket No. 81–00240. Applicant: University of Southern California, Department of Electrical Engineering, University Park, Los Angeles, CA 90002. Article: Excimer Laser. Model 861S and Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used in the study of spectroscopy as well as the study of unimolecular and biomolecular processes of gas phase radicals which are produced by the excimer laser. The experiments will use the very intense (focused) output from the excimer laser to dissociate, via multiphoton absorption, polyatomic molecules to produce the radical of choice. The objective of this research are to develop optical diagnostic techniques for radicals and to investigate their reactions, which are important in the study of combustion processes and air pollution. In addition, the article will be used in the course EE, Physics, or Chemistry 790, Thesis research by graduate students working toward the M.S. or Ph.D. degree. Application received by Commissioner of Customs: May 11, 1981.

Docket No. 81–00242. Applicant: National Aeronautics and Space Administration, (NASA Resident Office, Jet Propulsion Lab.) 4800 Oak Grove Drive. Pasadena. CA 91109. Article: Ion Microanalyzer Model IMS–3F with Accompanying Accessories. Manufacturer: Cameca. France.

Intended use of article: The article is intended to be used for the purpose of performing structural and material composition analysis of various semiconductors and metals used in fabricating low cost solar cells. The low-cost sheet materials for terrestrial solar cells contain both structural and chemical imperfections. It is essential to understand the interaction of structural and chemical imperfections and metallization contaminant in order to optimize the electrical performance of the solar cells. Application received by Commissioner of Customs: May 14, 1981.

Docket No. 81–00243. Applicant: Jet Propulsion Laboratory 4800 Oak Grove Drive. Pasadena, California 91103. Article: Millimeter Reflex Klystron, VRY 2131A. Manufacturer: Varian Associates, Ltd., Canada. Intended use of article: The article is a component for a millimeter-wavelength microwave spectrometer receiver which was constructed for radio astronomical investigation of cosmic sources of molecular line emissions. These investigations are carried out to determine the physical conditions, such as temperature and density, in the gas flowing from stars in the late stages of their lives. A particular objective is the determination of the abundance of silicon monoxide in the stellar ejecta. Application received by Commissioner of Customs: May 13, 1981.

Docket No. 81–00244. Applicant: 10MM&P MATES Program, Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090. Article: Shiphandling simulator for shiphandling and navigation training. Manufacturer: Vereinigte Flugtechnische Werke, West Germany. Intended use of article: The article is intended to be used for instruction and practice in the fundamentals of shiphandling. Application received by Commissioner of Customs: May 13, 1981.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director. Statutory Import Programs Staff.

[FR Doc. 81–20518 Filed 7–13–81; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service. NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established a Scientific and Statistical Committee which will meet to discuss the reopening of closed areas and surf clam and ocean quahog quotas. The meeting may be lenghtened or shortened or the agenda rearranged or changed depending upon progress of the same.

DATES: The public meeting will convene on Friday. August 28, 1981, at approximately 10 a.m., and will adjourn at approximately 4 p.m.

ADDRESS: The meeting will take place at the Sheraton Inn, Route 13, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901; Telephone: (302) 674–2331.

Dated: July 9, 1981.

Robert K. Crowell,

Deputy Executive Director. National Marine Fisheries Service.

[FR Doc. 81–20598 Filed 7–13–81; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards; Senior Executive

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Boards for the Department of Army for 1981.

EFFECTIVE DATE: July 17, 1981.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, D.C. 20310, (202) 697–2204.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate

the initial appraisal of senior executive's performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Each board's review and recommendation will include only those senior executive's appraisals from their respective commands or activities. A consolidated board has been established for those commands who do not have enough senior executives to warrant the establishment of separate boards. Publication of this notice rescinds the notice published in 46 CFR, page 22421, dated April 17, 1981, to account for additions and deletions to the membership of those boards previously published.

The Members of the Performance Review Board for the Office, Secretary of the Army (OSA), their Field Operating and Joint DoD Activities are:

1. Mr. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army—Alternate Chairperson.
2. Mr. Robert K. Dawson, Principal Deputy Assistant Secretary of the Army (Civil Works), Office, Assistant Secretary of the Army (Civil Works).
3. Mr. Isaac C. Hunt, Jr., Principal Deputy General Counsel, Office, General Counsel.
4. Ms. Amoretta M. Hoeber, Deputy Assistant Secretary of the Army (Research and Development), Office, Assistant Secretary of the Army (Research, Development and Acquisition).
5. Mr. John F. Wallace, Deputy for Management Systems, Office, Assistant Secretary of the Army (Installations, Logistics, and Financial Management).
6. Mr. Clayton N. Gompf, Deputy for Military Personnel Policy and Programs, Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
7. Brigadier General Johnnie H. Corns, Deputy Chief, of Legislative Liaison, Office, Chief of Legislative Liaison
8. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office, Under Secretary of the Army.
9. Mr. Peter Stein, Deputy Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
10. Mr. Darrell L. Peck, Deputy General Counsel (Military and Civil Affairs), Office, General Counsel.
11. Mr. George E. Dausman, Deputy for Material Acquisition Management, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
12. Mr. Joseph L. Miller, Deputy for Resources Analysis, Office, Assistant Secretary of the Army (Installations, Logistics and Financial Management).
13. Mr Leon Kniaz, Deputy for Civilian Personnel Policy. Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).

The members of the Performance Review Board for the Office of the Chief of Staff, Army are:

1. Mr. Jack H. Kalish, Director, Ballistic Missile Defense Program Office.
2. Mr. James D. Carlson, Director, Ballistic Missile Defense Advance Technology Center.
3. Mr. Martin B. Zimmerman, Deputy Assistant Chief of Staff for Automation and Communication.
4. Major General Morris J. Brady, Assistant Deputy Chief of Staff for Operations.
5. Mr. Leonard F. Keenan, Deputy Director of the Army Budget, Office of the Comptroller of the Army.
6. Mr. Wayne M. Allen, Director of Cost Analysis, Office of the Comptroller of the Army.
7. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Directorate of Civilian Personnel, Office of the Deputy for Personnel.
8. Brigadier General Walter J. Mehl, Director of Personnel Plans and Systems, Office of the Deputy Chief of Staff for Personnel.
9. Mr. Edgar P. Vandiver III, Technical Director, Deputy Chief of Staff for Operations and Plans.
10. Mr. Joseph P. Cribbons, Special Assistant to the Deputy Chief of Staff for Logistics and Chief, Aviation Logistics Office.
11. Dr. Robert J. Heaston, Scientific Advisor to Director of Weapons Systems, Office of the Deputy Chief of Staff for Research, Development and Acquisition.
12. Mr Charles H. Church, Assistant Director for Technology. Office of the Deputy Chief of Staff for Research, Development and Acquisition.
13. Brigadier General James E. Armstrong, Assistant Chief of Staff for Intelligence.
14. Major General Sampson H. Bass, Jr., Director of Supply and Maintenance, Office of the Deputy Chief of Staff for Logistics.
15. Major General Edward B. Atkeson, Commander. US Army Concepts Analysis Agency.
16. Mr. Harold L. Stuart, The Auditor General.
17. Mr. Michael A. Janoski, Deputy Auditor General.
18. Mr. Hunter M. Woodall, RDA Analysis Officer. Office of the Deputy Chief of Staff for Research and Development.
19. Mr Charles N. Davidson, Technical Director US Army Nuclear Agency.
20. Mr James E. Spates, Assistant Director for Laboratory Activities, Office of the Deputy Chief of Staff for Research and Development.
21. Brigadier General Roger J. Price, Director of OMA, Comptroller of the Army.
22. Mr Leroy E. Hoole, Jr., Deputy Director of the Army Budget for Budget Management, Comptroller of the Army.
23. Mr Carroll A. Olson, Deputy Director for Operations and Maintenance, Comptroller of the Army.
24. Major General Clay T. Buckingham, Assistant Chief of Staff for Automation and Communications, Office of the Chief of Staff, Army.
25. Major General Robert L. Kirwan, Commanding General, US Army Operational Test and Evaluation Agency.
26. Major General Vincent M. Russo, Director of Plans, Force Structure, and Systems, Office of the Deputy Chief of Staff for Logistics.

The Members of the Performance Review Board for the US Army Corps of Engineers (COE) are:

1. Major General William R. Wray, Deputy Chief of Engineers.
2. Major General Hugh G. Robinson, Division Engineer, Southwestern Division.
3. Major General E. R. Heiberg, Director of Civil Works, Office, Chief of Engineers.
4. Brigadier General Mark J. Sisinyak, Deputy Director for Facilities Engineering, Directorate of Military Programs, Office, Chief of Engineers.
5. Brigadier General Henry J. Hatch, Division Engineer. Pacific Ocean Division.
6. Ms. Betty J. Farwell, Director of Real Estate, Office, Chief of Engineers.
7. Dr L. R. Shaffer. Technical Director, Construction Engineering Research Lab.
8. Mr Richard C. Armstrong, Chief, Engineering Division, Ohio River Division.
9. Mr Lewis H. Blakey Chief, Planning Division, Directorate of Civil Works, Office, Chief of Engineers.
10. Mr Herbert Howard, Chief, Engineer Division, North Atlantic Division.
11. Mr Rodney H. Resta, Chief, Engineer Division, Lower Mississippi Valley Division.
12. Mr. William N. McCormick, Jr., Chief, Engineer Division, South Atlantic Division.
13. Dr. James Choromokes, Jr., Chief, Research and Development, Office, Chief of Engineers.

14. Mr. Ralph Loschialpo, Chief, Office of Personnel, Office, Chief of Engineers.

15. Mr. Delbert E. Olson, Chief Planning Division, North Pacific Division.

The Members of the Performance Review Board for the US Army Materiel Development and Readiness Command are:

1. Major General William H. Schneider, HQ, US Army Materiel Development and Readiness Command.

2. Major General Stan R. Sheridan, HQ, US Army Materiel Development and Readiness Command.

3. Major General Robert L. Herriford, Sr., HQ US Army Materiel Development and Readiness Command.

4. Major General Henry Doctor, Jr., HQ US Army Materiel Development and Readiness Command.

5. Major General Benjamin F. Register, Jr., HQ US Army Materiel Development and Readiness Command.

6. Brigadier General (P) Arthur H. Holmes, Jr., HQ US Army Materiel Development and Readiness Command.

7. Mr. Robert E. Bean, HQ US Army Materiel Development and Readiness Command.

8. Dr. Richard L. Haley, HQ US Army Materiel Development and Readiness Command.

9. Mr. Burton M. Blair, HQ US Army Materiel Development and Readiness Command.

10. Mr. Thomas J. Keenan, HQ US Army Troop Support and Aviation Materiel Readiness Command.

11. Mr. Donald R. Lathrop, US Army Armament Materiel Readiness Command.

12. Mr. Richard B. Lewis II, U.S. Army Aviation Research and Development Command.

13. Mr. Seymour J. Lorber, HQ U.S. Army Materiel Development and Readiness Command.

14. Dr. William C. McCorkle, Jr., U.S. Army Missile Command.

15. Dr. Herman Robl, U.S. Army Research Office.

16. Mr. Barton J. Toohey, U.S. Army Tank-Automotive Command.

17. Dr. Robert E. Weigle, U.S. Army Armament Research and Development Command.

The Members of the Performance Review Board for the Office of the Surgeon General are:

1. Major General Enrique Mendez, Jr., M.D., Deputy Surgeon General.

2. Brigadier General Robert T. Cutting, M.D., Director of Health Care Operations.

3. Brigadier General Garrison Rapmund, M.D., Commander, U.S. Army Medical Research and Development Command.

4. Dr. F. K. Mostofi, M.D., Chairman, Center for Advanced Pathology, Armed Forces Institute of Pathology.

5. Dr. G. F. Bahr, M.D., Department of Cellular Pathology, Armed Forces Institute of Pathalogy.

6. Dr. W. R. Beisel, M.D., Deputy for Science, Walter Reed Army Institute of Research.

7. Dr. Lorenz E. Zimmerman, M.D., Associate Chairman, Center for Advanced Pathology, Armed Forced Institute of Pathology.

8. Dr. Samuel B. Formal, Ph. D., Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

9. Brigadier General Frank F. Ledford, M.D., Director of Professional Services, Office of the Surgeon General.

10. Dr. L. S. Baron, Ph. D., Chief, Department of Bacterial Immuniology, Walter Reed Army Institute of Research.

11. Dr. B. P. Doctor, Ph. D., Director, Division of Biochemistry, Walter Reed Army Institute of Research.

12. Dr. F. M. Enzinger, M.D., Associate Chairman, Center for Advanced Pathology, Armed Forces Institute of Pathology.

13. Dr. R. F. Goldman, Ph. D., Director, Military Ergonomics Laboratory, U.S. Army Institute of Environmental Medicine.

14. Dr. E. D. Helwig, M.D., Chairman, Department of Skin and Gastrointestinal Pathology, Armed Forces Institute of Pathology.

15. Dr. K. G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.

16. Dr. F. B. Johnson, M.D., Chairman, Department of Chemical Pathology, Chief, Basic Science Division and Histochemistry Branch, Armed Forces Institute of Pathology.

17. Dr. A. D. Mason, Jr., M.D., Chief, Laboratory Division, U.S. Army Institute of Surgical Research.

18. Dr. H. E. Noyes, Ph. D., Associate Director for Research Management, Walter Reed Army Institute of Research.

The Members of the Performance Review Board for the Consolidated Commands are:

1. Major General John S. Crosby, Deputy Chief of Staff for Personnel, U.S. Army Forces Command.

2. Major General John B. Blount, Chief of Staff, U.S. Army Training and Doctrine Command.

3. Dr. Wilbur B. Payne, Director, U.S. Army Training and Doctrine Command, Systems Analysis Activity.

4. Brigadier General Charles H. Edmiston, USAF, Vice Commander, Headquarters Military Traffic Management Command.

5. Mr. Leonard J. Mabius, Technical Director/Chief Engineer, U.S. Army Communications Command.

6. Brigadier General Walter C. Cousland, Deputy Chief of Staff for Personnel, Administration & Logistics, U.S. Army Training and Doctrine Command.

7. Mr. Arthur C. Christman, Scientific Advisor, Office, Deputy Chief of Staff for Combat Development, U.S. Army Training and Doctrine Command.

8. Dr. Marion R. Bryson, Scientific Advisor, Combined Arms Combat Development Activity, U.S. Army Training and Doctrine Command.

9. Major General Charles C. Rogers, Deputy Chief of Staff for Personnel, Headquarters USAREUR/7th Army.

10. Mr. Phillip G. Hillen, Senior Transportation Advisor, Headquarters, Military Traffic Management Command.

11. Brigadier General William G. O'Leksy, Commander 1st PERSCOM and AG, USAREUR.

Carol D. Smith,

Chief, Senior Executive Service Office.

[FR Doc. 81-20501 Filed 7-13-81; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Institute of Pathology Scientific Advisory Board; Open Meeting

In order to comply with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, August 13-14, 1981, 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, D.C. 20306. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathlogy relating to consultation, education and research. The Executive Secretary from whom substative progam information may be obtained is Colonel Orlyn C. Oestereich, Executive Officer, Armed Forces Institute of Pathlology, Washington, D.C. 20306, telephone 202-576-2900.

For the Director.

Robert E. Liebmann,

Major, MSC, USA, Adjutant.

[FR Doc. 81-20535 Filed 7-13-81; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Public Hearing on Applications for Approval of Projects

Notice is hereby given that the Delware River Basin Commission will hold a public hearing on Wednesday, July 22, 1981, commencing at 1:30 p.m. The hearing will be a part of the Commission's regular July business meeting, which is open to the public. Both the hearing and the meeting will be held in the Titian Room of the Holiday Inn, 1800 Market Street, Philadelphia, Pennsylvania. The subject of the hearing will be applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *Borough of Stanhope (D–80–84 CP).* A well water supply project to augment public water supplies in the Borough of Stanhope, Sussex County N.J. The new well is expected to be utilized at an average rate of 165,000 gallons per day.

2. *Village of Wurtsboro (D–81–28 CP).* A well water supply project to augment public water supplies in the Village of Wurtsboro, Sullivan County N.Y. The new well is expected to yield about 580,000 gallons per day.

3. *Southland Corporation (D–80–27).* An industrial waste treatment project at the Corporation's facility in Great Meadows, Warren County, N.J. Carbon treatment facilities will be used to reduce color in an effluent of approximately 350,000 gallons per day. Treated effluent will discharge to a drainage ditch and thence to Pequest River.

4. *J. W. Hughes (D–81–4).* An agricultural irrigation project at Broad Acres Farm in Elk Township, Glouchester County, N.J. Up to 4.9 million gallons per day will be used to irrigate over 600 acres of peaches and apples. The water will be withdrawn from six new wells and 10 existing ponds and three existing wells.

Documents relating to the above-listed projects may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

Dated: July 8, 1981.

W. Brinton Whitall,

Secretary.

[FR Doc. 81–20636 Filed 7–13–81; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 81–CERT–011]

Husky Oil Co.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On August 14, 1980, Husky Oil Company (Husky), 600 South Cherry Street, Denver, Colorado 80222, was granted a certificate of an eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 80–CERT–019). The certification involved the purchase of natural gas from Husky Oil Company and Michigan Consolidated Gas Company for use by Husky at its refinery in Cody, Park County, Wyoming. The ERA certificate expires on August 13, 1981.

On June 22, 1981, Husky filed an application for recertification of an eligible use of natural gas to displace fuel oil at its Cody refinery pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG–13, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Husky states that the volume of natural gas for which it requests recertification is 234,725 Mcf per year. It is estimated that approximately 37,335 barrels of No. 6 fuel oil (3.0 percent sulfur) will be displaced at the Cody refinery per year. The eligible sellers of the natural gas are: Husky Oil Company; Texaco Inc., P.O. Box 2100, Denver, Colorado 80201; and Mobil Oil Corporation, P.O. Box 5444 TA, Denver, Colorado 80217. Husky has not requested recertification of Michigan Consolidated Gas Company as an eligible seller. The gas will be transported by Montana-Dakota Utilities, 400 North Fourth Street, Bismarck, North Dakota 58501; Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944; and Husky Pipeline Company, an intrastate pipeline.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Division of Natural Gas, Room 7108, RG–13, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Lynne H. Church, on or before July 24, 1981.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Husky and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C. on July 7, 1981.

F. Scott Bush,

Acting Director, Office of Program Operations, Economic Regulatory Administration.

[FR Doc. 81–20497 Filed 7–13–81; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 81–CERT–014]

Orange and Rockland Utilities, Inc.; Notice of Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On July 24, 1980, Orange and Rockland Utilities, Inc. (Orange and Rockland), One Blue Hill Plaza, Pearl River, New York 10965, was granted a certificate of an eligible use of natural gas to displace fuel oil for one year effective July 25, 1980, by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 80–CERT–024). The certification involved the purchase of natural gas from East Tennessee Natural Gas Company for use by Orange and Rockland at its Lovett Plant and/or Bowline Point generating facilities located in Rockland County, New York. This certificate expires on July 24, 1981.

On June 27, 1981, Orange and Rockland filed an application for recertification of an eligible use of natural gas to displace fuel oil at its Lovett Plant and/or Bowline Point generating facilities located in Rockland County, New York, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG–13, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30

a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Orange and Rockland states that the volume of natural gas for which it requests recertification is up to about 50,000 Mcf per day. It is estimated that a total of 3.66 million Mcf of natural gas will be used to displace approximately 600,000 barrels of No. 6 fuel oil (0.37 to 0.6 percent sulfur) at the Lovett Plant and/or Bowline Point facilities. The gas is being purchased under an existing contract which continues through October 31, 1982. Orange and Rockland requests recertification for an additional year. The eligible seller of the natural gas is East Tennessee Natural Gas Company, P.O. Box 10245, Knoxville, Tennessee 37919. The gas will be transported by Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., P.O. Box 2511, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Division of Natural Gas, Room 7108, RG-13, 2000 M Street, N.W., Washington D.C. 20461 Attention: Lynne H. Church, on or before July 24, 1981.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary futher notice will be given to Orange and Rockland and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., July 8, 1981.

F. Scott Bush,

Acting Director, Office of Program Operations, Economic Regulatory Administration.

[FR Doc. 81-20496 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-7007-003, et al.]

Cities Service Company, et al.; Renotice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

July 8, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 17, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
G-7007-003 D, Apr 17, 1981	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102	Cities Service Gas Co., Hickok, Kan.	[4]	
CI80-458-001, June 18, 1981	Aminoil USA Inc., 2800 North Loop West, Houston, Tex. 77018	Tennessee Gas Pipeline Co., South Timbalier Block 36 Field, Block 31, Offshore Louisiana.	[5]	15.025

[2] Producer abandonment. Application involving the Release of Limited Volumes of Gas From Contractual Dedication to be Used As an Alternative Fuel to Oil.

[3] On February 11, 1981, Aminoil and Tennessee executed an amendment to the July 1960 base contract to provide that the point of delivery be changed to South Timbalier Area Block 35 "D" platform.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 81-20553 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EC81-12-000]

Cliffs Electric Service Co.; Renotice of Filing

July 8, 1981.

The filing Company submits the following:

Take notice that on May 19, 1981, Cliffs Electric Service Company (Applicant) applied, pursuant to Section 203 of the Federal Power Act, for authority to purchase up to 200,000 additional shares of common stock of Upper Peninsula Generating Company (UPGC), at par value of $10 per share, and up to $5,000,000 in short-term notes and commercial paper to be issued by UPGC.

UPGC is engaged in the generation of electric energy for sale to Applicant and Upper Peninsula Power Company, its

owners. Applicant, a wholly-owned subsidiary of the Cleveland-Cliffs Iron Company, is the owner of record of 5,898,975 shares (approximately 93%) of UPGC's common stock. Applicant proposes to make an additional investment in UPGC for the purpose of financing the construction of the Plains Forsyth Transmission Line and coal handling facilities which will be used for the transmission of electrical energy between the Applicant and Wisconsin Electric Power Company and for the control of coal dust at UPGC's Presque Isle Plant in Marquette, Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 July 13, 1981. 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. 81-20554 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-477-000]

Duke Power Co.; Renotice of Filing

July 8, 1981.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on May 21, 1981 a supplement to the Company's Electric Power Contract with Broad River Electric Cooperative, Inc. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 143.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increases in designated demand: Delivery Point No. 1 from 2,000 KW to 2,200 KW and Delivery Point No. 3 from 3,200 KW to 4,500 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of July 20, 1981.

According to Duke Power copies of this filing were mailed to Broad River Electric Cooperative, Inc., and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 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 July 17, 1981. 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. 81-20555 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-480-000]

Niagara Mohawk Power Corp.; Renotice of Proposed Tariff Change

July 8, 1981.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on May 22, 1981 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation dated December 17, 1980.

The agreement provides for the transmission through Niagara's system of pumping and generating energy between Central Hudson Gas and Electric Corporation (Central Hudson) and the Power Authority of the State of New York's (PASNY) pump-generating station at Niagara Falls and at Gilboa.

Copies of the following were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602

Public Service Commission, State of New York, Rockefeller Plaza, Albany, NY 12223

Any persons desiring to be heard or to protest said application should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with paragraphs 1.8 and 1.10 of the Commission's Rules of Practices and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 17, 1981. 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 proceedings. 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. 81-20556 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-476-000]

Public Service Company of New Mexico; Renotice of Filing

July 8, 1981.

The filing Company submits the following:

Take notice that the Public Service Company of New Mexico (PNM) on May 21, 1981, tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Division of Colorado River Resources (DCRR). PNM states that this Letter Agreement provides for the sale of surplus energy between PNM and DCRR.

PNM indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $658,800.00 based on energy delivered from May 1, 1981 through September 30, 1981. PNM states that the rate for surplus energy under this Letter Agreement was negotiated.

An effective date of May 1, 1981, is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 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 July 17, 1981. 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. 81-20857 Filed 7-13-81; 8:45 am]

BILLING CODE 6450-85-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 9, 1981.

JD NO	JA DAT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED: 06/15/81 JA: NM					
8136915		3002527211		103		LANSFORD NO 1	HARE SAN ANDRES (GAS)	110.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED: 06/18/81 JA: NM					
8137031		3001523437		103		LANCASTER SPRINGS COM #1	UND HAPPY VALLEY MORROW	1400.0	EL PASO NATURAL G
-CITIES SERVICE COMPANY				RECEIVED: 06/18/81 JA: NM					
8137027		3001523458		102-3		BRANTLEY A NO 1	UND N LOVING MORROW	3650.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED: 06/15/81 JA: NM					
8136917		3002500000		108		STATE F-1 #1	ARROWHEAD E-M-E	10.8	EL PASO NATURAL G
8136916		3002500000		108		WANTZ #10	NOLAN-WANTZ-STATE 10	4.8	GETTY OIL CO
-E L LATHAM JR & ROY G BARTON JR				RECEIVED: 06/15/81 JA: NM					
8136920		3001570379		102-2		EDDY STATE COM NO 1	HAPPY VALLEY MORROW	548.0	EL PASO NATURAL G
-EL PASO EXPLORATION CO				RECEIVED: 06/15/81 JA: NM					
8136924		3001523441		103		BIRD COM #1	UNDESIGNATED ATOKA	500.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED: 06/15/81 JA: NM					
8136921		3004524615		103		GALLEGOS CANYON UNIT P C #323	KUTZ WEST PICTURED CLIFF	27.0	EL PASO NATURAL G
-ENSERCH EXPLORATION INC				RECEIVED: 06/15/81 JA: NM					
8136923		3004120555		103		AMOCO STATE NO 3	PETERSON N	7.0	TRANSWESTERN PIPE
8136922		3004120556		103		FINLEY NO 1	PETERSON N	77.0	
-ENSERCH EXPLORATION INC				RECEIVED: 06/18/81 JA: NM					
8137033		3004120571		103		RADCLIFF NO 1	PETERSON N	7.0	
-GIFFORD MITCHELL & WISENBAKER				RECEIVED: 06/18/81 JA: NM					
8137028		3002500000		103		AMERICAN EAGLE WELL NO 1	COMANCHE STATELINE TANSI	22.0	EL PASO NATURAL G
-MORRIS R ANTWEIL				RECEIVED: 06/15/81 JA: NM					
8136918		3002527111		103		NADINE #1	UNDESIGNATED DRINKARD	0.0	WARREN PETROLEUM
-NORTHWEST PIPELINE CORPORATION				RECEIVED: 06/15/81 JA: NM					
8136919		3003900000		108		ROSA UNIT 24	BLANCO MESAVERDE	25.0	EL PASO NATURAL G
-PETROLEUM CORPORATION OF TEXAS				RECEIVED: 06/18/81 JA: NM					
8137034		3002500000		108		TEXAS STATE WELL NO 2 B-165	JALPAT YATES SEVEN RIVER	24.0	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 06/18/81 JA: NM					
8137030		3002526929		103		E VACUUM GB/SA UNIT TR 0524 #2	VACUUM GB/SA	19.0	EL PASO NATURAL G
8137032		3002526776		103		E VACUUM GB/SA UNIT TR 2720 #7	VACUUM GB/SA	3.0	EL PASO NATURAL G
-READ & STEVENS INC				RECEIVED: 06/18/81 JA: NM					
8137029		3001523485		103		GULF WEST MESA NO 1	UNDES BUNKER HILL (PENRO	1.0	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO				RECEIVED: 06/18/81 JA: NM					
8137026		3002527109		103		SMITH 5 #1		13.0	WARREN PETROLEUM
-TENNECO OIL COMPANY				RECEIVED: 06/15/81 JA: NM					
8136925		3004523608		103		JACQUEZ #3	BASIN DAKOTA	500.0	EL PASO NATURAL G
8136926		3004523608		103		JACQUEZ #3	BLANCO PICTURED CLIFFS	500.0	EL PASO NATURAL G
8136927		3004522707		108		STATE #36-2	BASIN DAKOTA	4.0	NORTHWEST PIPELIN
OKLAHOMA CORPORATION COMMISSION									
-AN-SON CORPORATION				RECEIVED: 06/12/81 JA: OK					

JC NO	JA DAT	API NO	D SEC CAT WELL NAME	
*8136884	9255	3503902053	102-4 MEACHUM #1	
-AN-SON CORPORATION			RECEIVED: 06/15/81	JA: OK
8136913	09295	3503920380	102-4 MURPHY # 1-18	
-ANDOVER OIL COMPANY			RECEIVED: 06/15/81	JA: OK
8136903	09317	3501721412	102-2 MATTHIES #31-1	
-ANGRIM OIL CO INC			RECEIVED: 06/15/81	JA: OK
8136910	09308	3508120985	103 HOWLING DOG #1	
-APOLLO PRODUCTION LTD			RECEIVED: 06/15/81	JA: OK
8136894	09335	3507322652	103 LEMKE NO 25-4	
-BEASLEY OIL CO			RECEIVED: 06/12/81	JA: OK
8136887	09374	3504721677	102-4 ZALOUDEK #1-8	
-BERRY PETROLEUM CORP			RECEIVED: 06/12/81	JA: OK
8136877	08830	3507322498	103 WAHLING #26-1	
-CITIES SERVICE COMPANY			RECEIVED: 06/12/81	JA: OK
8136879	09278	3500700000	108 MILES L#1	
8136880	09277	3500721255	108 SHADDEN O #2	
-CITIES SERVICE COMPANY			RECEIVED: 06/15/81	JA: OK
8136911	09314	3504520854	103 HIXON A #1	
-CLARK RESOURCES INC			RECEIVED: 06/15/81	JA: OK
8136898	09272	3507322789	103 EMIL 4-1	
8136901	09273	3507322938	103 HORN 5-1	
-CLIFFORD RESOURCES INC			RECEIVED: 06/12/81	JA: OK
8136873	09247	3509300000	103 CARLSON 1-27	
-CROUCH PETROLEUM COMPANY			RECEIVED: 06/15/81	JA: OK
8136895	09283	3502520359	103 CRONE 2-28	
-EDWIN L COX			RECEIVED: 06/15/81	JA: OK
8136896	08814	3509321994	103 BEALL NO 2	
-EL PASO NATURAL GAS COMPANY			RECEIVED: 06/12/81	JA: OK
8136885	12146	3500920386	107-DP KENT #1	
-ENERGY SERVICES INC			RECEIVED: 06/15/81	JA: OK
8136914	09302	3501721458	102-2 GARY #7-1	
-F C D OIL CORP			RECEIVED: 06/12/81	JA: OK
8136875	9098	3504722339	103 DOYLE 1-16	
-GRACE PETROLEUM CORPORATION			RECEIVED: 06/12/81	JA: OK
8136891	09173	3512920515	102-4 TRACY 2-32	
-HADSON OHIO OIL COMPANY			RECEIVED: 06/12/81	JA: OK
8136888	09375	3506120377	102-2 SEABOLT 1-22	
-HADSON PETROLEUM CORP			RECEIVED: 06/12/81	JA: OK
8136882	12147	3503120588	107-DP LIVINGSTON 1-7	
-HAMILTON BROTHERS OIL CO			RECEIVED: 06/15/81	JA: OK
8136899	09285	3504520841	102-2 PARKER NO 1-14	
-INEXCO OIL COMPANY			RECEIVED: 06/15/81	JA: OK
8136897	08574	3512920503	102-4 DEAN NO 1-19	
-JIM L HANNA DBA HANNA OIL AND GAS C			RECEIVED: 06/15/81	JA: OK
8136905	09334	3509321917	103 E BROOMFIELD #1	
-JIMMY W GRAY			RECEIVED: 06/12/81	JA: OK
8136876	08952	3504921428	103 LITTLE BIT NO 1	
-KERR-MCGEE CORPORATION			RECEIVED: 06/12/81	JA: OK
8136881	09291	3512120752	102-2 PIERCE A WELL NO 1-22	
8136872	09289	3512120744	103 SARKEYS WELL NO 2	
-L G WILLIAMS OIL COMPANY INC			RECEIVED: 06/15/81	JA: OK
8136904	07324	3501721504	102-2 EVANS #1-1	
-PACIFIC OIL & GAS CO			RECEIVED: 06/15/81	JA: OK

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FIELD NAME	PROD	PURCHASER
EAST CLINTON	1387.0	PRODUCERS GAS CO
S W WEATHERFORD	2738.0	PRODUCERS GAS CO
	185.0	DELHI GAS PIPELIN
SOUTHWEST PRAIRIE GEM	60.0	SUN GAS CO
N E OKARCHE	72.0	SID RICHARDSON CA
NORTH ENID	150.0	ARKANSAS LOUISIAN
SOONER TREND	0.0	CITIES SERVICE GA
MOCANE	11.3	COLORADO INTERSTA
MOCANE	2.4	COLORADO INTERSTA
S E HARMON	273.0	PANHANDLE EASTERN
SOONER TREND	200.0	PANHANDLE EASTERN
SOONER TREND	200.0	PANHANDLE EASTERN
MEAC	75.0	PANHANDLE EASTERN
GRIGGS	360.0	WESTERN GAS INTER
CHEYENNE VALLEY	180.0	DELHI GAS PIPELIN
BERLIN EAST ATOKA	240.0	EL PASO NATURAL G
NORTH YUKON	138.4	DELHI GAS PIPELIN
KREMLIN	109.5	CRA INC
WEST CHEYENNE	0.0	EL PASO NATURAL G
KINTA	100.0	
EAST APACHE	1280.0	EL PASO NATURAL G
WILDCAT	292.0	UNITED GAS PIPE L
HAMMON	250.0	
	275.0	PHILLIPS PETROLEU
FLORENCE CHAPEL SOUTHWES	0.0	WARREN PETROLEUM
CANADIAN	0.0	
N W FEATHERSTONE	380.0	SOUTHEAST TRANSMI
NORTH RICHLAND	0.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8136893	08356	3515321047		103		ORR #1	N BOILING SPRINGS	0.0	NORTHERN NATURAL
-PCX CORP				RECEIVED: 06/15/81 JA: OK					
8136902	09303	3505120845		103		CUNNINGHAM #2	POCASSET	1000.0	CITIES SERVICE GA
8136907	09305	3515121023		102-2		LITTLE SAHARA #1	WAYNOKA SE	180.0	
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 06/12/81 JA: OK					
8136874	09284	3513900000		108		HERMIT #1	GUYMON HUGOTON	0.0	MICHIGAN WISCONSI
8136889	09329	3513900000		108		STOOKEY #1	GUYMON HUGOTON	0.0	PANHANDLE EASTERN
-PORTS OF CALL OIL CO				RECEIVED: 06/12/81 JA: OK					
8136878	8009	3501721671		103		SWINGLE #16-1	UNION CITY	0.0	DELHI GAS PIPELIN
-PORTS OF CALL OIL CO				RECEIVED: 06/15/81 JA: OK					
8136900	09300	3501721847		102-2		GAMBEL 3-1	NORTH MUSTANG	128.0	PHILLIPS PETROLEU
8136900	09300	3501721847		103		GAMBEL 3-1	NORTH MUSTANG	128.0	PHILLIPS PETROLEU
-POST OAK OIL CO				RECEIVED: 06/15/81 JA: OK					
8136909	05046	3510900000		102-2		KTVY #1-26	LONE STAR	0.0	CHAMPLIN PETROLEU
-SULLIVAN AND CO				RECEIVED: 06/12/81 JA: OK					
8136886	09333	3508121176		103		P MCNULTY NO 2	SOUTHWEST PRAIRIE GEM	4.0	
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 06/12/81 JA: OK					
8136883	09065	3508520362		103		COX #1	N MARIETTA	182.0	
8136871	09066	3501922020		103		HURLEY #6	JOINER CITY	36.5	AMINOIL USA INC
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 06/15/81 JA: OK					
8136906	09319	3505120981		102-2		UMBACH NO 1		170.0	ARKANSAS LOUISIAN
-TENNECO OIL COMPANY				RECEIVED: 06/12/81 JA: OK					
8136890	09313	3508320827		108		C N SMITH 3-32	CRESCENT-LOVELL	15.0	EASON OIL CO
-THE GHK COMPANY				RECEIVED: 06/15/81 JA: OK					
8136908	08693	3500920252		102-4		2-21 WATKINS	CARPENTER FIELD	91.0	ARKANSAS LOUISIAN
-TRANSIERRA EXPLORATION CORP				RECEIVED: 06/15/81 JA: OK					
8136892	09199	3510321123		103		DONOVAN YOST NO 1-15	S E BILLINGS	40.0	ARCO OIL & GAS CO
8136912	09321	3510321077		103		MYRNA STOOPS NO 3	TRANSIERRA-CINNAMON FIEL	25.0	AMINOIL USA INC
**********									
** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM									
**********									
-AMOCO PRODUCTION CO				RECEIVED: 06/17/81 JA: NM 4					
8136985	NM-0503-81	3002526829		103		FEDERAL AB #1	SOUTH CORBIN WOLFCAMP	183.2	CONTINENTAL OIL C
8136986	NM 0511-81	3004524556		103		GALLEGOS CANYON COM G #179E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8136930	NM-1068-80	3003921475		108		VALENCIA CANYON UNIT NO 15	CHOZA MESA - PICTURED CL	21.0	EL PASO NATURAL G
-APOLLO OIL COMPANY				RECEIVED: 06/17/81 JA: NM 4					
8136934	NM-3958-79	3002511591		108-ER		FEDERAL B #1	LANGLIE MATTIX	40.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED: 06/17/81 JA: NM 4					
8136940	NM 0306-81	3002526967		103		HAWK A NO 8	NMFU - DRINKARD	1.8	GETTY OIL CO
8136982	NM-0499-81	3002526601		103		HAWK B-1 NO 16	NEW MEXICO FEDERAL UNIT	59.0	GETTY OIL CO
8136941	NM-0350-81	3003922320		103		NORTHEAST HAYNES #1E	AXI APACHE AREA	314.0	EL PASO NATURAL G
8136942	NM-0351-81	3003922321		103		NORTHWEST HAYNES #2E	AXI APACHE AREA	727.0	EL PASO NATURAL G
8136979	NM-0492-81	3002526843		103		WARREN UNIT NO 82	NMFU - BLINEBRY OIL & GA	63.0	GETTY OIL CO
8136980	NM-0492-81-P	3002526843		103		WARREN UNIT NO 82	NMFU - ABO	4.0	GETTY OIL CO
-CONSOLIDATED OIL & GAS INC				RECEIVED: 06/17/81 JA: NM 4					
8136966	NM 0470-81	3004524386		103		JACKSON 2-E	BASIN DAKOTA	0.0	SOUTHERN UNION GA
-CURTIS J LITTLE				RECEIVED: 06/17/81 JA: NM 4					
8136961	NM-0464-81	3004524647		103		FEDERAL COM #2-E	BASIN DAKOTA	36.0	EL PASO NATURAL G
-DOME PETROLEUM CORP				RECEIVED: 06/17/81 JA: NM 4					
8136950	NM 0453-81	3004320475		102-2		DOME NAVAJO 27-22-6 #1	RUSTY CHACRA EXTENSION	249.7	SOUTHWEST GAS COR
8136953	NM 0456-81	3004320476		102-2		DOME NAVAJO 28-22-6 #4	RUSTY CHACRA EXTENSION	521.6	SOUTHWEST GAS COR
8136951	NM-0454-81	3004320485		102-2		DOME NAVAJO 28-22-7 #2	RUSTY CHACRA EXTENSION	8.8	SOUTHWEST GAS COR
8136952	NM-0455-81	3004320478		102-2		DOME NAVAJO 34-22-6 #1	RUSTY CHACRA EXTENSION	409.9	SOUTHWEST GAS COR

JA NO	JA TXT	API NO	C	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-DOYLE HARTMAN OIL OPERATOR				RECEIVED: 06/17/81 JA: NM 4					
8136963	NM-0466-81	3002526563		108		SANTA FE FEDERAL NO 1	JALMAT	11.6	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED: 06/17/81 JA: NM 4					
8136928	NM-0005-80(ER	3004522265		108-ER		RACHEL #2	WAW FRUITLAND PC	14.0	EL PASO NATURAL G
8136994	NM 0526-81	3004522285		108		RACHEL #2	WAW FRUITLAND-PICTURED C	14.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED: 06/17/81 JA: NM 4					
*8136931	NM-1378-80	3003920226		108		KLEIN A #3	OTERO-CHACRA	22.0	EL PASO NATURAL G
8136949	NM-0431-81	3003905405		108		LINDRITH UNIT X #17	SOUTH BLANCO - PICTURED	28.0	EL PASO NATURAL G
8136932	NM-1386-80	3004507542		108		RIDDLE G #1	BLANCO-MESAVERDE	21.0	EL PASO NATURAL G
8136968	NM 473-81	3003960054		108		RINCON UNIT #97 MV & PC	BLANCO - MESAVERDE AND S	19.0	EL PASO NATURAL G
8136976	NM 0487-81 A	3003922229		103		SAN JUAN 28-5 UNIT #29A	BLANCO MESAVERDE	220.0	EL PASO NATURAL G
8136977	NM 0487-81 B	3003922229		103		SAN JUAN 28-5 UNIT #29A	UNDESIGNATED PICTURED CL	35.0	EL PASO NATURAL G
8136974	NM 0486-81(A	3003922233		103		SAN JUAN 28-5 UNIT #38A	BLANCO MESAVERDE	220.0	EL PASO NATURAL G
8136975	NM 0486-81(B	3003922233		103		SAN JUAN 28-5 UNIT #38A	TAPACITO PICTURED CLIFFS	18.0	EL PASO NATURAL G
*8136938	NM-0260-81	3003921664		108		SAN JUAN 28-7 UNIT #100	BASIN DAKOTA	17.0	EL PASO NATURAL G
8136967	NM 0472-81	3003907206		108		SJ 27-4 UNIT #19 PC & MV	TAPACITO - PICTURED CLIF	18.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED: 06/17/81 JA: NM 4					
8136989	NM-0514-81	3004524751		103		O H RANDEL #6-E	BASIN DAKOTA	36.0	EL PASO NATURAL G
8136990	NM 0515-81	3004524750		103		O H RANDEL #7-E	BASIN DAKOTA	59.4	EL PASO NATURAL G
-FRED POOL DRILLING CO				RECEIVED: 06/17/81 JA: NM 4					
8136981	NM 0497-81	3000560702		102-2		GRYNBERG COMM FEDERAL #1	WILDCAT UND ABO	0.0	TRANSWESTERN PIPE
-GETTY OIL COMPANY				RECEIVED: 06/17/81 JA: NM 4					
8136996	NM-0529-81	3004524849		103		CARTER COM WELL NO 1E	BASIN DAKOTA FIELD	90.0	EL PASO NATURAL G
8136947	NM 04308I(A)	3003922513		103		JICARILLA B WELL NO 20E	BASIN DAKOTA FIELD	91.0	EL PASO NATURAL G
8136948	NM 04308I(E)	3003922513		103		JICARILLA B WELL NO 20E	OTERO GALLUP	33.0	EL PASO NATURAL G
-GRACE PETROLEUM CORPORATION				RECEIVED: 06/17/81 JA: NM 4					
8136939	NM 0304-81	3002526942		103		WEST TONTO FEDERAL COMM NO 1	WEST TONTO	0.0	GAS CO OF NEW MEX
-GULF OIL CORPORATION				RECEIVED: 06/17/81 JA: NM 4					
8136973	NM-0484-81	3001523505		103		CALLAWAY FEDERAL WELL NO 3	UNDESIGNATED DIAMOND MOU	0.0	EL PASO NATURAL G
8136988	NM-0513-81	3004524239		103		DOUTHIT A FEDERAL WELL NO 4	BASIN DAKOTA	0.0	EL PASO NATURAL G
8136983	NM-0501-81	3001523432		103		LAKE MCMILLAN FEDERAL UNIT #1	UNDESIGNATED WOLFCAMP	0.0	EL PASO NATURAL G
-HNG OIL COMPANY				RECEIVED: 06/17/81 JA: NM 4					
8136969	NM048081102	3002526815		102-2		WILSON 17 FED #2 NM 18644	SIOUX TANSILL	6.0	EL PASO NATURAL G
8136970	NM048081103	3002526815		103		WILSON 17 FED #2 NM 18644	SIOUX TANSILL	6.0	EL PASO NATURAL G
8136971	NM048381102	3002526816		102-2		WILSON 17 FED #3 NM 18644	SIOUX TANSILL	4.5	EL PASO NATURAL G
8136972	NM048381103	3002526816		103		WILSON 17 FED #3 NM 18644	SIOUX TANSILL	4.5	EL PASO NATURAL G
8136936	NM001881103	3002526252		103		WILSON 8 FEDERAL #6	SIOUX TANSILL YATES	19.6	EL PASO NATURAL G
8136937	NM002281103	3002526717		102-2		WILSON 9 FEDERAL #6	SIOUX TANSILL YATES	14.6	EL PASO NATURAL G
-LIVELY EXPLORATION COMPANY				RECEIVED: 06/17/81 JA: NM 4					
8136965	NM 0469-81	3004523974		103		LIVELY 3-E	BASIN DAKOTA	111.0	EL PASO NATURAL G
-MESA PETROLEUM				RECEIVED: 06/17/81 JA: NM 4					
8136958	NM 0461-81	3000560791		102-2		BEDFORD FEDERAL COM #1	UNDESIGNATED ABO	382.0	TRANSWESTERN PIPE
8136992	NM-0521-81	3000560859		102-2		CAMACK FEDERAL #1	UNDESIGNATED ABO	97.0	TRANSWESTERN PIPE
8136955	NM-0458-81	3000560831		102-2		CAMACK FEDERAL #3	UNDESIGNATED ABO	495.0	TRANSWESTERN PIPE
8136956	NM 0459-81	3000560827		102-2		COYOTE FEDERAL #3	UNDESIGNATED ABO	214.0	TRANSWESTERN PIPE
8136957	NM 0460-81	3000560818		102-2		COYOTE FEDERAL #4	UNDESIGNATED ABO	309.0	TRANSWESTERN PIPE
8137000	NM-0549-81	3004507819		108		FEDERAL NO 1	AZTEC PICTURED CLIFF	19.0	EL PASO NATURAL G
8136984	NM 0502-81	3000560864		102-2		GARCIA FEDERAL #1	UNDESIGNATED ABO	88.5	TRANSWESTERN PIPE
8136954	NM-0457-81	3000560769		102-2		HUGGINS FEDERAL #1	UNDESIGNATED ABO	290.0	TRANSWESTERN PIPE
8136991	NM-0520-81	3000560772		102-2		SALT FEDERAL #1	UNDESIGNATED ABO	181.0	TRANSWESTERN PIPE
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 06/17/81 JA: NM 4					
8136978	NM-0488-81	3003906540		108		JICARILLA H NO 10	GAVILAN PICTURED CLIFFS	15.9	NORTHWEST PIPELIN
-MOBIL PRODUCING TEXAS & NEW MEXICO				RECEIVED: 06/17/81 JA: NM 4					

JD NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8137002	NM 0565-81	3003906492		108		JICARILLA D NO 2	BLANCO MESAVERDE/GAVILAN	18.3	NORTHWEST PIPELIN
8137003	NM-0570-81	3003920169		108		JICARILLA G NO 9	GAVILAN PICTURED CLIFFS	16.9	NORTHWEST PIPELIN
8136999	NM-0532-81	3003922554		103		LINDRITH B UNIT #14	CHACON DAKOTA ASSOCIATED	117.5	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION		RECEIVED: 06/17/81 JA: NM 4							
8136933	NM 1832-80	3003908059		108		SAN JUAN 29-6 #78	BASIN DAKOTA	21.0	NORTHWEST PIPELIN
8136929	NM-0598-80	3003921289		108		SAN JUAN 32-7 #32	BLANCO MESAVERDE	23.0	EL PASO NATURAL G
-SAMEDAN OIL CORPORATION		RECEIVED: 06/17/81 JA: NM 4							
8136962	NM0465-81	3002527258		103		HUGHES B-6 NO 11	LANGLIE - MATTIX	200.0	WARREN PETROLEUM
-SHELL OIL CO		RECEIVED: 06/17/81 JA: NM 4							
8136959	NM0462-81	3004523945		103		CARSON UNIT 202	BISTI	30.0	EL PASO NATURAL G
8136960	NM 0463-81	3004523946		103		CARSON UNIT 203	BISTI	1.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO		RECEIVED: 06/17/81 JA: NM 4							
8136943	NM-0356-81	3004524447		103		FEDERAL PRI #1E	BASIN	56.0	EL PASO NATURAL G
8136935	NM 74-79	3004510582		108-ER		GRENIER #7	AZTEC PICTURED CLIFFS	4.0	SOUTHERN UNION GA
8136944	NM 0428-81	3004524657		103		HILL #6	BLANCO	250.0	SOUTHERN UNION GA
8136987	NM-0512-81	3004520451		103		HUBER #1	SOUTH BLANCO	95.0	EL PASO NATURAL G
8136945	NM 042981(A)	3004524457		103		REID A #1M	BLANCO	250.0	SOUTHERN UNION GA
8136946	NM 042981(B)	3004524497		103		REID A #1M	BASIN	175.0	SOUTHERN UNION GA
-SUPRON ENERGY CORPORATION		RECEIVED: 06/17/81 JA: NM 4							
8137001	NM-0554-81	3004524360		103		ANGEL PEAK B 26-E	BASIN DAKOTA	357.0	EL PASO NATURAL G
8136995	NM 0527-81	3004523637		103		STARR 4	BLANCO MESAVERDE	463.0	GAS CO OF NEW MEX
-TENNECO OIL COMPANY		RECEIVED: 06/17/81 JA: NM 4							
8136964	NM 0467-81	3004524594		103		SCHWERDTFEGER A #6E	BASIN DAKOTA	290.0	NORTHWEST PIPELIN
-WOLFSON OIL CO		RECEIVED: 06/17/81 JA: NM 4							
8136998	NM 0531-81	3004120489		103		MOUNTAIN FEDERAL NO 4	TOMAHAWK SAN ANDRES	5.0	CITIES SERVICE CO
8136997	NM 0530-81	3004120507		103		MOUNTAIN FEDERAL NO 6	TOMAHAWK SAN ANDRES	5.0	CITIES SERVICE CO
-SUPERIOR OIL CO		RECEIVED: 06/17/81 JA: UT 4							
8136993	NM 0522-81	4303730505		103		MCELMO CREEK UNIT P-20	GREATER ANETH	0.0	EL PASO NATURAL G
**********									
** U.S. GEOLOGICAL SURVEY - CASPER,WY									
**********									
-MIDLANDS GAS CORPORATION		RECEIVED: 06/17/81 JA: MT 5							
*8137018	M 717-0	2507121220		108		0432 FEDERAL 1	BOWDOIN	22.0	KANSAS-NEBRASKA N
*8137010	M-636-0	2507121168		108		1312 MIAMI FEDERAL 554-13	WILDCAT	22.0	KANSAS-NEBRASKA N
*8137022	M19-1	2507121136		108		1521 FEDERAL 1	WILDCAT	22.0	KANSAS-NEBRASKA N
*8137005	M 438-0	2507121329		108		1832 FEDERAL 183332-1	BOWDOIN	21.0	KANSAS-NEBRASKA N
*8137016	M 711-0	2507121469		108		1842 183432	BOWDOIN	22.0	KANSAS-NEBRASKA N
*8137017	M 713-0	2507121501		108		2532 FEDERAL 1	BOWDOIN	22.0	KANSAS-NEBRASKA N
-SHELL OIL CO		RECEIVED: 06/17/81 JA: MT 5							
8137020	M 733-0	2508321358		102-4		USA 21-30	MONDAK WEST	2.5	MONTANA DAKOTA UT
-FARMERS UNION CENTRAL EXCHANGE INC		RECEIVED: 06/17/81 JA: ND 5							
8137009	ND 598-0	3300700167		102-4		FEDERAL 16-31	ELKHORN RANCH	20.0	KOCH HYDROCARBON
8137007	ND 595-0	3300700169		102-4		FEDERAL 7-5	ELKHORN RANCH	20.0	KOCH HYDROCARBON
8137008	ND594-0	3300700173		102-4		FEDERAL 7-6	ELKHORN RANCH	3.0	KOCH HYDROCARBON
-SHELL OIL CO		RECEIVED: 06/17/81 JA: ND 5							
8137019	NM 727-0	3305301082		102-4		USA 12-31-97	SQUAW GAP	16.0	MONTANA DAKOTA UT
-AMOCO PRODUCTION CO		RECEIVED: 06/17/81 JA: WY 5							
8137024	W114-1	4900720500		102-2		CRESTON III UNIT NO 8A	CRESTON	113.0	CITIES SERVICE GA
8137025	W115-1-T	4900720500		107-TF		CRESTON III UNIT NO 8A	CRESTON	113.0	CITIES SERVICE GA
-CHAMPLIN PETROLEUM COMPANY		RECEIVED: 06/17/81 JA: WY 5							
8137006	W 474-E	4903720642		102-4		PRACY DEEP UNIT WELL #26N	BRADY FIELD	750.0	MOUNTAIN FUEL SUP
-CHINOOK RESOURCES INC		RECEIVED: 06/17/81 JA: WY 5							
8137012	W 656-0	4900921652		102-4		ANNE D OWEN FEDERAL 21-9	SCOTT FIELD	20.0	CHINOOK CONSTRUCT

JD NO	JA KT	API NO	C SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8137013	W 657-0	4900921731	102-4	DAUGAARD FEDERAL #1	SCOTT FIELD	6.0	CHINOOK CONSTRUCT
8137015	W 660-0	4900921588	102-4	J E T FEDERAL 2-29	SCOTT FIELD	5.0	CHINOOK CONSTRUCT
8137011	W655-0	4900921648	102-4	MAGGIE FEDERAL 23-15	SCOTT FIELD	0.0	CHINOOK CONSTRUCT
8137014	W 658-0	4900921685	102-4	W N G FEDERAL 41-9	SCOTT FIELD	18.0	CHINOOK CONSTRUCT
-GREAT WESTERN OIL CO				RECEIVED: 06/17/81 JA: WY 5			
8137004	W 274-0	4900920995	102-4	SCHIECK FEDERAL #2	SHAWNEE	237.0	KANSAS-NEBRASKA N
-KIMBARK OPERATING CO				RECEIVED: 06/17/81 JA: WY 5			
8137023	W73-1	4901320957	103	FEDERAL SCHNEBLY #2	JADE RIDGE	120.0	NORTHERN GAS CO
-MARATHON OIL COMPANY				RECEIVED: 06/17/81 JA: WY 5			
8137021	W 20-1T	4903721506	107-TF	TIERNEY II UNIT #6-32	TIERNEY II UNIT #6-32	365.0	

OTHER PURCHASERS VOLUME NO :467

8136884	SOUTHERN NATURAL GAS CO
8136931	NORTHWEST PIPELINE CORPORATION
8136938	NORTHWEST PIPELINE CORPORATION
8137005	MONTANA-DAKOTA UTILITIES COMPANY
8137010	MONTANA-DAKOTA UTILITIES COMPANY
8137016	MONTANA-DAKOTA UTILITIES COMPANY
8137017	MONTANA-DAKOTA UTILITIES COMPANY
8137018	MONTANA-DAKOTA UTILITIES COMPANY
8137022	MONTANA-DAKOTA UTILITIES COMPANY

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 81–20558 Filed 7–13–81: 8:45 am]

BILLING CODE 6450–85–M

ENVIRONMENTAL PROTECTION AGENCY

[EN–FRL 1859–2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Summary of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Waiver of Federal preemption.

SUMMARY: This decision grants California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act (Act) to enforce amendments in its exhaust emission standards and test procedures for new motor vehicles. California's amendments: (1) adopt as its own State standards and test procedures, the Federal particulate standards and test procedures for 1982 and subsequent model year light-duty diesel vehicles, (2) amend its 1982 model year 100,000-mile optional oxides of nitrogen (NO_x) standard, and (3) eliminate, for 1982 and subsequent model years, the hydrocarbon (HC) exhaust emission allowance granted to vehicles with low evaporative emissions. EPA cannot make the findings necessary to deny this waiver request; thus, this action will permit California to enforce these amendments to its motor vehicle pollution control program.

ADDRESSES: The complete decision document and other information relevant to this decision is available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at: U.S. Environmental Protection Agency, Central Docket Section (A–120), Gallery I, Waterside Mall, 401 M St., S.W., Washington, D.C. 20460 (Docket EN–80–23). Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, California 95812. Interested parties may also obtain copies of the decision document from the Manufacturers Operations Division by contacting Michael Chernekoff, as noted below.

FOR FURTHER INFORMATION CONTACT: Michael Chernekoff, Attorney/Advisor, Manufacturers Operations Division, (EN–340), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 472–9421.

SUPPLEMENTARY INFORMATION: EPA has decided to grant California a waiver of Federal preemption, pursuant to section 209(b) of the Clean Air Act, as amended (hereinafter "Act"),[1] for amendments to California's exhaust emission standards and test procedures. Specifically, California's amendments (1) adopt as its own State standards and test procedures, the Federal particulate exhaust emission standards and test procedures for 1982 and subsequent model year light-duty diesel vehicles, (2) amend the 1982 model year 100,000-mile optional NO_x exhaust emission standards from 1.0 grams per vehicle mile (g/mi) to 1.5 g/mi, the 1981 model year standard, and (3) amend the hydrocarbon (HC) exhaust emission standards and test procedures applicable to 1982 and subsequent model year passenger cars by eliminating the HC exhaust emission allowance granted to vehicles with low evaporative emissions.

Section 209(b) of the Act provides that if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California's proposed amendments are technologically feasible within available lead time, considering costs, and whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as their Federal counterparts. In order for EPA to deny the waiver, opponents bear the burden of providing EPA with sufficient information to convince EPA to make a negative determination on any of the criteria.

No manufacturer provided information indicating that CARB's amended standards were not technologically feasible within available lead time, considering costs. In fact, California adopted its amendments, in part, as a response to light-duty diesel vehicle manufacturers' concerns regarding the possible inability of their vehicles sold in California to meet the 1982 model year California NO_x standard, and the Federal light-duty diesel particulate standard.

Additionally, no party presented evidence that CARB arbitrarily and capriciously determined that its amended standards are, in the aggregate, at least as protective of public health and welfare as comparable Federal standards. CARB's determination in this case is consistent with previous determinations it has made regarding the relative stringency of its standards.

A full explanation of my decision to grant this waiver request is contained in the decision document which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers located outside the State which must comply with California's standards in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this decision is of nationwide scope and effect.

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981), requires EPA to initially determine whether a "rule" that it intends to propose or issue is a major rule and to prepare Regulatory Impact Analyses for all major rules. Section 1(b) of the Order defines "major rule" as any regulation

[1] 42 U.S.C. 7543(b) (1977).

(as defined in the Executive Order) that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this action is not a major rule. Based on the preceding discussion, EPA has concluded that the likely effect of this waiver determination will be cost savings to the consumers and industries involved, and will likely improve competition (foreign and domestic), employment, investment, productivity and innovation, since without this waiver some manufacturers may not be able to market diesel engine vehicles in California.

Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

This action is not a "rule" as defined in 5 U.S.C. 601(2) because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedures Act, or other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: July 2, 1981.

John W. Hernandez,

Acting Administrator.

[FR Doc. 81-20482 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-33-M

[EN-5-FRL-1880-2]

B.F. Goodrich Co.; B.F. Goodrich Research Center, Brecksville, Ohio; Applicability of National Emission Standards for Hazardous Air Pollutants and Approval To Construct Plant

AGENCY: U.S. Environmental Protection Agency, Region V.

ACTION: Final determination.

EFFECTIVE DATE: April 20, 1981.

Notice is hereby given that on April 20, 1981, the U.S. Environmental Protection Agency determined that the B.F. Goodrich Company was subject to the NESHAPS regulations and approved construction pursuant to 40 CFR Subpart A, 61.08 (38 FR 8826, April 6, 1973, as amended at 43 FR 8800, March 3, 1979).

This determination is considered a final agency action which is locally applicable under Section 307(b)(1) of the Clean Air Act and, therefore, any petition for review must be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with 307(b)(1), petitions for review must be filed 60 days from the date of notice.

In the matter of the applicability of Title 1, Part A of the Clean Air Act (the Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR Subpart A, 61.06 and 61.07 (38 FR 8826, April 6, 1973, as amended at 43 FR 8800, March 3, 1978) for National Emission Standards for Hazardous Air Pollutants (NESHAPS), to B.F. Goodrich Research Center in Brecksville, Ohio.

On February 3, 1981, the B.F. Goodrich Company submitted a request to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for approval to construct an ethylene dichloride pilot plant at their facility in Brecksville, Ohio. The application was submitted pursuant to 40 CFR 61.07.

On April 20, 1981, the B.F. Goodrich Company was notified that it is subject to the NESHAPS regulations, and approval to construct was granted.

This approval to construct does not relieve B.F. Goodrich of the responsibility to comply with any Federal, State or local regulations.

For further information contact Ms. Patricia Krause, Air Compliance Section, Enforcement Division, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2090.

COPIES: Copies of the determination are available for public inspection upon request from: Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Dated: May 22, 1981.

Sandra S. Gardebring,

Director, Enforcement Division, Region V.

[FR Doc. 81-20489 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-31-M

[PP 7G1888/T315; PH-FRL-1880-8]

Profenofos; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolities converted to 4-bromo-2-chlorophenol and calculated as *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate in or on the raw agricultural commodities cottonseed at 3 parts per million (ppm); eggs and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and milk at 0.01 ppm.

DATE: These temporary tolerances expire June 29, 1982.

FOR FURTHER INFORMATION CONTACT: William H. Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 403, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7040).

SUPPLEMENTARY INFORMATION: EPA issued an extension of temporary tolerances that published in the **Federal Register** of August 26, 1980 (45 FR 56911) to Ciba-Geigy Corp., Agricultural Div., P.O. Box 11422, Greensboro, NC 27409. The petition (PP 7G1888) requested an extension of the temporary tolerances to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of an experimental use permit that was extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136). These temporary tolerances expired October 16, 1980.

Ciba-Geigy Corp. requested a renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit that is being renewed under FIFRA. A related document renewing feed additive regulation for residues of profenofos in cottonseed hulls and soapstock appears elsewhere in this issue of the **Federal Register.**

The scientific data reported and all other relevant material have been evaluated, and it has been determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances are being renewed on the condition that the pesticide be used in accordance with the experimental use permit and the following provision:

1. The total amount of the insecticide to be used must not exceed the amount authorized in the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm will also keep records

of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire June 29, 1982. Residues not in excess of 3 ppm remaining in or on cottonseed; 0.05 ppm remaining in eggs and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and 0.01 ppm remaining in milk after the expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this temporary tolerance from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 406(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 29, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-20486 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-32-M

[PF-204A; PH-FRL-1880-7]

Rhone-Poulenc Inc.; Filing of Pesticide Petition; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends pesticide petition 0E2414, submitted by Rhone-Poulenc Inc., proposing to establish a tolerance for the combined residues of the fungicide; iprodione [(3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolites (3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodity kiwifruit at 7 parts per million (ppm).

ADDRESS: Written comments and inquiries should be directed to: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Program, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Written comments and inquiries may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-204A]" and the petition number. All written comments filed pursuant to this notice will be abailable for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby (703-557-7060).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of October 29, 1980 (45 FR 71678) that Rhone-Poulenc Inc., PO Box 125, Monmouth Junction, NJ 08852, had submitted a pesticide petition (PP 0E2414) to the EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for the combined residues of the fungicide iprodione [(3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolites (3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and (3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodity kiwifruit at 7 ppm.

Rhone-Poulenc Inc., has submitted a revised section F proposing that the tolerance be increased from 7 ppm to 10 ppm.

The proposed analytical method for determining residues is gas chromatography.

(Sec. 408(d)(1), 68 Stat 512 (7 U.S.C. 135))

Dated: June 29, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-20487 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51278; TSH-FRL-1881-3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA's statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28564) and November 7, 1980 (45 FR 74378). Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This notice announces receipt of six PMN's and provides a summary of each.

DATE: Written comments by August 10, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51278]" and the specific PMN number, should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, DC 20460, (202-426-2610).

FOR FURTHER INFORMATION CONTACT: Robert Jones, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-208, 401 M Street SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on PMN's received by the EPA:

PMN 81-278

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: compound from alkenoic acids, carbomonocyclic anhydride and substituted alkanediols.

Use. Claimed confidential business information. Generic use description

provided: Dispersive use that will release more than 50,000 kg per year into the environment with potential skin and eye exposure for both chemical industry and commercial employees and a low potential for exposure to consumers as part of a mixture.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	100,000	320,000
2d year	320,000	600,000
3d year	500,000	1,600,000

Physical/Chemical Properties

Total solids—80.0%.
Viscosity—11.7 stokes.
Acid value—6.4 mg KOH/g.
Flash point—149°F.
Density—1.110

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that at 6 sites, 369 workers manufacturing and processing the new chemical could have potential skin and eye exposure for 6 hr/da, 7 to 250 da/yr, during sampling for quality control, mixing, container filling, and cleanup operations. Commercial and consumer users could also have skin, eye, and inhalation exposure.

Environmental Release/Disposal. The manufacturer states that at six sites, less than 120 kg/yr of the new chemical will be released into the air and water and more than 41,010 kg/yr into the land. Reactor vapors will be passed through a scrubber; sludge from distilled cleaning solvents will be incinerated.

PMN 81-279

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: adduct of a substituted alkanol and a silicate.

Use. Claimed confidential business information. Generic use description provided: open use that will release more than 50 but less than 5,000 kg per year into the environment with potential skin and eye exposure to both chemical and nonchemical industry employees and skin exposure to consumers as an inherent part of a material.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	800	1,600
2d year	1,600	2,400
3d year	2,400	3,000

Physical/Chemical Properties

Total solids—77.5% at 105°C
Viscosity—0.34 stokes.
Hydroxyl content—None.
Flash point—89°F.

Toxicity Data. No data were submitted.

Exposure. The submitter states that at 2 sites, 69 manufacturing and processing workers could have potential skin and eye exposure to the new substance for 4 to 6 hr/da, 2 to 34 da/yr, during sampling for quality control, mixing, container filling, and cleanup operations. At the site of a typical industrial user, four workers could have potential skin and eye exposure for 8 hr/da, 240 da/yr.

Environmental Release/Disposal. The submitter states that at two sites, less than 40 kg/yr of the new chemical will be released into the air and water and from 20 to 200 kg/yr into the land. Reactor vapors will be passed through a scrubber; sludge from distilled cleaning solvents will be incinerated, sold as fuel, or landfilled. At the site of a typical user, less than 20 kg/yr will be released into the air and water and from 10 to 100 kg/yr into the land.

PMN 81-280

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: polyester polyurethane.

Use. Claimed confidential business information. Generic use information provided: open use that will release more than 50 but less than 500 kg per year into the environment with potential skin and eye exposure for both chemical and nonchemical industry employees and minimal exposure to consumers as an integral part of an article.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	4,500	18,000
2d year	10,000	40,000
3d year	20,000	80,000

Physical/Chemical Properties

Isocyanate equivalent—Infinity.
Percent Total solids (105°F)—70%.
Viscosity (25% resin by wt in 2-ethoxyethanol)—M.

Toxicity Data. No data were submitted.

Exposure. The submitter states that at 2 sites, 70 manufacturing and processing workers could have potential skin and eye exposure to the new chemical for 6 hr/da, 6 to 54 da/yr, during sampling for quality control, container and reactor filling, and cleanup operations. At the site of a typical industrial user, 20 workers could have potential skin and eye exposure for 16 hr/da, 250 da/yr.

Environmental Release/Disposal. The manufacturer states that at two sites, less than 40 kg/yr of the new substance will be released into the air and water and from 20 to 200 kg/yr into the land. Reactor vapors will be passed through a scrubber; sludge from distilled cleaning solvents will be landfilled or sold as fuel. At the site of a typical user, less than 20 kg/yr will be released into the air and water and from 10 to 100 kg/yr into the land.

PMN 81-281

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: polyester from substituted alkanediol and alkanoic acids.

Use. Claimed confidential business information. Generic use information provided: open use that will release more than 50 but less than 500 kg per year into the environment with potential skin and eye exposure for both chemical and nonchemical industry employees and minimal exposure to consumers as an integral part of an article.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	1,200	2,500
2d year	2,500	5,000
3rd year	5,000	10,000

Physical/Chemical Properties

Total solids—82.0% at 105°C.
Acid value—12.9 mg KOH/g.
Hydroxyl value—116 mg KOH/g.
Viscosity—65 (stokes).
Color—3 (Gardner).
Flash point—165°F.
Density—1.065

Toxicity Data. No data were submitted.

Exposure. The submitter states that at 3 sites, 124 manufacturing and processing workers could have potential skin and eye exposure to the new substance for 6 hr/da, 1 to 2 da/yr, during sampling for quality control, mixing, and filling shipment containers. At the site of a typical industrial user, 11 workers using and disposing of the new chemical could have potential skin, eye, and inhalation exposure for 1 to 6 hr/da, 50 to 250 da/yr, at an average concentration of 0 to 1 mg/m³ and a peak concentration of 1 to 10 mg/m³.

Environmental Release/Disposal. The manufacturer states that at three sites, less than 60 kg/yr of the new chemical will be released into the air and water and from 30 to 300 kg/yr into the land. Reactor vapors will be passed through a scrubber; sludge from distilled cleaning solvents will be incinerated, sold as fuel, or landfilled. At the site of a typical user, less than 20 kg/yr will be released into the air and water and from 1,000 to 10,000 kg/yr into the land.

PMN 81-286

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information.
Organizational description provided:
Manufacturing site—Middle Atlantic U.S.
Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Polymer dispersion of a diisocyanate and substituted alkanediols.

Use. Claimed confidential business information. Generic use information provided: open use that will release more than 50 but less than 5,000 kg per year into the environment with potential skin and eye contact for both chemical and nonchemical industry employees.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	220	10,000
2d year	10,000	20,000
3d year	20,000	40,000

Physical/Chemical Properties

MEQ acid—0.096 mg KOH/gm.
MEQ base—0.087 mg KOH/gm.
Percent total solids—30.3%.
Viscosity (Gardner holt)—380 sec.
Flash point—190°F.

Toxicity Data. No data were submitted.

Exposure. The submitter states that at 3 sites, 129 manufacturing and processing workers could have potential skin and eye exposure to the new chemical for 6 hr/da, 4 to 25 da/yr, during samplying for quality control, mixing, filling containers, and cleanup operations. At the site of a typical industrial user, 20 workers could have potential inhalation, skin, and eye exposure for 8 hr/da, 250 da/yr, at an average and peak concentration of 0 to 1 ppm.

Environmental Release/Disposal. The manufacturer states that less than 60 kg/yr of the new chemical will be released into the air and water and from 210 to 2,100 kg/yr into the land. Reactor vapors will be passed through a scrubber; sludge from distilled cleaning solvent will be incinerated. At the site of a typical user, less than 20 kg/yr will be released into the air and water and from 10 to 100 kg/yr into the land.

PMN 81-291

Close of Review Period. September 9, 1981.

Manufacturer's Identity. Claimed confidential business information.
Organizational description provided:
Annual sales—In excess of $500 million.
Manufacturing site—East-North Central U.S.
Standard Industrial Classification Code—285.

Specific Chemical Identity. Claimed confidential business information.
Generic name provided: polyol, mixture of carboxylic acids polymer.

Use. The manufacturer states that the PMN substance will be used in a site-limited use as a component of coating for packaging.

Production Estimates

	Kilogram per year	
	Minimum	Maximum
1st year	4,000	30,000
2d year	8,000	30,000
3d year	8,000	40,000

Physical/Chemical Properties

Physical state—Viscous liquid.
Acid number—<3
Flash point (PMCC)—>230°F (110°C).
Water solubility—13%.

Toxicity Data. No data were submitted.

Exposure. The submitter states that at all sites, nine workers manufacturing, using, and disposing of the new substance could have skin and eye exposure for 1 to 2 hr/da, 10 to 60 da/yr, at an average concentration of 0 to 1 mg/m³ and a peak concentration of 1 to 10 mg/m³, during sampling, on-site use, drum filling, and when drums are cleaned by incineration or washing. Sixty commercial users could have daily to weekly skin exposure during formulation of the substance as a coating component.

Environmental Release/Disposal. The manufacturer states that none of the new substance will be released into the air and water and that less than 10 kg/yr will be released into the land of an approved landfill.

Dated: July 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81-20483 Filed 7-13-81; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51281; TSH-FRL-1681-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days

after receipt. This notice announces receipt of three PMN's and provides a summary of each.

DATES: Written comments by:
PMN 81-294, 81-295, August 11, 1981.
PMN 81-296, August 10, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51281]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, DC 20460, (202-426-2610).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-294	Mary Cushmac.	202-426-0503	E-229
81-295	June Thompson.	202-755-6660	E-529C
81-296	Rachel Diamond.	202-426-8816	E-221

Mail address of notice managers: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMN's received by EPA:

PMN 81-294

Close of Review Period. September 10, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Annual sales—Between $10 million and $100 million.

Manufacturing sites—East and North central regions, U.S.

Standard Industrial Classification Code—285, "Paints, Varnish, Lacquers, Enamels, and Allied Products."

Specific Chemical Identity. Claimed confidential business information. Generic name provided: oil free polyester.

Use. The manufacturer states that the PMN substance will be used in an industrial use as a protective coating for industrial application.

Production Estimates. No data were submitted.

Physical/Chemical Properties

Color—2 maximum
Viscosity—Z5-Z6
Acid value (on solids)—8-9
Nonvolatile by weight—95-100%
Volatile—None (estimated)
Water solubility by 24-hr extraction—1.4%

Toxicity Data. No data were submitted.

Exposure. The submitter states that 24 manufacturing workers could have skin and inhalation exposure to the new chemical for 8 hr/da, 5 da/yr, during filling the reactor, sampling, filling drums, and cleaning filters. At a site not controlled by the submitter, workers using the new chemical could have eye and skin exposure during transfer and cleaning operations.

Environmental Release/Disposal. The manufacturer states that from 10 to 100 kg/yr of the new substance may be released into the air during 10 to 12 hr/da, 5 da/yr, and from 100 to 1,000 kg/yr into the land of an approved landfill. Waste solvents not landfilled will be incinerated or jobbed out to reclaim.

PMN 81-295

Close of Review Period. September 10, 1981.

Manufacturer's Identity. Claimed confidential business information. Organizational description provided:

Manufacturing site—South Atlantic U.S.

Standard Industrial Classification Code—282.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: acrylonitrile polymer with alkenoic acid alkyl esters; 2-propenoic acid; and 2-propenoic acid, 2-methyl.

Use. Claimed confidential business information. Generic use information provided: open use that will release more than 50,000 kg per year into the environment with potentially frequent skin, eye, and inhalation contact for both chemical and nonchemical industry employees.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	56,000	113,000
2d year	85,000	225,000
3d year	85,000	225,000

Physical/Chemical Properties

Solubility in water—10^{-4}—10^{-2}g/l.
Density—1.14 g/cm^3.

Toxicity Data

Acute oral toxicity LD_{50} (male, female albino rats)—>5.0 ml/kg.

Primary skin irritation (albino rabbits)— Moderately irritating.

Primary eye irritation (albino rabbits)—Practically non-irritating to both washed and unwashed eyes.

Inhalation toxicity LC_{50} (4-hr)—>20 mg/1/hr.

Dermal toxicity LD_{50} (albino rabbits)—>2.0 ml/kg.

Ames *Salmonella*/assay—Nonmutagenic.

Exposure. The submitter states that two workers manufacturing, processing, and disposing of the new chemical could have skin exposure from .5 to 6 hr/da, 66 da/yr, at average and peak concentrations in excess of 100 ppm, during accidential spills only. At the site of a potential customer, 180 workers processing and using the new substance could have skin and inhalation exposure for 8 hr/da, 250 da/yr, at average and peak concentrations in excess of 100 ppm.

Environmental Release/Disposal. The manufacturer states that from 1,000 to 10,000 kg/yr of the new chemical will be released during 100 da/yr into the water of a publicly owned treatment works (POTW) following settling, grinding, and activated sludge treatment. From the sites of potential customers, more than 10,000 kg/yr may be released into the water of POTW.

PMN 81-296

Close of Review Period. September 9, 1981.

Importer's Identity. Claimed confidential business information. Organizational description provided:

Annual sales—Between $1,000,000 and $9,999,999.

Location of importer—Middle Atlantic U.S.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: bis dihydrogenated ether of halogenated aryl sulfone.

Use. The importer states that the PMN substance will be used in an industrial use as a flame retardant for plastics.

Import Estimates

	Kilograms per year	
	Minimum	Maximum
1981	5,000	50,000
1982	20,000	400,000
1983	30,000	500,000

Physical/Chemical Properties

Appearance—Light yellow solid.
Melting point—50° C.
Halogen content—66% by weight.
Specific gravity—2.29
Decomposition point—285° C.
Solubility—Insoluble in water, soluble in aromatic solvents, ketones, CH_2Cl_2.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—10g/kg.
Skin irritation—Nonirritating.

Eye irritation—Nonirritating.

Exposure. No data was submitted. The importer states that employee exposure to the new chemical during formulation by customers is expected to be minimal.

Environmental Release/Disposal. No data were submitted.

Dated: July 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81-20484 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51275; TSH-FRL-1881-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA's statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) and November 7, 1980 (45 FR 74378). Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This notice announces receipt of two PMN's and provides a summary of each.

DATE: Written comments by August 16, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51275]" and the specific PMN number, should be sent to:

Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St. SW., Washington, DC 20460, (202-426-2610).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-298	Carrie Berlin	(202-426-8816)	E-221
81-299	June Thompson	(202-755-6660)	E-519C

Mail address of notice managers:

Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on PMN's received by the EPA:

PMN 81-298

Close of Review Period. September 15, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organizational information provided:

Annual sales—Between $100 million and $499,999,000.

Manufacturing site—East-North central region, U.S.

Standard Industrial Classification Code—851.

Specific Chemical Identity. Claimed confidential business information.

Use. Claimed confidential business information.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	192,000	576,000
2nd year	576,000	1,700,000
3rd year	760,000	1,900,000

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. Claimed confidential business information.

Exposure. Claimed confidential business information.

Environmental Release/Disposal. Claimed confidential business information.

PMN 81-299

Close of Review Period. September 15, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: metal resinate.

Use. Publication gravure printing inks.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties.

Resin solids, percent by weight—55.

Viscosity, Gardner-Holdt—V-Y.

Gardner color—12.

Specific gravity, 25°C./25° C.—0.93.

Melting point of solid resin, Fisher-Johns—150° C.

Toxicity Data. No data were submitted.

Exposure. No data were submitted.

Environmental Release/Disposal. The manufacturer states that less than 20 kg/yr may be released to air and water, 24 hr/da, 136 da/yr and up to more than 10,000 kg to land.

Dated: July 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81-20485 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51282; TSH-FRL-1881-6]

6-Hydroxy-2,3,7-Trimethylquinoxaline; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA's statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) and November 7, 1980 (45 FR 74378). Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This notice announces receipt of a PMN and provides a summary.

DATE: Written comments by August 16, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51282]" and the specific PMN number, should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, DC 20460, (202-426-2610).

FOR FURTHER INFORMATION CONTACT:

Carrie Berlin, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-8816).

SUPPLEMENTARY INFORMATION: A PMN has been received by the EPA. The following is a summary of information provided by the manufacturer:

PMN 81-297

Close of Review Period. September 15, 1981.

Importer's Identity. Ilford, Inc., Box 288, W. 70 Century Rd., Paramus, NJ 07652.

Specific Chemical Identity. 6-Hydroxy-2,3,7-trimethylquinoxaline.

Use. The importer states that the PMN substance will be used as a catalyst in a photographic processing solution.

Import Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	850	950
2d year	850	1,000
3d year	1,000	1,100

Physical/Chemical Properties

Appearance—Pinkish to light brown powder
Melting point—275° (decomposes)
Stability measurements:
Dry solid—Stable at ambient temperature
Dry solid at 60°C in air—Decomposes very slowly
Aqueous solution—Stable (only slightly soluble)
Effect of strong acid (HC1)—Decomposes slowly
Effect of strong alkali (NaOH)—Decomposes slowly

Toxicity Data

Acute oral Toxicity LD_{50} (rat)—15,000 mg/kg
Primary skin irritation (rabbit)—Minimally irritating to intact skin, slightly irritating to abraded skin
Eye irritation (rabbit)—Slightly irritating

Exposure. The importer states that three to four workers blending and bottling could have exposure to the new chemical in dilute form for 250 hr/yr. A typical customer could have minimal exposure to the chemical in dilute form.

Environmental Release/Disposal. The importer states that during blending operations accidental spills of the PMN substance will be contained and disposed of by landfill; spillage of the liquid mixture containing the new chemical will be routed through sanitary sewers to a publicly owned treatment works (POTW).

Dated: July 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81-20480 Filed 7-13-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-50027B; TSH-FRL-1881-4]

2-Naphthalenamine; Denial of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice denies a citizen's petition, submitted under section 21 of the Toxic Substances Control Act (TSCA), to ban the manufacture of 2-naphthalenamine.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistant Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M Street SW, Washington, DC 20460, Toll free: (800-424-9065). In Washington, DC: (554-1404).

Copies of the Administrator's decision may be obtained from the Industry Assistance Office.

SUPPLEMENTARY INFORMATION:

I. Decision of the Administrator

On April 26, 1980, EPA received a petition, under section 21 of the TSCA, 15 U.S.C. 2620, requesting that it prohibit the manufacture of 2-naphthalenamine (Chemical Abstracts Service Number 91-59-8), which is also known as 2-naphthylamine, β-naphthylamine, β-naphthalenamine, or 2-aminonaphthalene. The petition was filed by Mr. Glenn M. W. Scott of Owensboro, Kentucky. The petition is denied for the reasons given below.

II. Background

A. Citizen's Petitions Under TSCA

Under section 21 of TSCA, a citizen may petition the EPA "to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 [of TSCA]." The Administrator must either grant or deny the petition. If the Administrator denies the petition, the reasons for denial must be published in the **Federal Register.** This notice gives the reasons for EPA's denial of Mr. Scott's petition.

B. Petition Request

The petition filed by Mr. Scott requested that EPA ban the manufacture of 2-naphthalenamine because it is a carcinogen that causes bladder cancer in laboratory animals and humans. Mr. Scott stated that 2-naphthalenamine is used as an anti-oxidant in rubber and as an intermediate in the manufacture of dyes.

III. Reasons for Denying the Petition

A. 2-Naphthalenamine was Incorrectly Reported on the Inventory

In respnose to Mr. Scott's petition, EPA determined that 2-naphthalenamine was reported on the TSCA Chemical Substance Inventory by only one firm, an importer. This firm told EPA that it had mistakenly reported 2-naphthalenamine and that it imported a different substance, not 2-naphthalenamine. After further investigation, EPA concluded that 2-naphthalenamine is neither manufactured nor imported into this country for commercial purposes.

On the basis of this evidence, EPA proposed to remove 2-naphthalenamine from the TSCA Inventory (46 FR 11356, February 6, 1981). The notice solicited public comment regarding the manufacture, importation, or processing of 2-naphthalenamine since January 1, 1975. The only comment received was a general comment on the procedures to remove a chemical from the Inventory. Therefore, EPA concluded that: (1) the original Inventory report was incorrectly submitted; (2) no manufacture or importation of this substance occurred between January 1, 1975 and December 31, 1977; and (3) no ongoing manufacture, importation, or processing of this substance has taken place since December 31, 1977. Accordingly, EPA published a final Notice of Disposition that removed 2-naphthalenamine from the TSCA Inventory (46 FR 30563, June 9, 1981).

B. Effect of the Removal of 2-Naphthalenamine From the TSCA Inventory

The effect of removing 2-naphthalenamine from the Inventory is to require any person who intends to manufacture, import, or process it for a use covered under TSCA to submit a premanufacture notice (PMN), as required by section 5 of TSCA. This notice must be submitted at least 90 days before the person begins to manufacture, import, or process the substance. This 90-day period allows EPA to assess the potentially harmful health and environmental effects of the substance before manufacture begins.

IV. Conclusion

The substance 2-naphthalenamine is not manufactured, imported, or processed in the United States and has been removed from the TSCA Inventory. Any future importation or manufacture must be preceded by a premanufacture notification to EPA. Therefore, it is not necessary to prohibit the manufacture of 2-naphthalenamine.

The petition is denied.

Dated: July 1, 1981.

Edwin H. Clark II,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 81-20481 Filed 7-13-81; 8:45 am]

BILLING CDE 6560-31-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 81-431, File No. 20765-CD-P-1-81; CC Docket No. 81-432, File No. 20328-CD-P-1-81]

Airsignal International, Inc. and Charlotte Message Center, Inc.; Memorandum Opinion and Order.

Adopted June 30, 1981.

Released July 8, 1981.

In re applications of Airsignal International, Inc., for construction permit to add new locations on frequency 152.12 MHz on Station KIQ511 in the Domestic Public Land Mobile Radio Service at Naples, Fort Meyers and near Punta Gorda, Florida and; Charlotte Message Center, Inc., for construction permit to add an additional frequency Station KRM952 on 152.12 MHz in the Domestic Public Land Mobile Radio Service at Naples, Florida.

By the Common Carrier Bureau: 1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Airsignal International, Inc. (Airsignal), and Charlotte Message Center, Inc. (Charlotte). These applications are electrically mutually exclusive;[1] therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, IT IS ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of Airsignal International, Inc., File No. 20765-CD-P-1-81, and Charlotte Message Center, Inc., File No. 20328-CD-P-1-81, ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective 37 dBu contours, based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[2] and to determine and compare the need for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

(3) It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

(4) It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

(5) It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

(6) The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Sheldon Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-20004 Filed 7-13-81; 8:45 am]

BILLING CODE 6712-01-M

[1] We note that while Airsignal is applying to add a new location on its existing frequency for Station KIQ511, Charlotte is seeking to add an additional frequency for its existing Station KRM952. A grant of either application would preclude a grant of the other.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 37 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 150 MHz band. Propagation data set forth in Section 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding.

[Report No. 1297]

Petitions for Reconsideration of Actions in Rule Making Proceedings

July 7, 1981.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before July 29, 1981. Replies to an opposition must be filed on or before August 10, 1981.

Subject: Commission policy concerning the Noncommercial Nature of Educational Broadcast Stations. (Docket No. 21136).

Filed by: Erwin G. Krasnow & Barry D. Umansky, Attorneys for National Association of Broadcasters on 6-22-81. John L. Bartlett, David E. Hilliard & John S. Logan, Attorneys for The Metropolitan Opera Association, Inc. on 6-22-81 (Petition for Clarification).

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Fountain, Colorado) (BC Docket No. 80-316).

Filed by: Barry D. Wood, Attorney for Fountain Broadcasting Company on 6-26-81.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-20000 Filed 7-13-81; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1298]

Petitions for Clarification or Reconsideration of Actions in Rule Making Proceedings

July 13, 1981.

The following listings of petitions for clarification or reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before July 29, 1981. Replies to an opposition must be filed on or before August 10, 1981.

Subject: Use of Recording Devices in Connection with Telephone Service. (Docket No. 20840)

Filed by: Edward L. Friedman, H. W. William Caming & Bless J. Stritar, Attorneys for American Telephone and Telegraph Company on 6-19-81. J. Randolph MacPherson & Carl Wayne Smith, Attorneys for the Department of Defense on 7-2-81. Richard K. Willard, Attorney for the United States Department of Justice on 7-2-81.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-20005 Filed 7-13-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, August 6, 1981
Thursday, August 13, 1981
Thursday, August 20, 1981
Thursday, August 27, 1981

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman,

representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202–632–9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

July 7, 1981.

[FR Doc. 81–20502 Filed 7–13–81; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL RESERVE SYSTEM

Liberty Bancshares, Inc.; Formation of Bank Holding Company

Liberty Bancshares, Inc., Brentwood, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Liberty Bank, Brentwood, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 7, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 8, 1981.

D. Michael Manies,

Acting Secretary of the Board.

[FR Doc. 81–20641 Filed 7–13–81; 8:45 am]

BILLING CODE 6210–01–M

Michigan National Corp.; Proposed Acquisition of Wolverine Life Insuance Company

Michigan National Corporation, Bloomfield Hills, Michigan, has applied, pursuant to section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Wolverine Life Insurance Company, Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage in the acitivity of underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extension of credit by Applicant's subsidiary banks. These activities would be performed from offices of Applicant's subsidiary in Phoenix, Arizona, and the geographic area to be served is the State of Michigan. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than August 5, 1981.

Board of Governors of the Federal Reserve System, July 6, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81–20642 Filed 7–13–81; 8:45 am]

BILLING CODE 6210–01–M

Shattuck Bancshares, Inc.; Formation of Bank Holding Company

Shattuck Bancshares, Inc., Shattuck, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Shattuck National Bank, Shattuck, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 6, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1981

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20643 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc.; Acquisition of Bank

Texas American Bancshares, Inc., Fort Worth, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting share of Fondren Southwest Bank, Houston, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any persons wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 5, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 6, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20644 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

Troy Bancorp, Inc.; Formation of Bank Holding Company

Troy Bancorp, Inc., Troy, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Troy, Troy, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

The application may be inspected at the officers of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 6, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20645 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

American Bancorporation; Acquisition of Bank

American Bancorporation, Marietta, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 51 percent or more of the voting shares of The Quaker City National Bank, Quaker City, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing, to the Reserve Bank to be received not later than August 6, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20637 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

Commercial National Corp.; Formation of Bank Holding Company

Commercial National Corporation, Shreveport, Louisiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares, less directors qualifying shares, of Commercial National Bank in Shreveport, Shreveport, Louisiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to be Reserve Bank, to be received not later than August 7, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 8, 1961.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20638 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

Credit and Commerce American Holdings, N.V., Credit and Commerce American Investment, N.A., FGB Holding Corporation; Formation of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 80-40233) published at page 85521 of the issue for Monday, December 29, 1981. FGB Holding Corporation, Washington, D.C., has been included in the application seeking the Board's approval to acquire 100% of the voting shares of Financial General Bankshares, Inc., Washington, D.C.

Board of Governors of the Federal Reserve System, July 7, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20539 Filed 7-13-81; 8:45 am]

BILLING CODE 6240-01-M

Jeffries Insurance Agency, Inc.; Acquisition of Bank

Jeffries Insurance Agency, Inc., Buckner, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to increase its ownership of the voting shares of First State Bank of Buckner, Buckner, Missouri to 51.06 per cent. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 7, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing.

identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 8, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-20540 Filed 7-13-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 75N-0184; DESI 597, 3265, 9489, and 10837]

Certain Anticholinergics/Antispasmodics in Combination With a Sedative, and Single-Entity Antispasmodic, in Conventional Dosage Form; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration withdraws approval of the new drug applications and conditionally approved abbreviated new drug applications for certain combination drugs containing an anticholinergic/antispasmodic and a sedative and a single-entity antispasmodic. Approval is withdrawn because the drugs lack substantial evidence of effectiveness in the treatment of various gastrointestinal disorders.

EFFECTIVE DATE: July 24, 1981.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 597, 3265, 9489, or 10837, as appropriate, and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean Peeler, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of January 16, 1981 (46 FR 3977), the Director of the Bureau of Drugs proposed to withdraw approval of new drug applications and conditionally approved abbreviated new drug applications for certain anticholinergics/antispasmodics in combination with a sedative, and single-entity antispasmodics, and offered an opportunity for a hearing on the proposal. The proposed order was based on the lack of substantial evidence that the products are effective for their labeled indications. The combination products lack substantial evidence that each component of the combination makes a significant contribution to the effectiveness of the product.

Because the holders of the following new drug applications and conditionally approved abbreviated new drug applications did not request a hearing, approval of their applications is now being withdrawn. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing.

DESI 597

1. NDA 8-907; Dactil with Phenobarbital Tablets containing piperidolate hydrochloride 50 mg and phenobarbital 16 mg; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 E. Amity Rd., Cincinnati, OH 45215.

2. NDA 12-950; Robinul-PH Tablets and Robinul-PH Forte Tablets containing glycopyrrolate 1 mg and phenobarbital 16 mg, and glycopyrrolate 2 mg and phenobarbital 16 mg; A. H. Robins Co., 1407 Cummings Dr., Richmond, VA 23220.

DESI 3265

NDA 8-907; Dactil Tablets containing piperidolate hydrochloride 50 mg; Merrell-National Laboratories.

DESI 10837 [Related]

1. ANDA 86-281; Meprobamate with Tridihexethyl Chloride Tablets containing 200 mg meprobamate and 25 mg tridihexethyl chloride; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

2. ANDA 86-526; Meprobamate with Tridihexethyl Chloride Tablets containing 400 mg meprobamate and 25 mg tridihexethyl chloride; Chelsea Laboratories, Inc.

No hearing was requested for the following product also named in the January 16, 1981 notice. The product may no longer be marketed.

ANDA 86-675; Sidonna Tablets containing simethicone 25 mg, butabarbital sodium 16 mg, hyoscyamine sulfate 0.1037 mg, scopolamine hydrobromide 0.0065 mg, and atropine sulfate 0.0194 mg; Reed and Carnrick, 30 Boright Ave., Kenilworth, NJ 07033.

No hearing was requested for the following product also named in the January 16, 1981 notice. The product is not the subject of an approved new drug application; the NDA number shown is the number of the manufacturer's original product to which the listed product is related. The product may no longer be marketed.

Related to NDA 9-014; Probital Tablets containing propantheline bromide 7.5 mg and phenobarbital 15 mg; G. D. Searle & Co., P.O. Box 5110, Chicago, IL 60680.

The holders of the new drug applications and conditionally approved abbreviated new drug applications named below have requested hearings concerning their drug products. The requests for hearing are under review and will be the subject of future **Federal Register** notices.

DESI 597

1. NDA 7-409; Bentyl with Phenobarbital Capsules and Tablets containing dicyclomine hydrochloride 10 mg and phenobarbital 15 mg, Merrell-National Laboratories.

2. NDA 10-679; Cantil with Phenobarbital Tablets containing mepenzolate bromide 25 mg and phenobarbital 16 mg; Merrell-National Laboratories.

3. NDA 13-515; Daricon PB Tablets containing oxyphencyclimine hydrochloride 5 mg and phenobarbital 15 mg; Pfizer Laboratories, Division of Pfizer, Inc., 235 E. 42d St., New York, NY 10017. (Hearing was requested by Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620. Beecham is the sole marketer of Daricon PB under an agreement with Pfizer, Inc.)

4. NDA 9-014; Pro-Banthine with Phenobarbital Tablets containing propantheline bromide 15 mg and phenobarbital 15 mg; G. D. Searle & Co.

DESI 9489

NDA 9-489; Pathilon with Phenobarbital Tablets containing tridihexethyl chloride 25 mg and phenobarbital 15 mg; Lederle Laboratories Division, American Cyanamid Co., Pearl River, NY 10965.

DESI 10837

1. NDA 10-837; Pathibamate-200 Tablets and Pathibamate-400 Tablets containing tridihexethyl chloride 25 mg and meprobamate 200 mg, and tridihexethyl chloride 25 mg and meprobamate 400 mg; Lederle Laboratories.

2. NDA 11-043; Milpath-200 Tablets and Milpath-400 Tablets containing tridihexethyl chloride 25 mg and meprobamate 200, and tridihexethyl chloride 25 mg and meprobamate 400 mg; Wallace Laboratories, Division of

Carter-Wallace, Inc., Half-Acre Rd., Cranberry, NJ 08512.

Hearings were also requested for the following products that were not reviewed by the National Academy of Sciences-National Research Council. The requests are under review.

1. NDA 12-750; Librax Capsules containing clidinium bromide 2.5 mg and chlordiazepoxide 5 mg; Roche Laboratories, Division of Hoffman-LaRoche, Inc., Nutley, NJ 07110.

2. NDA 13-430; Valpin 50 PB Tablets and Valpin PB Tablets containing anisotropine methylbromide 50 mg and phenobarbital 15 mg, and anisotropine methylbromide 15 mg and phenobarbital 15 mg; Endo Laboratories, 1000 Stewart Ave., Garden City, NY 11530.

3. ANDA 86-791; T.C.M. 200 Tablets containing 200 mg meprobamate and 25 mg tridihexethyl chloride; Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.

4. ANDA 86-792; T.C.M. 400 Tablets containing 400 mg meprobamate and 25 mg tridihexethyl chloride; Zenith Laboratories, Inc.

Marketing of those drug products for which hearing requests are under review may continue pending a ruling on the requests. No other person filed a written appearance of election as provided for by the January 16, 1981 notice.

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products for which no hearing was requested, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of the new drug applications 8-907 and 12-950 and abbreviated new drug applications 86-281, 86-526 and 86-675, and all amendments and supplements applying thereto, is withdrawn effective July 24, 1981.

Shipment in interstate commerce of the above products, including Probital Tablets, or of any identical, related, or similar products that are not the subject of an approved new drug application, except for the ones described above that may continue to be marketed pending rulings on the requests for a hearing, will then be unlawful.

Dated: June 29, 1981.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-20354 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket Nos. 76N-0184 and 76N-0112; DESI 3590]

Parenteral Protein Supplements Containing Protein Hydrolysate; Notices of Opportunity for Hearing Rescinded for Seven Products

AGENCY: Food and Drug Administration

ACTION: Notice.

SUMMARY: The Food and Drug Administration is rescinding a notice of opportunity for hearing which proposed, on safety grounds, to withdraw approval of the new drug applications for all parenteral protein hydrolysate solutions. It is also rescinding a notice of opportunity for hearing which proposed, on effectiveness grounds, to withdraw approval of the new drug applications for certain parenteral protein hydrolysate solutions, insofar as the notice pertains to two of the three products for which a hearing was requested. The manufacturer withdrew the hearing request insofar as it pertained to the third product, and marketing of that product is now illegal.

DATES: Notice is effective July 14, 1981; supplements due September 14, 1981.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 3590, directed to the attention of the appropriate office named below.

Supplements to full new drug applications (identify with NDA number): Division of Surgical-Dental Drug Products (HFD-160), Rm. 18B-08, Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 3590; Docket No. 76N-0184) published in the **Federal Register** of September 21, 1976 (41 FR 41132), the Director of the Bureau of Drugs announced his conclusion that the following single-entity 5-percent protein hydrolysate parenteral solutions are effective for use as an adjunct in the prevention of nitrogen loss or in the treatment of a negative nitrogen balance:

1. That part of NDA 3-590 pertaining to Amigen Injection containing 5 percent protein hydrolysate; Mead Johnson Laboratories, Division Mead Johnson & Co., 2404 Pennsylvania St., Evansville, IN 47721.

2. That part of NDA 5-932 pertaining to Aminosol Injection containing 5 percent protein hydrolysate (modified); Abbott Laboratories, Inc., 14th and Sheridan Rd., N. Chicago, IL 60064.

3. That part of NDA 6-170 pertaining to Hyprotigen Injection containing 5 percent protein hydrolysate (modified); McGaw Laboratories, 1015 Grandview Ave., Glendale, CA 91201.

4. That part of NDA 6-726 pertaining to C.P.H. Injection containing 5 percent protein hydrolysate (modified); Cutter Laboratories, Inc., 4th and Parker St., Berkeley, CA 94710.

5. That part of NDA 5-419 pertaining to Travamin Injection containing 5 percent protein hydrolysate; Travenol Laboratories, Inc., Morton Grove, IL 60053.

In a notice of opportunity for hearing (NOOH) (DESI 3590; Docket No. 76N-0112), also published in the **Federal Register** of September 21, 1976 (41 FR 41133), the Director announced his conclusion that all combination products containing protein hydrolysates and single-entity products containing other than 5 percent protein hydrolysates lack substantial evidence of effectiveness. In response to the NOOH, Travenol Laboratories requested a hearing for the following products:

1. That part of NDA 5-419 pertaining to Travamin Injection containing 5 percent protein hydrolysate and 5 percent dextrose.

2. Travamin Injection containing 10 percent protein hydrolysate (no NDA).

3. Travamin Injection containing 5 percent protein hydrolysate,12.5 percent fructose, and 2.4 percent alcohol (no NDA).

Approval of the other drug products listed in the September 21, 1976 NOOH (Docket No. 76N-0112) was withdrawn in the **Federal Register** of February 4, 1977 (42 FR 6908).

In an NOOH published in the **Federal Register** of July 28, 1978 (43 FR 32869), the Director proposed to withdraw approval of all protein hydrolysates on

the ground that the drug products are not shown to be safe under the conditions for which the applications were appoved. In response to this notice, Mead Johnson & Co., Abbott Laboratories, and Travenol Laboratories submitted hearing requests. Travenol Laboratories subsequently withdrew its hearing request insofar as it pertained to Travamin Injection containing 5 percent protein hydrolysate, 12.5 percent fructose, and 2.4 percent alcohol (no NDA).

Based upon the material submitted in support of the hearing requests, particularly Abbott Laboratories' submission of L. D. Stegink's review of the data cited in the notice of July 28, 1978, FDA has concluded that there is substantial evidence that protein hydrolysate solutions are safe. Accordingly, the July 28, 1978 NOOH is rescinded. FDA has also concluded that there is substantial evidence that Travamin Injection containing 5 percent protein hydrolysate and 5 percent dextrose (NDA 5–419, and Travamin Injection containing 10 percent protein hydrolysate (no NDA) are effective. Accordingly, the NOOH published on September 21, 1976 (41 FR 41133) is rescinded insofar as it pertains to these two drug products.

However, FDA has concluded that there is not substantial evidence that Travamin Injection containing 5 percent protein hydrolysate, 12.5 percent fructose, and 2.4 percent alcohol (no NDA) is effective. Travenol has withdrawn its hearing request insofar as it pertains to this product. Therefore the marking of this product is now unlawful.

Protein hydrolysate parenteral solutions, and without dextrose, are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence, and concludes that parenteral protein hydrolysate solutions, with or without dextrose, are effective for the indications in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve full new drug applications and supplements to previously approved new drug applications under the conditions described herein.

1. *Form of drug.* The drug product is in sterile solution form suitable for peripheral and central venous administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug products are labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

For use as an adjunct in the prevention of nitrogen loss or in the treatment of negative nitrogen balance in patients in whom (1) the alimentary tract, by the oral, gastrostomy, or jejunostomy route, cannot or should not be used, (2) gastrointestinal absorption of protein is impaired, or (3) metabolic requirements for protein are substantially increased, as with extensive burns.

3. *Marketing status.* a. Marketing of such drug product which is now the subject of an approved or effective new drug application may be continued provided that on or before September 14, 1981 the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)).

b. Approval of a full new drug application must be obtained before marketing such products. Marketing before a new drug application is approved will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Date: June 12, 1981.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-20353 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conduct by the Committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel

Date, time, and place. August 3, 9 a.m., Rm. 1409, 200 C St. SW., Washington, DC.

Type of meeting and panel section leader. Closed presentation of data, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 4 p.m.; David S. Shindell, Bureau of Medical Devices (HFK-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writting, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before July 20, 1981, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness data for the transcutaneous carbon dioxide monitor submitted in support of premarket approval application #P810022.

Closed presentation of data. The sponsor of premarket approval application #P810022 will present trade secret information

concerning the device and will answer questions from the Panel members. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by July 22, 1981.

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place. August 13 and 14, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, DC.

Type of meeting and panel section leader. Open public hearing, August 13, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 5 p.m.; open public hearing, August 14, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 5 p.m.; Max W. Talbott, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before August 3, 1981, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 13, the committee will discuss statistical/epidemiological questions pertaining to intraocular lenses (IOL's) and may discuss premarket approval applications for other ophthalmic products. If discussion of all pertinent IOL issues is not completed, discussion will be continued the following day. On August 14, the committee may discuss premarket approval applications or general issues relating to contact lens products.

Closed committee deliberations. The committee will conduct reviews of premarket approval applications on August 13 and 14. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by July 27, 1981.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participatin does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Applications for reimbursement for participation in the meetings listed above should be sent to the Office of Consumer Affairs (HFE–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than the Dockets Management Branch as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meetings announced in this notice. The Office of Consumer Affairs, FDA, will file any application for

reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: July 8, 1981.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 81-20491 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 78P-0177]

Frank Scholz X-Ray Corp.; Approval of Extension of Variance for Accessory System 1564, General Operating Table Top Extension for Image Intensification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that an extension of a variance from the performance standard for diagnostic x-ray systems and their major components has been approved by the Bureau of Radiological Health for the Accessory System 1564, General Operating Table Top Extension for Image Intensification manufactured by Frank Scholz X-Ray Corp. The system is an x-ray penetrable "diving board" type extension that permits the use of a C-arm image intensifier on most operating and surgical tables.

DATES: The termination date of Variance No. 78004 is extended from December 18, 1981, to December 18, 1986.

ADDRESS: The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-3426

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), Frank Scholz X-Ray Corp., P.O. Box 223, Needham Heights, MA 02194, has been granted an extension of a variance from the aluminum equivalence requirement, § 1020.30(n) (21 CFR 1020.30(n)), of the performance standard for diagnostic x-ray systems and their major components. The Director of the Bureau of Radiological Health has determined that the arguments that led to the original granting of Variance No. 78004 are still valid. (See 43 FR 53826; November 17, 1978). This variance applies to the Accessory System 1564 General Operating Table Top Extension for Image Intensification. The conditions of the variance remain the same except that the extension permits introduction into interstate commerce of 150 units per year, and the termination date of the variance has been extended from December 18, 1981, to December 18, 1986.

The product will continue to bear the Variance No. 78004. In accordance with § 1010.4, the application and all correspondence (including the written notice of approval for extension) on this application have been placed on public display in the Dockets Management Branch (address above), and may be seen in that offfice between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 2, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20493 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 78P-0401]

Frank Scholz X-Ray Corp.; Approval of Extension of Variance for Base of Pelvic Anchor System 1563

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) announces that an extension of a variance from the performance standard for diagnostic X-ray systems and their major components has been approved by the Bureau of Radiological Health for the base of Pelvic Anchor System 1563 manufactured by Frank Scholz X-Ray Corp. The system is designed for use during hip surgery or hip nailing to provide secure positioning of the patient with traction on the attached leg, with the other leg supported in flexion, and a clear field for image intensifiers in both lateral and A-P positions.

DATES: The termination date of Variance No. 78P-0401 is extended from November 28, 1981, to November 28, 1986.

ADDRESS: The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), Frank Scholz X-Ray Corp., P.O. Box 223, Needham Heights, MA 02194, has been granted an extension of a variance from the aluminum equivalence requirement, § 1020.30(n) (21 CFR 1020.30(n)), of the performance standard for diagnostic X-ray systems and their major components. The Director of the Bureau of Radiological Health has determined that the arguments that led to the original granting of Variance No. 78P-0401 are still valid. (See 45 FR 2908; January 15, 1980). This variance applies to the base of Pelvic Anchor System 1563. The conditions of the variance remain the same except that the termination date has been extended from November 28, 1981, to November 28, 1986.

The product will continue to bear the Variance No. 78P-0401. In accordance with § 1010.4, the application and all correspondence (including the written notice of approval for extension) on this application have been placed on public display in the Dockets Management Branch (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 2, 1981.

William F. Randolph,

Acting Associate Commissioner for Regualtory Affairs.

[FR Doc. 81-20492 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81N-0198]

Licensed Biological Products; Facsimile Reproduction of Official Lot Release Form FDA 2558

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that receipt of a facsimile reproduction of the Official Lot Release Form FDA 2558 by a licensed biological manufacturer is official authorization from the Director, Bureau of Biologics, for distribution of the product in interstate commerce. This action is being taken to increase the efficiency of the agency's product release system.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Paul K. Hiranaka, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Biological products, which include vaccines, blood, blood products, and

allergenic products, are subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.), inasmuch as they fall clearly within the statutory definition of the term "drug" or "device" 21 U.S.C. 321 (g)(1) or (h). In addition, the products must be licensed by the Bureau of Biologics, Food and Drug Administration, before shipment in interstate commerce under the authority of section 351 of the Public Health Service Act (PHSA) (42 U.S.C. 262). The PHSA requires that a license be issued only after the product is demonstrated to be safe, pure, and potent (42 U.S.C. 262).

The biologics regulations (21 CFR Parts 600 through 680) require that tests to ensure the safety, purity, and potency of licensed biological products be completed before distribution of any biological product in interstate commerce. For certain biological products, the regulations further provide that samples of a product, and the protocols showing results of applicable tests, be submitted to the Bureau of Biologics for FDA testing and review, respectively, and that the product shall not be issued by the manufacturer until written notice of official release is received from the Director, Bureau of Biologics. The requirements for testing and officially releasing products before marketing are authorized under §§ 610.1 and 610.2 and the additional standards for specific products (21 CFR Parts 620 through 680). Currently, the written notification of official release is issued on Form FDA 2558. Approximately 6,000 of the forms are issued by the Bureau of Biologics each year.

In response to a number of complaints from manufacturers about excessive delays in the receipt of official lot release forms sent by mail, and in some cases, nonreceipt of the forms, the Bureau of Biologics initiated a pilot study of facsimile transmission of official lot release forms. Twenty-six licensed biological product manufacturers were contacted and nine of these firms that had compatible fascimile equipment agreed to participate in a study that began on June 2, 1980. Later, five additional firms were added to the study after the firms acquired the necessary facsimile equipment. During this study, which is presently ongoing, the facsimile reproduction is used for informational purposes only and the product cannot be distributed until the official lot release form is received by the manufacturer.

To date, the manufacturers participating in the pilot study have found the facsimile transmission system to operate satisfactorily and have expressed a desire to continue this method of release notification indefinitely. Other manufacturers of biological products have informed FDA that they would obtain the necessary facsimile equipment immediately if the facsimile reproduction of Form FDA 2558 were considered to be official authorization from the Director, Bureau of Biologics, for distribution of the product.

Because the facsimile transmission system will increase the efficiency of the agency's product release system, FDA has decided that receipt of a facsimile reproduction of the Official Lot Release Form FDA 2558, will be considered to be official authorization (written notification) from the Director, Bureau of Biologics, for the distribution of the biological product in interstate commerce. FDA believes that manufacturers using the fascimile transmission system and the public will benefit from the more expeditious release of biological products because of reduced storage cost to the manufacturers and increased quantities of biological products available to the public, especially those which may be in short supply.

It should be noted that use of the facsimile transmission system is entirely voluntary. The Bureau of Biologics will continue to notify those manufacturers not using the facsimile transmission system of the release of their products by telephone and will mail the original lot release forms to the manufacturers regardless of how they were notified of a product's release.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20490 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81M-0192]

New England Nuclear; Premarket Approval Rianen ™ (^{3}H) Estrogen Receptor Assay Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the RIANEN ™ (^{3}H) Estrogen Receptor Assay Kit sponsored by New England Nuclear, North Billerica, MA. After reviewing the recommendation of the Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 13, 1981.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 22, 1980, New England Nuclear, North Billerica, MA, submitted to FDA an application for premarket approval of the RIANEN ™ (^{3}H) Estrogen Receptor Assay Kit, an in vitro diagnostic product used as an aid in the proper selection of treatment and management of breast cancer patients. The application was reviewed by the Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel, an FDA advisory committee, which recommended approval of the application. On June 1, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of

review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and sustantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 13, 1981, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 2, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20494 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81N-0190]

NADA's for NAS/NRC-Reviewed Sulfonamides

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that it is accepting new animal drug applications (NADA's) for generic equivalents of DESI-reviewed sulfonamide drugs.

ADDRESS: New animal drug applications may be submitted to the Food and Drug Administration, Bureau of Veterinary Medicine, (HFV-100), 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Emilio E. Viera, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA announces its approval of an NADA submitted by International Multifoods, Inc., for a sulfamethazine-sustained release bolus. The Bureau of Veterinary Medicine has determined that the product is generically equivalent to American Cyanamid's sulfamethazine conventional oblet, which was the subject of a National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group, evaluation published in the **Federal Register** of July 17, 1970 (35 FR 11532). This notice sets forth the agency's position that Section 510.450 (21 CFR 510.450) permits approval of NADA's for products identical and similar to NAS/NRC-reviewed sulfa drugs submitted after January 1975.

Section 510.450 established a deadline for submission of NADA's for sulfonamides that were being marketed at that time and that had not been previously subject of approved applications. The regulation also required the submission of 90-day toxicity studies by sponsors of such sulfa NADA's as well as sponsors of previously approved sulfa NADA's. The purpose was to resolve a safety concern that had been raised. The agency acknowledges that it is possible to interpret Section 510.450 to have precluded action by the agency on applications submitted after January 1975. This interpretation would include applications by sponsors who wished to gain approval for marketing under provision of the DESI program. Because International Multifoods' approval is the first action on an application for a sulfonamide submitted after January 1975, the agency concludes that it is appropriate to clarify its interpretation of the regulation. Therefore, FDA advises that sponsors may submit NADA's for generic equivalents of NAS/NRC-reviewed sulfonamide drugs to the Bureau of Veterinary Medicine (HFV-100) (address above). To meet the safety and effectiveness requirements, such applicants must submit 90-day toxicity studies, or proof of authorization to use data from 90-day studies previously completed; and tissue residue studies sufficient to establish safe withdrawal periods. Bioequivalency data may also be required.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-20495 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Final Maximum Allowable Cost (MAC) Determinations for Certain Drug Products

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice for Maximum Allowable Cost Determinations.

SUMMARY: In accordance with 45 CFR 19.5, the Pharmaceutical Reimbursement Board (PRB) announces the following final Maximum Allowable Cost (MAC) determinations:

Drug	MAC limit
Glutethimide, oral tablet, 500 mg	$0.0432
Procainamide HCl, oral capsule, 250 mg	0.0383
Procainamide HCl, oral capsule, 375 mg	0.0505
Procainamide HCl, oral capsule, 500 mg	0.0585
Propantheline Bromide, oral tablet, 15 mg	0.0235

These multiple source drugs are reimbursed under Medicaid, Medicare, and other programs administered by the Department, and have been identified as drugs for which significant amounts of Federal funds are expended and for which there are significant by different prices. These limits represent the maximum product cost recognized by the Department for purposes of reimbursement or purchase. These MAC limits do not apply to unit dose packaging for institutional use.

EFFECTIVE DATE: August 28, 1981.

FURTHER INFORMATION CONTACT: Mr. Charles Spalding, Executive Secretary, Pharmaceutical Reimbursement Board, 1-D-5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-5403.

Background

The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration (HCFA) to set limits on payment or reimbursement for drug products under HCFA and other HHS programs. On December 24, 1980, the Board published a notice in the **Federal Register** (45 FR 85159) proposing MAC limits on six drug products. The Board has received written comments concerning MAC limits on these drugs and now announces final MAC determinations for the products listed above. The following is a summary of the written comments and other material on which the Board relied in determining each MAC limit and the Board's reasons for its determinations.

In a notice of intent to set MAC limits (45 FR 29639, May 5, 1980), the Board originally identified these multiple source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration (FDA) has advised the Board that there is no regulatory action, either pending or

under consideration, that would be a reason for delaying or withholding the establishment of MAC limits on these drugs.

The originally proposed MAC limits on these drugs are as follows:

Glutethimide, oral tablet, 500 mg—$0.0398 per tablet
Phentermine HCl oral capsule, 30 mg—$0.0395 per capsule
Procainamide HCl, oral capsule, 250 mg—$0.0369 per capsule
Procainamide HCl, oral capsule, 375 mg—$0.0505 per capsule
Procainamide HCl, oral capsule, 500 mg—$0.0585 per capsule
Propantheline Bromide, oral tablet, 15 mg—$0.0235 per tablet

In making determinations of the lowest unit price at which each of the drugs are widely and consistently available from any formulator or labeler, the Board relies on two sources: A HCFA survey and *Drug Topics Red Book*. The HCFA survey is a summary, updated monthly, of pharmacy invoice prices obtained by HCFA under contract with IMS America. The HCFA survey price is based on the 70th percentile of invoice prices from a panel of 1,000 pharmacies nationwide. *Drug Topics Red Book* published annually and updated monthly, is a listing of advertised prices of suppliers.

As in earlier determinations, the Board has determined that MAC limits should not apply to drugs purchased in unit dose packages and used in institutions since the costs for these items often exceed the MAC limits (45 FR 70574, October 24, 1980).

General Comments

1. A hospital pharmacist commented that he was in basic disagreement with the MAC program because of "* * * its minimal chances for productivity in relation to the administrative costs in attempting enforcement." The comment states that there are other areas within the health care system where much more significant costs savings could be attained and mentions "* * * greater Federal support for pharmacy programs promoting rational drug therapy as a specific area."

The Board does not agree with the comment that the MAC program has "* * * minimal chances for productivity * * *" The Board notes that in a December 1980 General Accounting Office (GAO) report by the Comptroller General of the United States *(Programs to Control Prescription Drug Costs Under Medicaid and Medicare Could Be Strenghtened,* (HRD8136) US General Accounting Office, Dec. 31, 1980), the estimated annual savings resulting from the application of MAC limits to the Medicaid program in five States were in excess of $1.4 million. The report stated the MAC limits in the five States studied had reduced the States' costs for these drugs from 9.8 to 45.6 percent. A second evaluation by a private research firm found the savings of the MAC program from 17 to 22 times greater than the administrative costs.

The Board supports the concept of drug programs designed to promote the rational and proper use of drug products. It also believes the use of less costly but equivalent drug products is part of rational drug use and provides for more efficient use of existing funds.

2. A manufacturer's comment suggests to the Board that it "* * * take this opportunity to review the basis upon which it determines MAC prices, in order to further improve the timeliness of its price determinations. The need to keep MAC limits current is particularly acute, in light of recent effects of inflation on drug prices. Every drug named (both pioneer brand and generic versions) in the May 5 notice was the subject of inflation related price increases between late 1979 and April 1980." The comment continues that if MAC limits based upon November/December 1979 or early 1980 prices were proposed to be effective, the products would not necessarily be widely and consistently available on the effective date of the MAC limit. The comment also suggests that each manufacturer on whose product a MAC is to be based should be contacted immediately before publication of a proposal in order to ensure that the proposed price is current.

The Board believes that the combination of data sources and the opportunity for public participation in the MAC process clearly assures the timeliness of its final determinations. The value of public participation in the MAC process is that it provides the public an opportunity to make certain that the record upon which the Board relies is as timely, complete, and accurate as possible. To the extent that commenters offer market data not available at the time of the proposed MAC, the Board gives full consideration to these submissions and modifies its proposals whenever it will achieve a more accurate and equitable result. On several occasions in the past, the Board has revised proposed MAC limits or has decided not to establish MAC limits in response to public comments that the drugs were not widely and consistently available at the proposed MAC price.

The Board makes every effort to assure that the information it considers is timely and notes that it maintains updated price data for drug products under consideration for MAC limits until the close of the comment period. However, the Board believes that contact with a company after the close of the comment period and immediately before publishing information regarding a MAC limit would be improper since it elicits data that is not made available to the public for scrutiny prior to the adoption of a final MAC limit. Further, such contact would provide an advantage to the company contacted that was not enjoyed by other companies.

3. A community pharmacist commented that "* * * today, the generic manufacturers are spending more and more time in court than they are in their quality control labs it seems."

The MAC drug clearance procedures of FDA include reviews of Good Manufacturing Practices compliance and reviews of drug recall records. The Board accepts and confidently relies on the assurances of the FDA regarding the quality of marketed drug products.

Specific Comments on Drugs

Glutethimide, oral tablet, 500 mg.

The Board originaly proposed a MAC limit of $0.0398 per tablet for this product based on a selling price of $3.98 per 100 tablet package size.

During the comment period, the Board received information that indicated recent price changes had occurred for this product. The Board has taken these price changes into consideration in arriving at its final determinations of $0.0432 per tablet.

At the time of the proposed MAC limit, there were 13 suppliers whose products were advertised in the *Drug Topics Red Book* at or below the $0.0398 per tablet level. There are now 18 suppliers below the final determination of $0.0432. At the time of the proposed MAC limit, the HCFA survey showed that 70 percent of all purchases of the "all other brands" category were at or below $0.0398. The survey now shows that 70 percent of all purchases of the "all other brands" category are at or below the $0.0432 level. Small and medium size independents have purchased "all other brands" at or below the $0.0432 level. On March 5, 1981, after reviewing the record, the Board voted to increase the proposed final MAC limit on glutethimide, oral tablet, 500 mg to $0.0432 per tablet. The Board believes this price level assures wide and consistent availability of the product.

Phentermine HCl, oral capsule, 30 mg.

The Board originally proposed a MAC limit of $0.0395 per capsule for this

product based on a selling price of $3.95 per 100 capsule package size. Information received by the Board during the comment period regarding product availability and the lack of response on the part of one supplier to confirm its ability to supply the product at or below the proposed MAC limit caused the Board concern. On Febuary 3, 1981, the chairman contacted the individual Board members by phone. After reviewing the record on phentermine HCl, oral capsules, 30 mg and discussing the concern regarding the availability of the product at the proposed MAC limit, the Board voted to suspend consideration of a MAC limit on this product at this time.

Procainamide HCl, oral capsules, 250 mg, 375 mg, and 500 mg.

Only one comment was received by the Board regarding the proposed MAC limits for these three forms of procainamide HCl.

A community pharmacist commented that procainamide HCl "* * * should not be forced into a generic dispensing category because many elderly patients have been on Pronestyl ten to twelve years and to switch over to the generic product may be a tremendous problem. Bioequivalence is not even the only subject discussed. There is a problem of psychological adjustment to another brand."

The pharmacist's comment regarding bioequivalence is unspecific and undocumented as submitted to the Board. The Board confidently relies on the assurances of the FDA regarding quality of marketed drug products. However, if the pharmacist has substantial evidence that such problems exist that may be harmful to the public health, then he should immediately contact the FDA.

In reference to the pharmacist's comment regarding the psychological adjustment to the generic product, the Board notes that should the generic product so confuse a patient that he or she refuses to comply with the drug regimen, then the phsyician may properly "override" the MAC limit by certifying "brand medically necessary" on the prescription form.

Procainaminde HCl, oral capsule, 250 mg.

The Board originally proposed a MAC limit of $0.0369 per capsule for this product based on a selling price of $3.69 per 100 capsule package size. During the comment period, the Board received information that indicated recent price changes had occurred for this product. The Board has taken these price changes into consideration in arriving at its final determination of $0.0383 per capsule.

At the time of the proposed MAC limit, there were sixteen suppliers whose products were advertised in the *Drug Topics Red Book* at or below the $0.0369 per capsule level. There are now twenty suppliers at or below the final determination of $0.0383 per capsule. At the time of the proposed MAC limit, the HCFA survey showed that over 80 percent of the purchases of the "all other brands" category were at or below the proposed limit. The survey now shows that over 90 percent of all purchases of the "all other brands" category are at or below the final determination of $0.0383 per capsule. Small and medium size independent pharamacies have purchased "all other brands" at or below the final determination of $0.0383. Of the three approved manufacturers whose prices were at or below the proposed MAC limit, two had increases that brought their prices above the proposal. Both manufacturers' prices, however, are at or below the final determination of $0.0383.

On March 5, 1981, after reviewing the record, the Board voted to increase the proposed final MAC limit on procainamide HCl, oral capsules, 250 mg, to $0.0383 per capsule. The Board believes that this price level assures wide and consistent availability of the product.

Procainamide HCl, oral capsule, 375 mg.

The Board originally proposed a MAC limit of $0.0505 per capsule based on a selling price of $5.05 per 100 capsule package size. During the comment period, the Board received information that indicated recent price changes had occurred for this product. The Board has taken these price changes into consideration in arriving at its final determination of $0.0505 per capsule.

At the time of the proposed MAC limit, there were ten suppliers whose products were advertised in the *Drug Topics Red Book* at or below the $0.0505 per capsule level. The new data shows that there continued to be ten suppliers at or below the $0.0505 per capsule level. At the time of the proposed MAC limit, the HCFA survey showed that over 80 percent of the purchases of "all other brands" were at or below the proposed limit. The survey now shows that over 70 percent of the purchases are at or below the $0.0505 level. The Board believes that the 70th percentile represents a substantial percentage of the purchases in the marketplace. Small and medium size independents continued to purchase "all other brands" at or below the final determination of $0.0505 per capsule. The Board does not believe that the changes that have occurred in the marketplace for this product are sufficient to modify the original proposed MAC limit of $0.0505 per capsule.

On March 5, 1981, after reviewing the record, the Board voted to establish the proposed final MAC limit on procainamide HCl, oral capsules, 375 mg, at $0.0505 per capsule. The Board believes this price level assures wide and consistent availability of the product.

Procainamide HCl, oral capsule, 500 mg.

The Board originally proposed a MAC limit of $0.0585 per capsule, for this product based upon a selling price of $5.85 per 100 capsules package size. During the comment, the Board received information that indicated recent price changes had occurred for this product. The Board has taken these price changes into consideration in arriving at its final determination of $0.0585 per capsule.

At the time of the proposed MAC limit, there were twenty suppliers whose products were advertised in the *Drug Topics Red Book* at or below the $0.0585 per capsule level. According to the new data, there are now eighteen suppliers at or below the final determination of $0.0585 per capsule. The Board does not believe this change is significant. At the time of the proposed MAC limit, the HCFA survey showed that 80 percent of the purchases of the "all other brands" category were at or below the proposed limit. The survey continues to show 80 percent of the purchases of the "all other brands" category at or below the final determination of $0.0585 per capsule. Small and medium size pharmacies continued to purchase "all other brands" at or below the final determination of $0.0585. The Board does not believe that the changes that have occurred are sufficient to modify the original proposed MAC limit of $0.0585 per capsule.

On March 5, 1981, after reviewing the record, the Board voted to establish the proposed final MAC limit on procainamide HCl, oral capsule, 500 mg, at $0.0585 per capsule. The Board believe this price level assures wide and consistent availability of the product.

Propantheline Bromide, oral tablet, 15 mg.

A community pharmacist wrote to object to the MAC limit proposed for propantheline bromide, 15 mg tablets on the basis that the product does not represent a significant amount of Medicaid expenditures and does not seem to be worth the extra time and paperwork involved in establishing a MAC limit for this drug.

The Board believes this comment is an incomplete assessment of the Board's decisionmaking. The Board believes that it has accurately gauged market conditions before proposing MAC limits. Further, as a purchaser of drug products for various agency programs, the Board believes that it should have the same latitude as other major purchasers of multiple source products and that it has the capacity and facilities to determine what constitutes significant expenditures for Federally funded programs subject to its deliberations.

The Board originally proposed a MAC limit of $0.0235 per tablet for this product based on a selling price of $2.35 per 100 tablet package size.

During the comment period, the Board received information that indicated recent price changes had occurred for this product. The Board has taken these price changes into consideration in arriving at its final determination of $0.0235 per tablet.

At the time of the proposed MAC limit, there were twenty-four suppliers whose products were advertised in the *Drug Topics Red Book* at or below the $0.0235 per tablet level. According to the new data there are now twenty-one suppliers at or below the final determination of $0.0235 per tablet. The Board does not believe this change is significant. At the time of the proposed MAC limit, the HCFA survey showed that over 90 percent of the purchases of the "all other brands" category were at or below the proposed limit. The survey continues to show 90 percent of the purchases of "all other bands" at or below the final determination of $0.0235 per tablet. Small and medium size pharmacies continued to purchase "all other brands" at or below the final determination of $0.0235 per tablet. Because of a price increase, the product of Lederle, subsidiary of the 18th largest ethical pharmaceutical company, is no longer available at or below the $0.0235 level. The Board does not believe this change is significant in light of the continued purchasing below the $0.0235 level shown in the HCFA survey and in light of the continued availability from Purepac, the 63rd largest and McKesson, the 73rd largest ethical pharmaceutical companies. The Board does not believe that the changes that have occurred are sufficient to modify the original proposed MAC limit of $0.0235 per tablet.

On March 5, 1981, after reviewing the record, the Board voted to establish the proposed final MAC limit on propantheline bromide, oral tablet, 15 mg at $0.0235 per tablet. The Board believes this price level assures wide and consistent availability of the product.

Regulatory Burden Analysis

We have determined that this final notice does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this final notice will not change expenditures by over $100 million per year; or cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. We estimate that the net effect of this notice in reducing program expenditures will be approximately $1.15 million in fiscal year 1982. This determination sets forth a specific unit price at which each of these drugs is widely and consistently available. For these reasons, we believe no Regulatory Impact Analysis is required.

In addition, this notice does not meet the criteria set forth in section 605(b) of Pub. L. 96-354 (the Regulatory Flexibility Act of 1980) for preparing a regulatory flexibility analysis since we do not believe that it will result in a significant economic impact on a substantial number of small pharmacies or other business entities. The MAC process is fundamentally designed to assure wide and consistent availability of the drug products subject to MAC limits. In every case, the Board has reviewed data which has enabled the Board to determine that small and medium size pharmacies are able to acquire these drug products at or below the final MAC limits.

(Secs. 1814(b), 1861(v)(1)(A), 1902(a)(30), and 1903(i)(1) of the Social Security Act and Sec. 215 of the Public Health Services Act; 42 U.S.C. 1395f(b), 1395x(v)(1)(A), 1396a(a)(30), 1396(b)(i)(1), and 216)

Dated: May 11, 1981.

Peter J. Rodler,

Chairman, Pharmaceutical Reimbursement Board.

Approved: July 8, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 81-20660 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-35-M

Public Health Service

Health Maintenance Organizations; Noncompliance Determination

AGENCY: Public Health Service, HHS.

ACTION: Notice, continued regulation of health maintenance organizations: Determination of noncompliance and Revocation of Federal qualification.

SUMMARY: On February 27, 1981, the Office of Health Maintenance Organizations (OHMO) determined that Group Health of El Paso (GHEP), 10301 Gateway West, El Paso, Texas 79925, a federally qualified health maintenance organization (HMO), was not in compliance with the assurance it had provided to the Secretary that it would maintian a fiscally sound operation. On May 6, 1981, the Acting Director of OHMO notified GHEP that he was revoking GHEP's Federal qualification. Accordingly, GHEP is no longer a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Acting Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (the Act) (42 U.S.C. 300e-11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO is not organized or operated in the manner prescribed by section 1301(c), then the HMO shall be (1) notified in writing of the determination and (2) directed to initate corrective action to bring it into compliance with the assurances it provided to the Secretary under section 1310(d)(1).

The OHMO notice of February 27, 1981, stated the Secretary's determination that GHEP was not in compliance with the assurance that it would maintain a fiscally sound operation. The basis for the revocation of Federal qualification was OHMO's determination that GHEP had not carried out and would not carry out the corrective action necessary to return to compliance. In addition, GHEP is in receivership pursuant to Texas State statute. The revocation of qualification became effective five working days after GHEP received the May 6 letter.

The effect of the revocation of GHEP's Federal qualification is as follows: (1) GHEP may not seek inclusion in employees' health benefits plans under section 1310 of the Act; (2) with respect to employers including GHEP in the health benefits plan offered their employees, GHEP is not a qualified HMO for purposes of section 1310 of the Act; (3) the inclusion of GHEP in an employees' health benefits plan will be disregarded for purposes of determining whether, and to what extent, the employer is subject to 42 CFR Part 110, Subpart H, and will not constitute

compliance with the requirements of that subpart; and (4) GHEP is not a qualified HMO for purposes of the financial assistance programs under 42 CFR Part 110.

Section 1312(b)(1) of the Act requires that a notice of the determination of noncompliance and of the revocation of Federal qualification of an HMO be published in the **Federal Register.**

Dated: June 30, 1981.

Frank H. Seubold,

Acting Director, Office of Health Maintenance Organizations.

[FR Doc. 81-20533 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-85-M

Health Maintenance Organizations; Noncompliance Determination

AGENCY: Public Health Service, HHS.

ACTION: Notice, continued regulation of health maintenance organizations: Determination of noncompliance and revocation of Federal qualification.

SUMMARY: On March 2, 1981, the Office of Health Maintenance Organizations (OHMO) determined that Idaho Health Maintenance Organization (Idaho HMO), 963 South Orchard, Suite B, Boise, Idaho 83705, a federally qualified health maintenance organization (HMO), was not in compliance with the assurance it had provided to the Secretary that it would maintain a fiscally sound operation. On May 1, 1981, the acting Director of OHMO notified Idaho HMO that he was revoking Idaho HMO's Federal qualification. Accordingly, Idaho HMO is no longer a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph. D., Acting Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (the Act) (42 U.S.C. 300e-11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO is not organized or operated in the manner prescribed by section 1301(c), then the HMO shall be (1) notified in writing of the determination and (2) directed to initiate corrective action to bring it into compliance with the assurances it provided to the Secretary under section 1310(d)(1).

The OHMO notice of March 2, 1981, stated the Secretary's determination that Idaho HMO was not in compliance with the assurance that it would maintain a fiscally sound operation. The basis for the revocation of Federal qualification was OHMO's determination that Idaho HMO had not carried out and would not carry out the corrective action necessary to return to compliance. In addition, Idaho HMO is in receivership pursuant to Idaho State statute. The revocation of qualification became effective five working days after Idaho HMO received the May 1 letter.

The effect of the revocation of Idaho HMO's Federal qualification is as follows: (1) Idaho HMO may not seek inclusion in employees' health benefits plans under section 1310 of the Act; (2) with respect to employers including Idaho HMO in the health benefits plan offered their employees, Idaho HMO is not a qualified HMO for purposes of section 1310 of the act; (3) the inclusion of Idaho HMO in an employees' health benefits plan will be disregarded for purposes of determining whether, and to what extent, the employer is subject to 42 CFR Part 110, Subpart H, and will not constitute compliance with the requirements of that subpart; and (4) Idaho HMO is not a qualified HMO for purpose of the financial assistance programs under 42 CFR Part 110.

Section 1312 (b)(1) of the Act requires that a notice of the determination of noncompliance and of the revocation of Federal qualification of an HMO be published in the **Federal Register.**

Dated: June 30, 1981.

Frank H. Seubold,

Acting Director, Office of Health Maintenance Organizations.

[FR Doc. 81-20534 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-85-M

Social Security Administration

Reallotment of Funds for 1981; Low Income Energy Assistance Program

AGENCY: Social Security Administration.

ACTION: Notice of intent to reallocate State allotments and amounts set aside for Indian tribes.

SUMMARY: The Commissioner of Social Security gives notice of the intent to reallocate State allotments and amounts set aside for Indian tribes under the Low Income Energy Assistance Program (LIEAP). This reallocation is authorized by Section 306(c) of the Home Energy Assistance Act of 1980 (Title III of Pub. L. 96-223), the Continuing Resolution, Pub. L. 96-369 enacted on October 1, 1980, and 45 CFR 260.108 (45 FR 66693, October 7, 1980).

Before making a final decision to reallot funds from any State or tribe, we will consider comments we receive from the public by August 13, 1981. Comments should be submitted, in writing, to: Commissioner of Social Security, P.O. Box 23367, L'Enfant Plaza, Washington, D.C. 20024.

Beginning two weeks from July 14, 1981 the public may review the comments during regular business hours at: Office of Family Assistance, 2100 Second Street, S.W., Room B-424, Transpoint Building, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Edward J. Freel, Deputy Director, Office of Policy/Energy, 2100 Second Street, S.W., Room B-424, Transpoint Building, Washington, D.C. 20201 (202) 472-2400.

SUPPLEMENTARY INFORMATION.

Program Purpose and Design

LIEAP was enacted to assist low income households offset the rising costs of home energy that are excessive in relation to household income. In order to receive funds, States and Indian tribes submitted comprehensive plans describing how they would implement the program. Congress provided $1.75 billion for allotment to the States in fiscal year 1981. We have made quarterly grant awards to the States and tribes for the first, second and third quarters of FY 1981 based on information contained in their approved plans and reports they submitted in accordance with our regulations.

Reallotment Purpose and Design

The purpose of reallotment is to make sure that LIEAP funds do not go unused in one State or tribe if they is an unmet need in another State or tribe.

Where we determine that a portion of a State's allotment or Indian tribe's set-aside will not be needed to carry out its approved plan, we will reallot that portion to other States or tribes based on their need and ability to expend the funds in a manner consistent with the Act and LIEAP regulations.

The amounts we propose to make available for reallotment are set forth below and are based on our review of:

- Reports from the States and Indian tribes submitted under the LIEAP regulations;
- States' climatic conditions;
- Provisions in the approved plans regarding the amounts, method, timing and form of payment, amounts reserved for emergencies, and payments planned for summer cooling;
- Starting date of the program in the States and tribes.

After considering comments by the States and tribes and the public, we will publish a notice of our final determination of the funds available for

reallotment and the amount by which each State and tribal allotment will be reduced or increased.

Funds Available for Reallotment

The chart below shows the States and tribes that we believe have allotments in excess of their needs, the amount of their original allotment, and the excess amount that we propose to make available for reallotment.

State	Allotment	Excess
Alaska	$9,623,855	$2,500,000
Iowa	32,674,799	4,500,000
Missouri	40,673,651	4,400,000
Montana	12,902,720	3,500,000
Nebraska	16,158,946	3,000,000
North Dakota	14,016,247	5,000,000
South Dakota	11,383,649	4,000,000
Utah	13,105,171	3,000,000
Washington	35,951,971	3,000,000
Wisconsin	62,694,479	3,500,000
Wyoming	5,247,030	2,000,000

Tribe	Set aside	Excess
Devil's Lake Sioux	$245,284	$24,921
Puyallup	232,322	127,897
Sauk-Suiattle	58,638	43,318
Standing Rock	436,737	175,000
Utes	137,239	39,538
Three Affiliated Tribes	263,505	37,474

Dated: July 8, 1981.

John A Svahn,

Commissioner of Social Security.

[FR Doc. 81-20591 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-81-1079]

National Manufactured Home Advisory Council; Meeting

AGENCY: Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, HUD.

ACTION: Notice of biannual meeting of the National Manufactured Home Advisory Council.

SUMMARY: This notice announces a biannual meeting of the advisory council.

FOR FURTHER INFORMATION CONTACT: Janice Ligon, Coordinator, National Manufactured Home Adivsory Council, Office of Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Attention: Office of Mobile Home Standards, Room 3248), 451 7th Street, S.W., Washington, D.C. 20410; Telephone (202) 755-6893.

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (hereinafter "the Act"), 42 U.S.C. 5401 *et seq.*, requires the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for manufactured homes. The Act also requires that the Secretary appoint a National Manufactured Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) consumer organizations, community organizations, and recognized consumer leaders; (b) the manufactured home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State and local governments. The purpose of the National Manufactured Home Advisory Council is to advise the Department, to the extent feasible prior to the establishment, amendment or revocation of any manufactured home construction and safety standard.

Sections 6(a) and (b) of the Charter of the National Manufactured Home Adivsory Council stipulate that members are appointed to serve two year terms which expire on August 21 of the second year of each member's appointment, unless a member is appointed to fill an unexpired term.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, announcement is made of the following meeting: The National Manufactured Home Advisory Council will meet on August 4 through 7, 1981. The meetings are open to the public and will convene at 9:00 a.m. on Tuesday, Agust 4, 1981 at the Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Among other items, the Department plans to discuss and seek recommendations concerning evaluations and recommendations for improvements and clarification to the Federal Manufacture Housing Construction and Safety Standards in the following areas:

(1) Space Planning;
(2) Fire and Egress Safety;
(3) Energy;
(4) Transportation;
(5) Plumbing Systems;
(6) Electrical Systems;
(7) Mechanical Systems;
(8) Structural and Load Testing Requirements;
(9) Indoor Air Quality (Formaldehyde); and
(10) General Provisions.

The final agenda will be available at the meeting. Inquiries concerning the agenda may be made after July 20, 1981 by contacting the Office of Mobile Home Standards, HUD, at (202) 755-6893.

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5404; and Federal Advisory Committee Act, 5 U.S.C. App. 1, sec. 10(a)(2).

Issued at Washington, D.C., July 10, 1981.

William O. Anderson,

General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 81-20626 Filed 7-13-81; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-81-1077]

Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/H-7, Previous Participation Files.

EFFECTIVE DATE: The amendment shall become effective without further notice on August 13, 1981 unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202-755-5333. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The System location, Notification procedure, Record access procedures, and Contesting record procedures sections of the Previous participation Files (HUD/H-7) are being amended to reflect the fact that the system is located in field offices as well as in Headquarters. Field offices are being added to "System location," and the words "at the appropriate location" are being substituted for "at the Headquarters location" in the sections dealing with "Notification procedure," "Record access procedures," and "Contesting record procedures."

Previously, the system was published at 45 FR 67623 (October 10, 1980). Appendix A, which lists the addresses of HUD's field offices was published at 45 FR 67626 (October 10, 1980). The notice describing Previous Participation Files (HUD/H-7) is being amended to read as follows:

HUD/H-7

SYSTEM NAME:

Previous Participation Files.

SYSTEM LOCATION:

Headquarters and field offices.

* * * * *

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contresting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

* * * * *

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., July 8, 1981.

A. J. Kliman,

Acting Deputy Assistant Secretary for Administration

[FR Doc. 81-20503 Filed 7-13-81, 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit; Receipt of Application

Applicant: U.S. National Park Service, Virgin Islands National Park, St. Thomas, VI.

The applicant requests an amendment to his application to relocate sea turtle nests which might otherwise be washed away, to include nests of all species of sea turtles which might occur in the park: hawksbill (*Eretmochelys imbricata*), Atlantic ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*) and loggerhead (*Caretta caretta*).

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-8074. Interested persons may comment on this application on or before August 13, 1981 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: July 7, 1981.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-20578 Filed 7-13-81, 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permits Issued for the Month of June

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to Section 10 of the Endangered Species Act of 1973 as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the proposes and policy set forth in the Endangered Species Act of 1973 as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, Box 3654, Arlington, VA 22203, telephone (703/235-1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 605, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

U.CA/Berkeley	0682	I	06-30-81
Indiana Bat Rec Team	2174	I	06-04-81
USFWS, REG 6	4030	I	06-16-81
Tata, Barbara	4341	I	06-02-81
Woodland Park Zoo	6785	I	06-25-81
HI Volcanoes National	6937	I	06-02-81
Allen, Joseph C.	7125	I	06-04-81
VA Wildlife Fed.	7470	I	06-26-81
Nat. Fishery Res. Lab	7546	I	06-04-81
Florida State Museum	7606	I	06-10-81
Clemson Univ.	7775	I	06-11-81
Univ of TN	7818	I	06-23-81
Ok City Zoo	7820	I	06-04-81
Gruenerwald, William	7841	T	06-04-81
Inst. For Rapt. Stud.	7869	I	06-10-81
Chicago Zoo Park	7879	I	06-04-81
Thompson, Richard L.	7883	I	06-26-81
Gladys Porter Zoo	7904	I	06-12-81
Ft Wayne Children Zoo	7931	I	06-05-81
Gruenerwald, William	7958	I	06-10-81

Dated: July 9, 1981.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 16-20575 Filed 7-13-81, 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct specific activities with various Endangered Species:

Applicant: New York Zoological Society, Bronx, NY—PRT 2-8169.

The applicant requests a permit to export one male and one female captive-bred Andean condors (*Vultur gryphus*) to the Societe Zoologique de Granby, Granby, Quebec, Canada for enhancement of propagation.

Applicant: Western Foundation for Vertebrate Zoology, Los Angeles, CA—PRT 2-8176.

The applicant requests a permit to export and re-import museum specimens of endangered species to and from various foreign institutions for scientific research.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications on or before August 13, 1981 by submitting written data, views, or arguments to the Director at the above address.

Dated: July 8, 1981.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-20577 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On May 29, 1981, a notice was published in the **Federal Register** (46 FR 28961), that an application had been filed with the Fish and Wildlife Service by Donald B. Siniff and John R. Tester for a permit to take up to 300 sea otters (*Enhydra lutris*) for the purpose of scientific research.

Notice is hereby given that on July 8, 1981, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued a permit PRT 2-4114 to the applicants to take up to 300 sea otters subject to certain conditions set forth in the permit.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: July 9, 1981.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 81-20576 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Outer Continental Shelf (OCS) Oil and Gas Information Program

NOTICE: Availability of Updated Indexes to Three of Four OCS Leasing Regions.

SUMMARY: Indexes to three OCS leasing regions (Pacific, Atlantic, and Alaska) have been published by the U.S. Geological Survey, Department of the Interior. The Gulf of Mexico Index will be available in August. It was delayed due to a temporary moratorium on government printing. Each of the updated indexes contains detailed information on the OCS leasing process and on the final 5-year OCS oil and gas leasing schedule (June 1980). Each step in the OCS leasing process is described in detail and includes a list of relevant documents for every lease sale in the given region. Following the step descriptions, ongoing support programs of the Bureau of Land Management and the U.S. Geological Survey are described. Next, information on State involvement in the leasing process is presented. Appendixes include a directory of State and Federal OCS-related contacts, Federal depository libraries, and other general OCS-related information.

EFFECTIVE DATE: Immediately.

ADDRESSES: Copies of the reports may be obtained free upon request from the Office of OCS Information, U.S. Geological Survey, 640 National Center, Reston, VA 22092.

FOR FURTHER INFORMATION CONTACT: Louis G. Hecht, Jr., Acting Chief, Office of OCS Information, U.S. Geological Survey, 640 National Center, Reston, VA 22092, (703) 860-7166.

Robert R. Rioux,

Deputy Division Chief, Offshore Minerals Regulation, Conservation Division.

[FR Doc. 81-20590 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Availability of Final Supplement to the Colstrip Project Final Environmental Impact Statement (INT FES 81-25) Supplement

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of final supplement to the Colstrip project final environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Supplement to the Colstrip Project Final Environmental Impact Statement (INT FES 79-29). This supplement evaluates additional proposed corridors for the Colstrip 500 kv transmission line from near Boulder, Montana to alternative substation locations near Garrison, Montana.

SUPPLEMENTARY INFORMATION: The Final Supplement was prepared as the result of new alternatives developed in response to public concerns obtained during the centerline location process. These alternatives had not been previously considered in the Colstrip Project EIS. This supplement was prepared jointly by the Bureau of Land Management, Forest Service, and Bonneville Power Administration.

As a result of the Federal environmental studies completed, including the Draft Supplement and the public input received, the Federal agencies have identified a proposed corridor and substation site. They are the Boulder corridor in the Boulder area, the Black Mountain + AAA corridor in the Deer Lodge area, and Substation Site 3A located four miles southwest of Garrison.

The Boulder corridor leaves the designated corridor east of Boulder and goes around the north end of the Boulder Valley. The Boulder corridor crosses I-15 at the north end of the Boulder Valley, passing about three miles north of Basin. The Boulder corridor rejoins the alignment of the designated corridor northwest of Basin and continues southwest to the Berkin Flat Area. The Black Mountain + AAA corridor leaves Berkin Flat and continues west across the Continental Divide, then turns north following the foothills on the east side of the Deer Lodge Valley to near Garrison. There, the corridor turns west across I-90 and the Clark Fork River south of Garrison continuing west to the site of Substation 3A.

In addition to copies being mailed, copies of the document are available at the following locations:

U.S. Department of Agriculture, Forest Service, Planning, Programming, Budgeting, Federal Building, Missoula, Montana 59807, Telephone: (406) 329-3399, FTS 585-3399

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 758, Hwy. 2 East, Kalispell, Montana 59901, Telephone: (406) 755-6202

U.S. Department of the Interior, Bureau of Land Management, Public Affairs Staff, 222 North 32nd Street, Billings, Montana 59101, Telephone: (406) 657-6561, 585-6561

Comments on the Final Supplement should be forwarded to the following official no later than August 17, 1981: Neil Morck, Bureau of Land Management, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107, Telephone: (406) 657-6457, FTS 585-6632.

Dated: July 7, 1981.

Michael J. Penfold,

BLM Montana State Director.

[FR Doc. 81-20479 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-84-M

Nevada State Office; Intensive Wilderness Inventory Units Under Appeal to the Interior Board of Land Appeals (IBLA)

The Bureau of Land Management, Nevada State Office, announced its intensive wilderness inventory protest decisions in the March 18, 1981 **Federal Register** on pages 17265-17266. The March announcement initiated a 30-day appeal period in which adversely affected persons could appeal the March protest decisions to the IBLA. The following units are currently under appeal.

Lands Identified as WSA's Under Appeal

Unit No.	Unit name	WSA acres under appeal
Elko District:		
NV-010-027	Bluebell	63,150
NV-010-033	Goshute Peak	88,440
NV-010-035	South Pequop	39,900
NV-010-106	Owyhee Canyon	17,170
NV-010-132	Little Humboldt River	40,100
NV-010-151	Rough Hills	6,300
Winnemucca District:		
NV-020-006-A/CA-020-914	East Fork High Rock Canyon	53,920
NV-020-007	High Rock Lake	61,035
NV-020-008/CA-020-913	Little High Rock Canyon	52,143
NV-020-014	Fox Mountain Range	70,586
NV-020-019	Calico Mountains	65,490
NV-020-200	Selenite Mountain	30,602
NV-020-201	Mt. Limbo	22,458
NV-020-406	Tobin Range	20,301
NV-020-600	Blue Lakes	23,397
NV-020-603	South Jackson Mountains	60,124
NV-020-606	North Jackson Mountains	25,571
NV-020-620	Black Rock Desert	333,111
NV-020-621	Pahute Peak	55,052
NV-020-622	North Black Rock Range	29,945
NV-020-637	McGee Mountain	25,406
NV-020-827	N. Fork Little Humboldt	70,498
NV-020-859/OR-3-153/OR-2-79	Disaster Peak	10,687
Carson City District:		
NV-030-102	Clan Alpine Mountains	193,120
NV-030-104	Stillwater Range	92,053
NV-030-108	Augusta Mountains	93,200
NV-030-110	Desatoya Mountains	48,150
NV-030-122	Job Peak	91,022
NV-030-407	Gabbs Valley Range	75,440
NV-030-430	Basalt	27,560
NV-030-432	Hornbone Mine	1,570
NV-030-528A	Burbank Canyons	13,395
Ely District:		
NV-040-015	Goshute Canyon	35,050
NV-040-086/UT-050-029	Granite Spring	23,400
NV-040-154	Park Range	46,500
NV-040-168	Riorden's Well	56,600
NV-040-197	Table Mountain	35,600
NV-040-242	Worthington Mountains	47,100
Las Vegas District:		
NV-050-0131	East Pahranagat	18,200
NV-050-0154	Medsger Pass	11,462
NV-050-0165	Lower Pahranagat Lake	3,350
NV-050-0338	Silver Peak Range North	33,900
NV-050-0350	Pigeon Spring	3,575
NV-050-0354	Queer Mountain	81,550
NV-050-0355	Bonnie Claire Flat	69,000
NV-050-0368	Porter Mine	6,089
NV-050-0369	Amargosa	12,453
NV-050-0370	Nothing Flats	9,510
NV-050-03R-22	Gem	2,153
NV-050-0401	Mount Stirling	69,650
NV-050-0414	Pine Creek	24,000
Battle Mountain District:		
NV-060-019	Kawich	54,320 [1]
NV-060-059	Rawhide Mountain	64,360
NV-060-112	South Reveille	106,200
NV-060-142/162	Palisade Mesa	99,550
NV-060-158/199	Blue Eagle	59,560
NV-060-163	The Wall	38,000
NV-060-168	Grant Range	5,840
NV-060-190	Fandango	40,940
NV-060-191	Morey	20,120
NV-060-231/241	Antelope	87,400
NV-060-428	Simpson Park	49,670
NV-060-541	Roberts	15,090

[1] This figure represents a recalculation of the WSA acreage published in the FR on 11/7/80, p. 74071 and on 11/14/80, p. 75594

Lands Not Identified as WSA's Under Appeal

Unit No.	Unit name	Non-WSA acres under appeal
Elko District:		
NV-010-035A	South Pequop	4,700
NV-010-130	Rock Creek	37,060
NV-010-197	Hank's Creek	6,300
Winnemucca District:		
NV-020-430	Granite Mountain	20,269
NV-020-620P	Black Rock Desert	218,189
Carson City District:		
NV-030-525	East Pine Nuts	38,785
NV-030-	Virginia Mountains	72,745
Ely District:		
NV-040-015B	Goshute Canyon	55,900
NV-040-123	Martin Spring	24,800
Battle Mountain District:		
NV-060-461	South Fish Creek	104,500

All Wilderness Study Areas and all lands appealed will continue to be managed under provisions specified in the *Interim Management Policy and Guidelines for Lands Under Wilderness Review.*

Dated: July 6, 1981.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 81-20529 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 3, 1981. Pursuant to section 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 29, 1981.

Carol Shull,

Acting Keeper of the National Register.

CONNECTICUT

Hartford County

Farmington, *Gridley-Parsons-Staples Homestead*, 1554 Farmington Ave.

West Hartford, *Webster, Noah, Memorial Library*, 7 N. Main St.

MICHIGAN

Baraga County

Skanee, *Arvon Township Hall*

Barry County

Hastings, *Barry County Courthouse Complex*, 220 W. State St.

Berrien County

Niles, *Chapin, Henry A., House*, 508 E. Main St.

NEW JERSEY

Passaic County

Paterson, *Thompson, Daniel, and Ryle, John, Houses*, 8 and 9 Mill St.

NEW YORK

Dutchess County

Hyde Park, *Hyde Park Railroad Station*, River Rd.

OREGON

Jackson County

Medford, *Medford Carnegie Library*, 413 W. Main St.

TENNESSEE

Shelby County

Memphis, *Lenox School*, 519 S. Edgewood Ave.

WISCONSIN

Dane County

Madison, *Bernard-Hoover Boathouse*, 622 E. Gorham St.

La Crosse County

La Crosse vicinity, *Smith Valley School*, 4130 Smith Valley Rd.

[FR Doc. 81-20205 Filed 7-13-81; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Contract Negotiations With Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado; Intent To Establish Initial Water Delivery Date and To Begin Contract Adjustment Negotiations of Charges Under the Water Service Contract

The Department of the Interior, through the Regional Director, Lower Missouri Region of the Bureau of Reclamation (Reclamation), intends to establish January 1, 1982, as the initial water delivery date for the Fryingpan-Arkansas Project. Also, Reclamation will initiate and complete contract negotiations for adjustment in the payments for water service with the Southeastern Colorado Water Conservancy District prior to initial delivery of water.

The Fryingpan-Arkansas Project is a multipurpose transmountain diversion development in south-central Colorado authorized under the Act of August 16, 1962 (76 Stat. 389). The project will provide supplemental irrigation water

and water for municipal use. In accordance with the provisions of contract No. 5–07–70–W0087 (formerly No. 14–06–700–4715), the beneficiaries will reimburse their allocated share of the project costs to the United States.

The existing contract with the conservancy district allows the Secretary of the Interior, through Reclamation, to adjust the district's repayment obligation prior to initial water delivery. Reclamation intends to negotiate an amendment of contract No. 5–07–70–W0087 which would increase the rates for project water to the district. Other, less significant, provisions of the contract also will be renegotiated.

The amendatory contract will be negotiated under the authority of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), and will continue to provide for the delivery of project water for irrigation of irrigable lands, for municipal and industrial service, and for the operation, maintenance, and replacement of project works.

All meetings scheduled by Reclamation with the district for the purpose of discussing terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties who have provided a written request for notification. Requests should be addressed to the Project Manager, Fryingpan-Arkansas Project Office, Bureau of Reclamation, P.O. Box 515, Pueblo, Colorado 81002. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act of September 6, 1966 (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared available to the public. Unless significant public interest is evidenced in these negotiations as gauged by the response to this notice and local news releases or announcements, the availability of the proposed form of contract for public review and comment will not be publicized through the **Federal Register** or other media. The Commissioner of Reclamation will review comments submitted and based on the number, sources, and nature of the comments, will decide whether to hold a public hearing.

For further information on the contract negotiations, please contact the Project Manager at the above address, or telephone (303) 544–5277.

Dated: July 7, 1981.

Clifford I. Barrett,

Assistant Commissioner of Reclamation.

[FR Doc. 81–20509 Filed 7–13–81; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL CONVENTION ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. Appendix I, that a meeting of the International Convention Advisory Commission will be held on Thursday, August 13, 1981, 9:30 a.m., Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C.

The Commission will consider a report on the CITES permit system, a report on trade in cactus, a blueprint for Federal activities on international wildlife trade: FY 1982–1985 and miscellaneous other business.

For further information contact Mr. Gordon Brown, Acting Executive Secretary, International Convention Advisory Commission, Suite 220, 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007, telephone 202/343–7407. Opportunity will be given for oral or written presentations provided that appointments are made with Mr. Brown by 5:00 p.m., August 7, 1981.

Dated: July 9, 1981.

Gordon Brown,

Acting Executive Secretary, International Convention Advisory Commission.

[FR Doc. 81–20587 Filed 7–13–81; 8:45 am]

BILLING CODE 4310–68–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-38)]

Illinois Central Gulf Railroad Company Abandonment Between Rosedale and Greenville in Washington and Bolivar Counties, MS; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision dated July 8, 1981, the Commission, Appellate Division 2 found that the public convenience and necessity require or permit abandonment by the Illinois Central Gulf Railroad Company of its line of railroad between Rosedale and Greenvile in Washington and Bolivar Counties, MS, a total distance of 32.45 miles, subject to the conditions for employee protection provided in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued permitting the abandonment unless within 15 days from the date of this publication the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the issuance of the abandonment certificae will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, the abandonment certificate will be issued. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–20755 Filed 7–13–81; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-No. 63)]

Illinois Central Gulf Railroad Company—Abandonment Between Port Gibson and Crosby and Between Harriston and Fayette, MS; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision dated July 9, 1981, the Commission found that the public convenience and necessity require or permit abandonment by Illinois Central Gulf Railroad Company of its lines extending from milepost 251 near Port Gibson, MS to milepost 302.8 near Crosby, MS (including Port Gibson and Crosby), and from milepost 70 at Harriston, MS to the end of the line at milepost 74 southwest of Fayette, MS, all in Jefferson, Franklin, Wilkinson,

Amite and Claiborne Counties, MS, including 55.8 miles of branch line track and 8.4 miles of side and yard track, subject to the conditions for employee protection provided in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 ICC 91 (1979). A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company permitting their abandonment unless within 15 days from the date of this publication the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenue attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the issuance of an abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, an abandonment certificate will be issued. Upon notification to the Commission of the execution of a subsidy or purchase agreement, the Commission shall further postpone the issuance of a certificate for such time as the agreement is in effect. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-20629 Filed 7-13-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly Section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 3, Members Krock, Taylor, and Williams.

MC–FC–79067. By decision of June 25, 1981, on appeal, issued under 49 U.S.C. 10928 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Arctic Air Transport, Inc., of Mondovi, WI (a Minnesota Corporation) of Certificates No. MC–140744 (Sub-Nos. 9, 12, 13, 16, 17 and 18), issued to Arctic Air Transport, Inc., of Mondovi, WI (a Wisconsin Corporation), authorizing general commodities; meats; and foodstuffs; from and to named points in the United States. Applicants' representative: Stanley C. Olsen, Jr., Suite 307, 5200 Willson Rd., Minneapolis, MN 55424. TA lease is not sought. Transferee is not a carrier, but is affiliated with transferor.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-20571 Filed 7-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 428]

Motor Carriers; Permanent Authority Decision; Republications of Grants of Operating Rights; Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broaden grant of authority over that previously noticed in the **Federal Register**.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 126555 (Sub-86) (Republication), filed June 16, 1980, published in the **Federal Register** issue of August 5, 1980 and republished this issue. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. A Decision of the Commission, Review Board Number 3, decided May 19, 1981, and served June 17, 1981, finds that the performance by applicant of the service will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement and cement products*, between points in TX, CO, WY, MT, SD, and ID; that applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to broaden the commodity description to include cement products.

By the Commission.
Agatha L. Mergenovich,
Secretary.
[FR Doc. 81-20572 Filed 7-13-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP3-239]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register**.

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this **Federal Register** notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 (renumbered 1100.251) addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 (renumbered 251) was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

MC 127834 (Sub-128) (Republication) filed December 15, 1980, published in the **Federal Register** issue of January 6, 1981, and republished this issue. Applicant: LIGON TRANSPORTATION COMPANY, Highway 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. A Decision of the Commission, Division 2, Acting as an Appellate Division, decided May 19, 1981 and served June 3, 1981, finds on further consideration that the performance by applicant of the service as described herein will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, between (a) Lanare, Hub, and Mentone, CA; (b) Sorrento, FL; (c) Roseville and Youngstown, IL; (d) Commerce, OK; (e) DeSoto and Nashville, NE; (f) Jordan, KY, and Spelter and Farnum, WV, on the one hand, and, on the points in the United States. Note: The purpose of this application is to substitute motor carrier for abandoned rail service. Condition: The certificate granted above, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring 5 years from the date of issuance. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication to eliminate the commodity restriction as previously published.

MC 140315 (Sub-12) (Republication) filed January 21, 1981, published in the **Federal Register** issue of February 20, 1981, and republished this issue. Applicant: DEES TRANSPORTATION, INC., P.O. Box 446, Worland, WY 82401. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. A Decision of the Commission, Review Board Number 2, decided April 27, 1981 and served May 12, 1981, finds that the performance by applicant of the service will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities as are dealt in by wholesale and retail groceries and food business houses*, between points in the United States in and west of ND, SD, NE, KS, MO, OK, and TX; (2) *agricultural limestone and fertilized*, between points in Eddy County, NM, and Laramie County, WY, on the one hand, and, on the other, points in WY and CO; and (3) *feeds and feed ingredients*, between points in the United States in and west of MN, WI, IL, MO, AR, and LA; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to broaden the commodity description in (1) above to encompass the needs of the shipper.

MC 144955 (Sub-1) (Republication) filed February 6, 1980, published in the **Federal Register** issue of March 5, 1981, and republished this issue. Applicant: FLORIDA FAST FREIGHT, INC., P.O. Box 5177, Glencoe, AL 35905. Representative: Ronald L. Stichweh, 727 Frank Nelson Bldg, Birmingham, AL 35203. A Decision of the Commission, Review Board Number 2, decided June 2, 1981, and served June 16, 1981, finds that the performance by applicant of the service will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives), between points in FL and AL, on the one hand, and, on the other, points in GA, AL, and TN; that applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect service additionally to the states of Georgia and Alabama.

By the Commission.
Agatha L. Mergenovich,
Secretary.
[FR Doc. 81-20543 Filed 7-13-81; 8:45 am]
BILLING CODE 7035-01-M

Rerouting of Traffic; Revised I.C.C. Order No. 80 Under Service Order No. 1344

To: St. Louis Southwestern Railway Company; Little Rock & Western Railway Corporation; Cadillac & Lake City Railway Company; Oklahoma, Kansas and Texas Railroad Company; Keota Washington Transportation Company; and Union Pacific Railroad Company.

In the opinion of Joel E. Burns, Agent, the Chicago, Rock Island and Pacific Railroad Company is unable to transport promptly traffic offered for movement via its lines, because of an embargo of its lines.

Rerouting authority was granted in Reroute Order No. 63, and should be extended for those carriers which have indicated that tariff modifications cannot be completed by the expiration of Reroute Order No. 63 (June 30, 1981). This matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and therefore requires this action by the Commission.

It is ordered,

(a) *Rerouting traffic.* The Chicago, Rock Island and Pacific Railroad Company (RI), being unable to transport promptly traffic offered for movement via its lines because of an embargo of its lines, that lines interim operators named below are authorized to reroute such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

St. Louis Southwestern Railway Company; Little Rock & Western Railway Corporation; Cadillac & Lake City Railway Company; Oklahoma, Kansas and Texas Railroad Company; Keota Washington Transportation Company; and Union Pacific Railroad Company.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other

railroads to which such traffic is to be rerouted, before rerouting.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted and shall furnish to such shipper the new routing provided for under this order, except when the disability requiring the rerouting occurs after the movement has begun.

(d) Inasmuch as the rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., July 1, 1981.

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1981, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 30, 1981.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 81-20519 Filed 7-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-39)]

Western Pacific Railroad Company Exemption for Contract Tariff ICC-WP-C-0003; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract and contract tariff to be filed can become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: By letter petition filed June 24, 1981, the Western Pacific Railroad Company (WP) has requested an exemption from the requirement of 49 U.S.C. 10713(e) that its contract rate tariff ICC-WP-C-0003 be made effective on a minimum of 30 days' notice. This contract tariff is a one-year renewal of a previous contract. WP requests that the contract become effective on July 1, 1981.

The contract involves the transportation of woodchips from Quincy Junction, CA (and other stations in Tariff PSFB 4489-series) to West Sacramento, CA (and other stations in Tariff PSFB 4489-series). The shipper and railroad intended to extend the prior contract (ICC-WP-4015), on one day's notice, but were unable to do so because of mail delays.

There is not provision for waiving the section 10713(e) requirement that contracts must be filed to become effective on not less than 30 nor more than 60 days' notice. Cf. former section 10762(d)(1). However, we may address the same relief under our section 10505 exemption authority and we do so here.

We believe that this type of situation warrants an exemption. There is no indication that protests will be filed since this contract is a renewal of a previous contract. Because the shipper supports WP's request, a 30 day notice period is not required to protect it from abuse of market power. This action will provide WP with a degree of certainty and dependability as to the involved traffic and the revenues it generates. Under the circumstances, the contract and contract tariff can be made effective on one day's notice.

We will impose the following conditions:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding, on its own initiative or on complaint, to review the contract or to disapprove it.

Subject to compliance with the conditions set out above, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. The contract tariff to be filed in conformity with our tariff publishing regulations may become effective on one day's notice. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10505.

Decided: July 7, 1981.

By the Commission, Division 1, Commissioners Clapp, Trantum, and Taylor. Commissioner Taylor dissented.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-20522 Filed 7-13-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed.

Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPY–4–244

Decided: July 8, 1981.

FF 556, filed June 26, 1981. Applicant: AABCO, INC., 3045 Sleepy Hollow Rd., Falls Church, VA 22042. Representative: Charles F. Magness (same address as applicant), (703) 241–0918. As a freight forwarder, in connection with the transportation of (1) *used household goods and unaccompanied baggage* and (2) *used automobiles*, between points in the U.S. (excluding HI and AK) restricted in (2) above to the transportation of import-export traffic.

MC 136636 (Sub-7), filed June 26, 1981. Applicant: MIKE'S TRUCKING, INC., Rt. 1, Chebanse, IL 60922. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200–A, Park Ridge, IL 60068, (312) 698–2235. Transporting *machinery*, between points in Will County, IL, on the one hand, and, on the other, points in the U.S.

MC 146096 (Sub-3), filed June 16, 1981. Applicant: BARRY D. STROUPE TRUCKING, Rt. 2, Box 32 BA, Kings Mt., NC 28086. Representative: W. G. Reese III, 623 E. Artesia, Carson, CA 90746, (213) 538–3622. Transporting (1) *cylinder liner board*, (2) *jacquard board*, (3) *machinery and machinery parts, and* (4) astro packing, between points in the U.S., under continuing contract(s) with Shelby Baxter Corporation of Shelby, NC.

MC 156236, filed June 22, 2981. Applicant: G & L TRUCKING, INC., 165 Locke Rd., Locke, NY 13902. Representative: Roy D. Pinsky, Suite 1020—State Tower Bldg., Syracuse, NY 13202, (315) 422–2384. Transporting *fabricated metal products*, between points in the U.S., under continuing contract(s) with Triangle Steel Inc., of Ithaca, NY.

MC 156806, filed June 18, 1981. Applicant: WALTER H. DOLAN CO., d.b.a. DOLAN TRANSPORTATION, 68 Mt. Hope Ave., Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187, (617) 696–7610. Transporting *general commodities* (except classes A and B explosives), between points in ME, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, MO, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, WV, and DC.

MC 141436 (Sub-5), filed May 18, 1981, previously noticed in the **Federal Register** issue of June 3, 1981, and republished this issue. Applicant: HARKER'S TRANSPORTATION, INC., P.O. Box 1308, LeMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Harker's Wholesale Meat, Inc., and Wells Dairy, Inc., both of LeMars, IA.

Note.—The purpose of this republication is to correctly state the authority sought.

Volume No. OPY–4–246

Decided: July 8, 1981.

MC 12906 (Sub-1), filed June 16, 1981. Applicant: MINOWA TOUR & TRAVEL AGENCY, INC., 222 W. Water St., Decorah, IA 52101. Representative: Kimball H. Peterson (same address as applicant), (319) 382–4224. To engage in operation, in interstate or foreign commerce, as a broker, to arrange at Decorah, IA, for the transportation, by motor vehicles, *passengers and their baggage*, beginning and ending at points in a 125 mile radius of Decorah, IA, and extending to points in the U.S.

MC 87966 (Sub-23), filed June 26, 1981. Applicant: ELEVELD CHICAGO FURNITURE SERVICE, INC., 9630 S. 76th Ave., Hickory Hills, IL 60457. Representative: Terry G. Fewell, P.O. Box 4403, Chicago, IL 60608, (312) 681–8375. Transporting (1) *furniture or fixtures, and appliances*, and (2) *such commodities* as are dealt in by department, discount, and speciality stores, between points in the U.S.

MC 148906 (Sub-2), filed June 18, 1981. Applicant: REGENCY LIMOUSINE, INC., 331 Danbury Rd., Wilton, CT 06897. Representative: Philip F. Sparton, 400 Main St., Stamford, CT 06901, (203) 323–0248. Transporting *passengers and their baggage*, in charter operations, between points in Fairfield County, CT, on the one hand, and, on the other, points in NY, NJ, PA, and MA, restricted to the transportation of not more than six passengers in any one vehicle, not including the driver.

MC 154236, filed June 23, 1981. Applicant: MAMMOTH OF CALIFORNIA, INC., d.b.a. MAMMOTH FREIGHT LINES, 6725 N. Motel Dr., Fresno, CA 93711. Representative: Edward L. Fanucchi, 2409 Merced St., Suite No. 3, Fresno, CA 93711, (209) 268–8771. Transporting *frozen foods*, between points in San Joaquin, Stanislaus, Merced, Madera, and Fresno Counties, CA, on the one hand, and, on the other, points in AZ, WA, OR, NV, ID, MT, WY, CO., NM, and UT.

[FR Doc. 81–20630 Filed 7–13–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the from of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPY–2–120

Decided: June 30, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 95813 (Sub-18), filed June 23, 1981. Applicant: SHUMAKER TRUCKING COMPANY, 601 U.S. Route 15 North, Dillsburg, PA 17019. Representative: David Shumaker (same address as applicant), (717) 432–9617. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 156612 filed June 12, 1981. Applicant: DAN PRICE TRUCKING, Rte. 3, Box 121B, Tylertown, MS 39667. Representative: Dan Price (same address as applicant), 601–684–6310. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 156613, filed June 12, 1981. Applicant: A. SIEBECKE TRUCKING, 3822 Cape Horn Road, Concrete, WA 98237. Representative: Alfred Siebecke (same as applicant), (206) 826–3711. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditions* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 156622, filed June 17, 1981. Applicant: THOMAS J. ROEDERER, d.b.a. BI–STATE SERVICES, 426 Fillmore St., Davenport, IA 52805. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 156742, filed June 23, 1981. Applicant: DALE W. SOMERVILLE, Turnpike Road, Norwich, VT 05055. Representative: Dale Somerville (same address as applicant), 802–649–1122. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY–4–245

Decided: July 8, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 156846, filed June 29, 1981. Applicant: ROY BAILEY, d.b.a. BAILEY TRUCKING, 3906 Jefferson St., Sioux City, IA 51108. Representative: Roy Bailey (same address as applicant), (712) 239–2717. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY–4–247

Decided: July 8, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 156816, filed June 26, 1981. Applicant: UNSWORTH TRANSPORT INTERNATIONAL, INC., 1831 Pennsylvania Ave., Linden, NJ 07036. Representative: DAG S. Hedengren (same address as applicant), (201) 486–1100. As a broker of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 81–20523 Filed 7–13–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each

applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission' regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate of foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPY–2–121

Decided: July 6, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 119043 (Sub-3F), filed June 18, 1981. Applicant: MELVIN L. MALBRAATEN, Route 9 Box 520, Bemidji, MN 56601. Representative: Daryl Malbraaten, Route 4, Box 80, Bemidji, MN 56601 (218) 751–2616. Transporting *lumber and wood products*, between points in MN, on the one hand, and, on the other, points in IA, SD, NE, MT, and ND, and ports of entry on the interntional boundary line between the United States and Canada in MN.

MC 134153 (Sub-3), filed June 25, 1981. Applicant: D & D TRANSPORTATION CO., INC., 1059 Empire Avenue, Camden, NJ 08103. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956 (609) 541–3055. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) The Alpha Company, Inc., of Philadelphia, PA, (2) Architectural Products, Inc., of Camden, NJ, (3) Brussels Steel America, of Bala Cynwyd, PA, (4) Eastern Steel & Metal Company, of Milford, CT, (5) Marlboro International Steel Company, Inc., of Morganville, NJ, (6) Imperial Wood Paneling Co., of Pennsauken, NJ, and (7) Towne & Countrie Fab., Inc., of Exton, PA.

MC 134752 (Sub-7), filed June 25, 1981. Applicant: HILL & WILLIAMS BROS., INC., 799–44th St., Marion, IA 53203. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309 (515) 282–3525. Transporting *general commodities* (except classes A and B explosives), between the facilities of International Paper Company at points in the U.S., on the one hand, and on the other, points in the U.S.

MC 135552 (Sub-4F), filed June 11, 1981. Applicant: SCENIC TRAILS, INC., 700 North 3rd St., La Crosse, WI 54601. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424 (612) 927–8855. Over (1) *regular routes*, transporting *passengers and their baggage* and *express and newspapers*, in the same vehicle with passengers, between Dubuque, IA and Rock Island, IL: (a) from Dubuque over U.S. Hwy 61 to junction U.S. Hwy 67 at Davenport, IA, then over U.S. Hwy 67 to Rock Island, and (b) from Dubuque over U.S. Hwy 61 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 74, then over Interstate Hwy 74 to junction IL Hwy 92, then over IL Hwy 92 to Rock Island, serving all intermediate points, and (2) *irregular routes*, transporting (a) *passengers and their baggage*, in charter and special operations, and *baggage of passengers* in separate vehicle, between those points at which service would be authorized under, (1) above, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI), (b) *passengers and their baggage*, in charter and special operations, and *baggage of passengers*, in separate vehicles, between points in Dane, Grant, Juneau, Monroe, Sauk, and Vernon Counties, WI, and Houston and Winona Counties, on the one hand, and, on the other, points in the U.S., and (c) *passengers and their baggage*, in special operations, between points in LaCrosse County, WI, on the one hand, and, on the other, points in the U.S.

MC 135762 (Sub-21F), filed June 25, 1981. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, 6004 Highway 271 South, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith 72902 (501) 782–1001. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under a continuing contract(s) with S. K. Products Corporations, of Atlanta, GA.

MC 146213 (sub-12), filed June 25, 1981. Applicant: JAMES P. DOYLE d.b.a. J. DOYLE TRUCKING, P.O. Box 76, Wisconsin Dells, WI 53965. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd. Ste. 307, Edina, MN 55424, 612–927–8855. Transporting *food and related products*, between Chicago, IL, and points in Cass County, ND, on the one hand, and, on the other, points in the U.S.

MC 147962 (Sub-4), filed June 26, 1981. Applicant: DONDO TRUCKING, INC., 9020 South Ridgeland, Oak Lawn, IL 60453. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60453 (312) 263–2306. Transporting *chemicals and related products, metal products, and textile mill products*, between Chicago, IL, on the one hand, and, on the other, points in the U.S.

MC 148143 (Sub-10), filed June 26, 1981. Applicant: MID-AMERICA FARM LINES, INC., M.P.O. Box 71, Springfield, MO 65801. Representative: John M. Ringenberg (same address as applicant) 417–862–7460. Transporting *general commodities* (except classes A and B explosives), between the facilities of Ralston Purina Company and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 148392 (Sub-4), filed June 25, 1981. Applicant: SERVICE TRANSPORT, INC., 925 Visco Dr., Nashville, TN 37210. Representative: James Clarence Evans, 1800 Third National Bank Bldg., Nashville, TN 37219 (615) 244–1440. Over regular routes, transporting *general commodities* (except classes A and B explosives), (1) between Memphis and Nashville, TN, over Interstate Hwy 40, (2) between Nashville and Cookeville, TN, over Interstate Hwy 40, (3) between Cookeville and Crossville, TN, over U.S. Hwy 70N, (4) between Crossville and Knoxville, TN: From Crossville over U.S. Hwy 70 to junction Interstate Hwy 40,

then over Interstate Hwy 40 to Knoxville, and return over the same route, (5) between Chattanooga and Knoxville, TN: from Chattanooga over U.S. Hwy 27 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Knoxville, and return over the same route, (6) between Chattanooga, TN and Bristol, VA: from Chattanooga over Interstate Hwy 75 to Cleveland, TN, then over TN Hwy 40 to junction U.S. Hwy 411, then over U.S. Hwy 411 to Greeneville, TN, then over U.S. Hwy 11E to Bristol, and return over the same route, (7) between Knoxville and Chattanooga, TN, over U.S. Hwy 11, (8) between Nashville and Chattanooga, TN, over Interstate Hwy 24, (9) between Nashville and Sparta, TN, over U.S. Hwy 70S, (10) between McMinnville and Morrison, TN, over TN Hwy 55, (11) between McMinnville and Chattanooga, TN, over TN Hwy 8, (12) between Memphis and Chattanooga, TN, over U.S. Hwy 64, (13) between Chattanooga and Knoxville, TN: from Chattanooga over U.S. Hwy 64 to Cleveland, TN, then over U.S. Hwy 411 to Maryville, TN, then over U.S. Hwy 129 to Knoxville, and return over the same route, (14) between Chattanooga and Livingston, TN: from Chattanooga over TN Hwy 8 to junction TN Hwy 111, then over TN Hwy 111 to Cookeville, then over TN Hwy 42 to Livingston, and return over the same route, (15) between Sparta and Crossville, TN, over U.S. Hwy 70, (16) between Livingston and Monterey, TN, over TN Hwy 84, (17) between Crossville and Jamestown, TN, over U.S. Hwy 127, (18) between Spencer and Fall Creek Falls State Park, TN: from Spencer over TN Hwy 30 to unnumbered access roads, then over unnumbered access roads to Fall Creek Falls State Park, and return over the same route, (19) between Knoxville, TN and Bristol, VA, over U.S. Hwy 11E, serving all points in Washington County, VA as off-route points, (20) between Knoxville, TN and Bristol, VA, over U.S. Hwy 11W, serving all points in Hawkins County, TN as off-route points, (21) between Erwin, TN and Gate City, VA, over U.S. Hwy 23, serving all points in Washington and Sullivan Counties, TN and Scott County, VA as off-route points, (22) between Elizabethton, and Johnson City, TN, over U.S. Hwy 321, (23) between Elizabethton, TN and Bristol, VA: from Elizabethton over U.S. Hwy 19E to junction U.S. Hwy 19, then over U.S. Hwy 19 to Bristol and return over the same route, and (24) serving all intermediate points in connection with routes (1) through (23) above.

MC 148833 (Sub-8), filed June 25, 1981. Applicant: REBEL EXPRESS, INC., Box 98, Dawson, IA 50066. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, 515–245–4300. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, of Chicago, IL.

MC 150933, filed June 23, 1981. Applicant: CASUAL TRAVEL, INC., 801 So. Gammon Rd., Suite B, Madison, WI 53719. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502, 712–323–9124. Transporting *passengers and their baggage*, in special and charter operations, between points in Dane, Grant, Green, Iowa, Jefferson, Lafayette, and Rock Counties, WI, on the one hand, and, on the other, points in the U.S.

MC 154092 (Sub-2F), filed June 26, 1981. Applicant: SUGARLAND EXPRESS, INC., 6623 Kansas Avenue, Kansas City, KS 66111. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601. Transporting *petroleum, natural gas, and their products*, between Kansas City, MO, on the one hand, and, on the other, points in KS and MO. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquified petroleum gases, it shall be limited to a period expiring 5 year from its date of issuance.

Volume No. OPY–2–122

Decided: July 2, 1981.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

FF–413 (Sub-2), filed June 19, 1981. Applicant: OCEAN–AIR INTERNATIONAL, INC., R.D. #1, Burgettstown, PA 15021. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006 (202) 833–8884. As a *freight forwarder*, in connection with the transportation of *general commodities* (except used household goods, unaccompanied baggage and used automobiles and classes A and B explosives), between points in the U.S.

MC 107012 (Sub-713) (Correction), filed May 15, 1981, published in the **Federal Register** June 2, 1981, republished as corrected in this issue. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant) 219–429–2110. Transporting *building materials*, between the facilities of Harris-Crestline Corporation at points in Tehama County, CA, Erie County, NY, Spokane County, WA, and Marathon County, WI, on the one hand, and, on the other, points in AK, AR, CA, CO, CT, DE, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD TN, VT, VA WA WV, WI, WY and DC. The purpose of this republication is to include the state of Missouri in the territory description.

MC 134653 (Sub-8), filed June 22, 1981. Applicant: M.C.E. TRANSPORTATION CO., INC., 1640 Penfield Rd., Rochester, NY 14625. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580 (716) 671–8200. Transporting (1) *those commodities* which because of their size or weight require the use of special handling or equipment, (2) *metal products*, and (3) *building and contractors' materials*, between points in NY.

MC 146872 (Sub-3), filed June 25, 1981. Applicant: CHARLES SEATON, d.b.a. SEATON TRUCKING COMPANY, 1560 North Sandburg Village, Chicago, IL 60610. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603, (312) 236–9375. Transporting *food and related products*, between Chicago, IL, Linden, NJ, San Francisco, CA, points in Morris County, NJ, and Bucks County, PA, on the one hand, and, on the other, points in the U.S.

MC 147013 (Sub-7), filed June 19, 1981. Applicant: RDL, INC., P.O. Box 286, Gambrills, MD 21054. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St., N.W., Washington, D.C. 20005, (202) 296–3555. Transporting *food and related products*, between points in PA and Berkeley County, WV, on the one hand, and, on the other, points in AR, LA, OK, and TX.

MC 148183 (Sub-40), filed June 24, 1981. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Bldg., 425 13th St. NW, Washington, DC 20004, 202–737–2188. Transporting *chemicals and related products* and *rubber and plastic products*, between points in IL, IN, MI, and OH, on the one hand, and, on the other, points in AL, DE, FL, GA, KY, MD, MS, NC, SC, TN, VA, and WV.

MC 151193 (Sub-12), filed June 17, 1981. Applicant: PAULS TRUCKING CORPORATION, 3 Commerce Drive, Cranford, NJ 07016. Representative: Michael A. Beam (same as applicant), (201) 499–3869. Transporting *general commodiates* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with S. Gumpert Company, Inc., and American Kitchen Products Company, a subsidiary, of Jersey City, NJ.

MC 151483 (Sub-1), filed June 19, 1981. Applicant: BIGBEE

TRANSPORTATION, INC., P.O. Box 32, Columbus, MS 39701. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, (601) 948–8820. Transporting *metal products* (1) between Chicago, IL, Detroit, MI, Cleveland, OH, Philadelphia, PA, and points in Lake County, In, on the one hand, and, on the other, points in AL, FL, GA, IA, IN, KS, KY, MS, NE, NC, OH, OK, PA, SC, TN, TX and VA; (2) between Birmingham, AL, Chicago, IL, Gary, IN, Detroit, MI, Cleveland, OH, Memphis, TN, and points in Madison and Cook Counties, IL, Lake County, IN, Boyd County, KY, Baltimore County, MD, Cuyahoga and Trumbull Counties, OH, and Morris County, TX, on the one hand, and, on the other, points in Oktibbeha County, MS; (3) between Chicage, IL, Detroit, MI, Cleveland, OH, Pittsburgh, PA, and points in Putnam and Whiteside Counties, IL, Mahoning County, OH, and Ohio County, WV, on the one hand, and, on the other, points in Henry County, IA, Lowndes County, MS and Edgecombe County, NC.

MC 151383 (Sub-7), filed June 18, 1981. Applicant: NICKELL TRUCKING CO., 4901 West 51st Street, Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103, (918) 583–9000. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Sooner Construction Equipment & Service Co. of Oklahoma City, OK, and McGill, Incorporated, of Tulsa, OK.

MC 156172 (Correction), filed May 27, 1981, published in the **Federal Register** issue of June 12, 1981, and republished, as corrected, this issue. Applicant: W. M. SPIEGEL SONS, INC., d.b.a. REFUSE CONTAINER TRANSPORTATION, 461 E. Clinton Street, Elmira, NY 14901. Representative: Donald C. Carmien, 15 Chenango Street, P.O. Box 1922, Binghamton, NY 13901. Transporting *hazardous waste materials*, between points in Chemung, Steuben, Yates, Schyler, Tompkins, and Tioga Counties, NY, and points in Bradford and Tioga Counties, PA, on the one hand, and, on the other, points in the U.S. Condition: To the extent that this certificate authorizes the transportation of hazardous waste materials it shall be limited in term to a period expiring 5 years from its date of issuance. The purpose of this correction is to reflect the county of Bradford, PA which was inadvertently omitted.

MC 156183 (Correction), filed May 21, 1981, published in the **Federal Register** June 12, 1981, republished as corrected in this issue. Applicant: QUICK TRANSPORTATION, INC., 1320 Elm Hill Pike, Nashville, TN 37210. Representative: Earl Douglas Ison, Jr. (same address as applicant), 615–256–3166. Transporting *general commodities* (except classes A and B explosives), between points in GA, IL, IN, KY, MI, MO, OH, and TN. The purpose of this republication is to include the State of Missouri in the territorial description.

MC 156493, filed June 12, 1981. Applicant: BOYD MESSER TRANSFER, INC., P.O. Box 19, Fulton, KS 66738. Representative: Eugene W. Hiatt, 207 Casson Bldg., 603 Topeka Blvd., Topeka, KS 66603, 913–232–7263. Transporting *petroleum, natural gas and their products*, between points in Anderson, Bourbon, Butler, Johnson, Linn, Montgomery, and Wyandotte Counties, KS, on the one hand, and, on the other, points in Barton, Bates, Jasper, Newton, and Vernon Counties, MO. Conditon: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 156722, filed June 19, 1981. Applicant: CENTRE FOR TRAVEL, INC., 114 Hiester St., State College, PA 16801. Representative: Barry R. Diamond, 805 King St., Alexandria, VA 22314, (703) 549–8010. As a *broker*, at State College, PA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, beginning and ending at points in PA, on the one hand, and, on the other, points in the U.S.

Volume No. OPY–2–119

Decided: June 30, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 18192 (Sub-1), filed June 16, 1981. Applicant: C. BAIN, INC., 154 Pleasant St., Lynn, MA 01901. Representative: Frederick T. O'Sullivan P.O. Box 2184, Peabody, MA 01960 (617) 535–5430. Transporting *household goods* between points in MA, NH, VT, ME, CT, RI, NY, NJ, PA, MD, DE, VA, WV, NC, OH and DC.

MC 11722 (Sub-79), filed June 17, 1981. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232 (503) 288–8141. Transporting *Food and related products*, between points in King County, WA on the one hand, and, on the other, points in MT, ID, and OR.

MC 92633 (Sub-34), filed June 11, 1981. Applicant: ZIRBEL TRANSPORT, INC., P.O. Box 933, Lewiston, ID 83501. Representative: Wm. Seehafer (same address are applicant) 208–743–6588. Transporting *lumber and wood products, pulp, paper, and related products, metal products*, and *building materials*, between points in the U.S., under continuing contract(s) with Louisiana-Pacific Corporation, of Samoa, CA.

MC 105733 (Sub-86), filed June 12, 1981. Applicant: RITTER TRANSPORTATION, INC., P.O. Box 1064–A, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW, Washington, DC 20005, 202–296–3555. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with BASF Wyandotte Corporation, of Parsippany, NJ. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 107012 (Sub-726), filed June 17, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with GTE Automatic Electric Incorporated, of Northlake, IL.

MC 138882 (Sub-382), filed June 12, 1981. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–435–7140. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 142603 (Sub-50), filed June 22, 1981. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 179, Springfield, MA 01101. Representative: Susan E. Mitchell (same address as applicant) (413) 732–6283. Transporting *pulp, paper and related products*, between points in the U.S., under continuing contract(s) with Flambeau Paper Corporation, of Park Falls, WI.

MC 148472 (Sub-3), filed June 22, 1981. Applicant: CLOVER CLUB FOODS CO.,

P.O. Box 228, Kaysville, UT 84037. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111 (801) 531–1300. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers, between points in the U.S., under continuing contract(s) with Masada Valley Daries, Inc., of Salem, UT.

MC 156282, filed June 2, 1981. Applicant: TRAVEL ASSOCIATES, INC., First Wisconsin Center, Suite 3470, 777 East Wisconsin Avenue, Milwaukee, WI 53202. Representative: George Salvat (same as applicant) (414) 276–3980. To engage in operations, in interstate and foreign commerce, as a *broker* at Milwaukee, WI, in arranging for the transportation of *passengers and their baggage*, in charter and special operations beginning and ending at points in AR, AL, CT, GA, IA, IL, IN, KN, LA, MA, MI, MN, MO, MS, ND, NE, NY, OH, OK, PA, SD, TN, TX, and WI, and extending to points in CO, FL, IL, MT, UT and WY.

MC 156473, filed June 10, 1981. Applicant: B & G TRUCKING, INC., 2685 Index, P.O. Box 206, Washougal, WA 98671. Representative: Stanley Bishoprick (same address as applicant) 206–835–8561. Transporting *building materials, metal products, lumber and wood products, forest products, and machinery*, between points in ID, WA, and OR.

MC 156482, filed June 11, 1981. Applicant: PACIFIC MOLASSES COMPANY, One California St., Suite 1500, San Franciso, CA 94111. Representative: B. L. Anderson (same address as applicant) 415–445–1475. Transporting (1) *chemicals and related products*, and (2) *food and related products*, between points in the U.S., under continuing contract(s) with (a) Wesco Technologies, Inc., of San Clemente, CA, (b) Sacramento Rendering Co., of Sacramento, CA, and Nevada Byproducts d/b/a Reno Rendering, of Reno, NV, and (c) Delst Chemical & Research Inc., of LaHabra, CA.

MC 156492, filed June 12,1981. Applicant: WAYNE C. SHIPLEY & SONS, Rte. #3, Box 89, Littlestown, PA 17340. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740, 301–739–4860. Transporting *lumber and wood products*, between Baltimore, MD, on the one hand, and, on the other, points in VA, MD, PA, and DC.

MC 156602, filed June 16, 1981. Applicant: DUANE D. ZABKA, INC., 5200 East 78th Ave., Henderson, CO 80640. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264 (303) 861–4028. Transporting (1) *Food and related products* between points in the U.S., under continuing contract(s) with Twin City Distributing, Inc. of Greeley, CO, and The Pillsbury Company of Minneapolis, MN, (2) *Lumber and wood products;* between points in the U.S., under continuing contract(s) with Potlatch Corporation of Lewiston, ID, and (3) *clay, concrete, glass or stone products* between points in the U.S., under continuing contract(s) with CALCO Incorporated, of Commerce City, CO.

MC 156702, filed June 22, 1981. Applicant: LABENZ TRUCKING, INC., Box 388, Humphrey, NE 68642. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106 (402) 392–1220. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Armour Food Company, of Phoenix, AZ.

MC 153712, filed June 23, 1981. Applicant: J & R ENTERPRISES INCORPORATED, 21551 Brookhurst St., Huntington Beach, CA 92646. Representative: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650 (213) 863–8883. Transporting *transportation equipment*, between points in the U.S., under continuing contract(s) with Maxon Industries, Inc., of City of Commerce, CA.

MC 156732, filed June 22, 1981. Applicant: TRANS-HAUL, INC., 411 East Wallisville Rd., Box 755, Highlands, TX 77562. Representative: Leroy E. Firestone (same address as applicant) (713) 426–5561. Transporting *general commodities* (except classes A and B explosives), between points in Harris County, TX, on the one hand, and, on the other, points in the U.S.

MC 156733, filed June 22, 1981. Applicant: D.T.I. LTD., P.O. Box 289, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1910 Juliet Ave., St. Paul, MN 55105. Transporting *General commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with (1) Farmers Union Central Exchange, Inc., of St. Paul, MN; (2) Minnesota Mining and Manufacturing Company, of St. Paul, MN; (3) Getty Refining and Marketing, of Tulsa, OK; (4) Metalcote Grease and Oil Company, of St. Paul, MN; (5) Callahan Steel Supply, Inc., of Newport, MN, and (6) Mobil Oil Corporation, of Dallas, TX.

[FR Doc. 81-20574 Filed 7-13-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Notice of Ending of Extended Benefit Period in the State of Alabama

This notice announces the ending of the Extended Benefit Period in the State of Alabama, effective on July 11, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alabama on June 22, 1980, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Alabama has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on June 20, 1981, and the

immediately preceding 12 weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on July 11, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Alabama should contact the nearest Unemployment Compensation Claims Office of the Alabama Department of Industrial Relations in their locality.

Signed at Washington, D.C., on July 8, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-20587 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Notice of Ending of Extended Benefit Period in the State of Wisconsin

This notice announces the ending of the Exended Benefit Period in the State of Wisconsin, effective on July 11, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Wisconsin on March 23, 1980, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Wisconsin has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on June 20, 1981, and the immediately preceding 12 weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on July 11, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Wisconsin should contact the nearest District Office of the Wisconsin Department of Industry, Labor and Human Relations in their locality.

Signed at Washington, D.C., on July 8, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-20588 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-56]

Exemption From the Prohibitions for Certain Transactions Involving the Truman Arnold Distributing Company, Inc., Retirement Trust Located in Texarkana, Texas (Exemption Application No. D-2447)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the contribution of a parcel of real property and improvements thereon by the Truman Arnold Distributing Company, Inc. (the Employer) to the Truman Arnold Distributing Company, Inc. Retirement Trust (the Plan). The property will then be leased back to the Employer by the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 15, 1981, notice was published in the **Federal Register** (46 FR 26955) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for transactions described in an application filed on behalf of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice and an accompanying statement have been provided to all interested persons in order to comply with the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the extemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution by the Employer to the Plan of a parcel of real property and the improvements thereon which are located at South Robison Road, Texarkana, Texas, and the subsequent leaseback of that property to the Employer, provided the contribution is valued at its fair market value on the date contributed and the terms of the lease are no less favorable to the Plan than terms obtainable in an arm's-length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 9th day of July, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-20565 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Ajustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of July, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aacoustiphase, Inc. (workers)	Proctorsville, VT	6/25/81	6/22/81	TA-W-12,811	Stereo speaker systems.
Aquarius Dyeing & Finishing, Inc. (workers)	St. Johnsville, NY	6/26/81	6/23/81	TA-W-12,812	Dyed & finished fabrics.
Chrysler Corporation Parts Depot (workers)	Fullerton, CA	6/15/81	6/9/81	TA-W-12,813	Auto supply parts
Dynamic Instrument Corp. (workers)	Hauppage, NY	6/29/81	6/25/81	TA-W-12,814	Wall plugs, adapters, converters & chargers.
Elliott Company (USWA)	Jeannette, PA	6/30/81	6/27/81	TA-W-12,815	Compressors & turbines turbo charges & plant air plant air package compressors.
General Metal Fabricataors, Sanchez Enterprise Div (OCAWU).	Erwin, TN	6/24/81	6/23/81	TA-W-12,816	Wood & coal stoves & conveyor.
Monroe Auto Equipment Company (company)	Paragould, AR	6/30/81	6/23/81	TA-W-12,817	Ride control products for autos.
New City Steel Co. (workers)	Chicago, IL	6/26/81	6/16/81	TA-W-12,818	Fabricators of steel framing for building.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Selva & Sons, Inc. (workers)	Long Island City, NY	6/25/81	6/22/81	TA-W-12,819	Women's footwear
(The) Singer Co., U.S. Sewing Products Group (workers)	Syosset, NY	5/25/81	5/21/81	TA-W-12,820	Distribution & transportation.
Sound Research, Inc. (workers)	Proctorsville, VT	6/25/81	6/22/81	TA-W-12,821	Raw speakers.
Technapac, Inc. (workers)	Clearwater, FL	6/29/81	6/24/81	TA-W-12,822	Bottle filling equipment
Teledyne Stillman-Manufacturing (IUE)	Lakewood, NJ	6/25/81	6/16/81	TA-W-12,823	Tubular electric heating elements.
Vermont Wood Crafts, Inc. (workers)	Proctorsville, VT	6/25/81	6/22/81	TA-W-12,824	Stereo cabinets.

[FR Doc. 81-20566 Filed 7-13-81; 8:45 am]

BILLING CODE 4510-28-M

MERIT SYSTEMS PROTECTION BOARD

Delegations of Authority

AGENCY: Merit Systems Protection Board.

ACTION: Delegations of authority to the Secretary, Merit Systems Protection Board.

Pursuant to the provisions of Pub. L. 95-454 (5 U.S.C. 1205(f)), the Merit Systems Protection Board hereby amends the delegations to the Secretary that appeared in 45 FR 36566, Friday, May 30, 1980. The following delegations are added:

(k) The Secretary, with concurrence of the appropriate action office, shall prepare and/or issue orders denying untimely petitions for review which make no attempt to show good cause for extending the 30-day period.

(l) The Secretary, with concurrence of the appropriate action office, shall prepare and/or issue orders granting withdrawal of petitions for review when requested by the petitioner or the petitioner's representative.

(m) The Secretary, with concurrence of the appropriate action office, shall prepare and/or issue orders denying intervention by the Director, Office of Personnel Management, when the Director's request to intervene is not submitted to the Board within 20 days from the date of receipt by the Director of the Petition for review and when no showing that it nontheless has been submitted at the earliest practicable time is made.

(n) The Secretary, will concurrence of the appropriate action office, shall prepare and/or issue orders denying intervention by the Special Counsel when the Special Counsel's request to intervene is not submitted to the Board within 20 days from the date of receipt by the Special Counsel of the petition for review and there has been no showing that it nonetheless has been submitted at the earliest practicable time.

(o) The Secretary, with concurrence of the appropriate action office, shall prepare and/or issue orders denying interlocutory appeals which have not been certified for review by the presiding official as required by 5 CFR 1201.34.

(p) The Secretary, with concurrence of the appropriate action office, shall prepare and/or issue orders notifying parties to original jurisdiction cases of the time when a response to a pleading is due.

EFFECTIVE DATE: June 28, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Secretary, Merit Systems Protection Board, 1717 H Street, N.W., Room 350, Washington, D.C. 20419, (202) 632-4525.

Dated: July 7, 1981.

Ersa H. Poston,

Vice Chair.

[FR Doc. 81-20355 Filed 7-13-81; 8:45 am]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Enrico Fermi Atomic Power Plant Unit 2; Meeting

The ACRS Subcommittee on Enrico Fermi Atomic Power Plant Unit 2 will hold a meeting on July 24, 1981, Room 1046, 1717 H Street, NW, Washington, DC to review the application of Detroit Edison Company for an Operating License. Notice of this meeting was published June 17.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Friday, July 24, 1981

8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Detroit Edison Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: July 8, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-20581 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-348 and 50-364]

Alabama Power Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. NPF-2 and Amendment No. 2 to Facility Operating License No. NPF-8 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Units No. 1 and 2 (the facilities) located in Houston County, Alabama. The amendment was effective May 11, 1981.

The amendments were authorized by telephone on May 11, 1981 and confirmed by letter on the same date. The amendments grant temporary relief on a one-time only basis from diesel generator operability and surveillance frequency requirements to allow continued plant operation during repairs to diesel generator 1C.

The application for the amendments 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 Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the request for amendments, dated May 10, 1981, (2) Amendment No. 20 to License No. NPF-2, (3) Amendment No. 2 to License No. NPF-8, and (4) the Commission's related Safety Evaulation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of July, 1981.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-20583 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-524, 50-525, 50-526, 50-527]

Alabama Power Co., Alan R. Barton Nuclear Plant, Units 1, 2, 3 and 4; Notice of Withdrawal of Application for Construction Permits

By letter, dated December 5, 1980, counsel for Alabama Power Company reviewed its history of having cancelled plans for the construction of Alan R. Barton Nuclear Plant, Units 1, 2, 3 and 4 and requested withdrawal of its construction permit applications for those plants. The sites were located along the west side of the Cosa River in Chilton and Elmore Counties, Alabama. Units 1 and 2 were proposed for Chilton County and Units 3 and 4 were proposed for Elmore County. A Notice of Receipt of Application for Construction Permits and Operating Licenses was published in the Federal Register on November 29, 1974 (39 FR 4574).

By letter, dated February 18, 1981, applicant's counsel advised that no work had been performed at the Barton sites. The Nuclear Regulatory Commission had not issued a limited work authorization or construction permits for the Barton plants and no hearing on the matter had been held.

By "Order Permitting Withdrawal of Application for Construction Permits and Terminating Proceeding", dated June 10, 1981, the NRC's Atomic Safety and Licensing Board terminated the proceeding.

In accordance with the applicant's request and with the "Order Permitting Withdrawal of Application for Construction Permits and Terminating Proceeding" and pursuant to 10 CFR 2.107(c), notice is hereby given that the application for construction permits for the Alan R. Barton Nuclear Plant, Units 1, 2, 3 and 4 have been withdrawn and that the proceeding in this matter is terminated.

Correspondence concernng this application will continue to be maintained at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and for the next six months at the Clanton Public Library, 100 First Street, Clanton, Alabama 35045.

Dated at Bethesda, Maryland, this 7th day of July, 1981.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 81-20582 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389A]

Florida Power & Light Co., (St. Lucie Plant, Unit No. 2); Conferences of Counsel Concerninig Intervention of Parsons and Whitemore, Inc. Summary Judgment, Discovery and Related Issues.

July 7, 1981.

Conferences shall be held at 9:30 a.m. on July 20, 1981 ("intervention conference"), and at 9:30 a.m. on Aug. 17 and 18, 1981 ("summary judgment conference") in the Nuclear Regulatory Commission's 5th floor hearing room, in East-West Towers, 4350 East West Highway, Bethesda, Maryland.

The intervention conference will hear arguments concerning whether the petition to intervene filed by Parsons and Whitemore, Inc. should be granted. The summary judgment conference will consider whether to grant Summary Judgment concerning the existence of a situation inconsistent with the antitrust laws and it will also consider questions concerning the extent and timing of discovery.

The content of these conferences is more fully discussed in an Order issued today and available from the Public Document Room of the Nuclear Regulatory Commission, Washington, D.C.

Dated: July 7, 1981, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 81-20584 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 57 to Facility Operating License No. DPR-59 issued to the Power Authority of the State of New

York (the licensee) which revised the License and Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The revisions to the license and Technical Specifications involve incorporation of certain of the TMI–2 Lessons Learned Category "A" requirements. These requirements are related to (1) Emergency Power Supply/ Inadequate Core Cooling, (2) Valve Position Indication, (3) Containment Isolation, (4) Shift Technical Advisors, (5) Integrity of Systems Outside Containment, and (6) Iodine Monitoring.

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 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. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 24, 1981, (2) Amendment No. 57 to License No. DPR–59, 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 Penfield Library, State University College at Oswego, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 7th day of July 1981.

For the Nuclear Regulatory Commission,

Thomas A. Ippelito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 18-20585 Filed 7-13-81; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1989; Amdt. 1]

Montana; Declaration of Disaster Loan Area

The above numbered declaration (See 46 FR 30452) is amended by extending the incidence period (time when physical damage occurred) from May 19, 1981 through June 11, 1981. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on July 27, 1981, and for economic injury until the close of business on March 1, 1982.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 26, 1981.

Donald R. Templeman,

Acting Administrator.

[FR Doc. 81-20551 Filed 7-13-81; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1995; Amdt. 1]

Ohio; Declaration of Disaster Loan Area

The above numbered declaration (See 46 FR 34447) is amended in accordance with the President's declaration of June 16, 1981, to include Hancock, Putnam and Wyandot Counties and adjacent counties within the State of Ohio. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on August 17, 1981, and for economic injury until the close of business on March 16, 1982.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 26, 1981.

Donald R. Templeman,

Acting Administrator.

[FR Doc. 81-20552 Filed 7-13-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0295]

BT Capital Corp.; Application for Approval of Conflict of Interest Transaction

Notice is hereby given that BT Capital Corporation (BTC), 280 Park Avenue, New York, New York 10017, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has filed an application with the Small Business Administration pursuant to Section 312 of the Act and covered by §§ 107.3(g) and 107.1004(b)(4) of the Regulations governing small business investment companies (SBICs) (13 FR 107.1004 (1981)), for approval of two conflict of interest transactions falling within the scope of the above Sections of the Act and Regulations.

BTC proposes (1) to purchase 177,927 shares of common stock ($35,585) and subordinated notes ($380,000) of Findex, Inc. from an Associate of the Licensee. The Associate is Bankers Trust New York Corporation, 280 Park Avenue, New York, New York 10017 and owns 90% of BTC; (2) to purchase 127.5 shares of common stock ($25,500) and subordinated notes ($935,000) of Multi-Metal Wire Cloth, Inc., presently owned by Bankers Trust New York Corporation, an Associate of the Licensee. The proposed financings by BTC fall within the purview of § 107.1004(b)(4) of the Regulations and require a written exemption from SBA. SBA is considering a request for such exemptions.

Notice is hereby given that any interested person may, not later than ten (10) days from the date of the publication of this Notice, submit written comments on the proposed transactions to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 8, 1981.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 81-20550 Filed 7-13-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 763]

Claims Against Iran

This notice concerns claims of U.S. nationals against Iran within the scope of the Claims Settlement Agreement of January 19, 1981. Specifically, it addresses (1) the registration with the Department of State of claims of less than $250,000; (2) the procedures applicable to the settlement of claims of $250,000 and more; and (3) the appointment of the third-country members of the Iran-U.S. Claims Tribunal.

For further information, contact David P. Stewart, Administrator of Iranian Claims, Office of the Legal Adviser, Department of State, Washington, D.C., 20520. Telephone (202) 632–5040.

1. Registration of Claims of Less Than $250,000

The Iran-U.S. Claims Tribunal established pursuant the Claims Settlement Agreement will adjudicate the claims of U.S nationals against Iran which arise out of debts, contracts, expropriations or other measures affecting property rights. Claimants with claims in the aggregate of $250,000 or more will represent themselves before the Tribunal; those with claims in the aggregate of less than $250,000 will be represented by the U.S. Government.

The Department of State previously announced that U.S. nationals with claims against Iran, in the aggregate, of less than $250,000 were required to register such claims with the Department by May 8, 1981. See Public Notice 749 of April 1, 1981 (46 FR 19893) and supplementary Public Notice 753 of May 4, 1981 (46 FR 25026). The information submitted pursuant to this registration will be used by the Department in seeking to conclude an agreement with Iran for the settlement by lump-sum payment of claims of less than $250,000.

The Department of State seeks to ensure that all eligible U.S. claimants have the fullest possible opportunity to present their claims against Iran. Accordingly, because the negotiation of an agreed settlement with Iran has not yet begun, the Department has been able to accept the small number of registrations received after May 8, 1981. In view of the timetable now projected for negotiations with Iran, the Department will continue to accept late registrations. Claimants who have not yet registered claims with an aggregate value of *less than $250,000* are urged to do so *immediately* by contacting the Office of the Legal Adviser of the Department of State by telex (89–2461 or 89–601), telegram or telephone (202) 632–5040). Completed registration forms must be submitted promptly to the Administrator of Iraninan Claims, Office of the Legal Adviser, Department of State, Washington, D.C. 20520.

After the settlement negotiations have begun, it will become impossible for the Department to take into account any additional unregistered claims, and claimants who have not registered their claims by that time may be excluded from sharing in the proceeds of a lump-sum settlement and from having their claims presented to the Tribunal. The final deadline, which will be announced in the **Federal Register**, will not be earlier than July 31, 1981.

2. Procedures Applicable to Settlement of Claims of $250,000 and More

The Claims Settlement Agreement provides for a six-month period during which the United States and Iran are to promote settlement of claims by the parties directly concerned. The Agreement further states that the settlement period may be extended once for an additional three months at the request of either government. At the request of the Government of Iran, and with the concurrence of the Government of the United States, the settlement period has been *extended* to *October 19, 1981.*

Claimants whose claims in the aggregate are $250,000 or more are referred to Public Notice 753 (46 FR 25026, May 4, 1981) and Public Notice 755 (46 FR 25584, May 7, 1981) concerning procedures applicable to direct settlement of claims. The Department reported in Public Notice 753 a proposal by the Government of Iran that settlement negotiations directly with such claimants should take place in London. Iran has subsequently proposed that such negotiations take place in Vienna, Austria, instead of London, and the Department has concurred in that proposal.

Claims not settled by the parties directly concerned may be formally submitted to the Tribunal *beginning on October 20, 1981.* The last date on which claims of U.S. nationals may be submitted to the Tribunal is *January 19, 1982.* As soon as the Tribunal has determined the procedures applicable to the formal submission of statements of claim, the Department will publish an appropriate announcement in the **Federal Register.**

The Department of State will, in addition, communicate directly by mail with registered claimants on matters of general significance. Claimants who have not registered claims with the aggregate value of $250,000 or more and who wish to be included in such informational mailings should contact the Administrator of Iranian Claims.

3. Appointment of the Third-Country Members of the U.S. Claims Tribunal

Beginning on May 8, 1981, three arbitrators appointed by the United States met at The Hague with three Iranian arbitrators to appoint the third-country members of the Tribunal. On June 9, they announced their agreement to appoint Justice Gunnar Lagergren of Sweden, Justice Pierre Bellet of France, and Justice Nils Mangard of Sweden as the remaining members of the Tribunal.

His Excellency Justice Lagergren, who has been selected as President of the Tribunal, is Marshall of the Realm of Sweden and a former President of the Court of Appeal of Western Sweden. He has been President of arbitration tribunals in a number of major public and private international law cases. He is a judge of the European Court of Human Rights at Strasbourg and a Member of the Permanent Court of Arbitration at The Hague. Justice Bellet is a former Chief Justice of the French Supreme Court. He has also been active in international arbitration and is President of the French Committee of Private International Law. Justice Mangard is a Judge of the Court of Appeal of Stockholm, Sweden. He has been the President of international arbitration tribunals in important cases. He is a Member of the International Council for Commercial Arbitration.

The three Members of the Tribunal previously appointed by the United States of America are Howard M. Holtzmann, George H. Aldrich and Richard M. Mosk. The three Members previously appointed by the Islamic Republic of Iran are Mahmoud M. Kashani, Seyyed Hossein Enayat and Shafey Shafeiei.

The Tribunal held its first series of meetings at The Hague beginning July 1 to discuss organizational questions and related matters.

Dated: July 9, 1981.

David P. Stewart,

Administrator of Iranian Claims.

[FR Doc. 81-20615 Filed 7-13-81; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 762]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 623 (43 FR 37783), August 24, 1978, the Department is submitting its June 1981 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article IV(c)(4) of the guidelines published in the **Federal Register** on August 24, 1978.

Dated: July 2, 1981.

John W. Kimball,

Director, Office of International Conferences.

U.S. Delegation to the Twenty-Sixth Session of the Subcommittee on Fire Protection, Maritime Safety Committee International Maritime Consultative Organization (IMCO), London, June 22–26, 1981

Representative

Donald J. Kerlin, Merchant Marine Technical Division, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation

Alternate Representative
Randall F. Eberly, Merchant Marine Technical Division, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation
Advisers
Norman W. Lemley, Chief, Survival Systems Branch, Merchant Marine Technical Division, United States Coast Guard, Department of Transportation
Alexander F. Robertson, Senior Scientist, Center for Fire Research, National Bureau of Standards, Department of Commerce
Private Sector Adviser
Captain Philip Neal, American Institute of Merchant Shipping, Washington, D.C.

U.S. Delegation to the Meeting of Group B of the Preparatory Intergovernmental Committee for the Revision of the Paris Convention World Intellectual Property Organization (WIPO), Madrid, June 22–26, 1981
Representative
Michael K. Kirk, Director, Office of Legislation and International Affairs, U.S. Patent and Trademark Office, Department of Commerce
Alternate Representative
Harvey J. Winter, Director, Office of Business Practices, Department of State
Advisers
Lee J. Schroeder, Office of Legislation and International Affairs, U.S. Patent and Trademark Office, Department of Commerce
Private Sector Adviser
George R. Clark, Vice President, Sunbeam Corporation
Sidney A. Diamond, Sidley and Austin, Washington, D.C.
William E. Schuyler, Schuyler, Banner, Birch, McKie and Beckett, Washington, D.C.

U.S. Delegation to the International Rubber Study Group (IRSG) Commodities, London, June 22–25, 1981
Representative
Fred Siesseger, Director, Resources Policy Division, Department of Commerce
Alternate Representative
Paul Pilkauskas, American Embassy, London
Adviser
Steven Thompson, Industrial and Strategic Minerals Division, Bureau of Economic and Business Affairs, Department of State
Private Sector Advisers
Eric P. Bierrie, President, United Baltic Corporation, New York, New York
Thomas E. Cole, Vice President, Rubber Manufacturers Association, Washington, D.C.
Donald A. Ensminger, General Manager, Plantation Operations, Goodyear Tire and Rubber Company, Akron, Ohio
Warren Heilbron, President, Alan L. Grant Division-Imperial Commodities Corporation, New York, New York
Lawrence E. Long, Manager, Rubber Purchases, Firestone Tire and Rubber Company, Akron, Ohio
Frank J. Raniolo, President, ALCAN Rubber and Chemical, Inc., New York, New York

U.S. Delegation to the Fourteenth Session, United Nations Commission on International Trade Law (UNCITRAL), Vienna, June 19–26, 1981
Representative
Peter H. Pfund, Assistant Legal Adviser for Private International Law, Department of State
Alternate Representative
Brewster Hemenway, U.S. Alternate Representative to UNIDO, Vienna
Adviser
Professor Joseph C. Sweeney, Fordham University School of Law, New York, New York
Private Sector Adviser
Professor Howard M. Holtzmann, American Arbitration Association, New York, New York

U.S. Delegation to the United Nations Negotiating Conference on Tin (resumed session), United Nations Conference on Trade and Development (UNCTAD), Geneva, June 9–26, 1981
Representative
The Honorable, Michael B. Smith, Deputy U.S. Trade Representative, Geneva
Alternate Representatives
Ralph R. Johnson, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State
Frederick McEldowney, Office of the U.S. Trade Representative, Geneva
Advisers
Timothy Dulaney, Office of Raw Materials and Oceans Policy, Department of the Treasury
Paul P. Pilkauskas, American Embassy, London
Charles Roh, Office of the U.S. Trade Representative, Geneva
William Sugg, International Commodities Division, Department of Commerce
Private Sector Advisers
(June 9–12)
William Bothe, National Steel Corporation, Pittsburgh, Pennsylvania
(June 22–26)
James Ferrigan, Bethlehem Steel Corporation, Bethlehem, Pennsylvania
(June 15–19)
Roy S. Somogye, Jones and Loughlin, Pittsburgh, Pennsylvania

U.S. Delegation to the Working Party on Building Economic Commission for Europe, Geneva, June 9–12, 1981
Representative
Orville Lee, Director, Building Technology Research Staff, Housing and Urban Development
Private Sector Adviser
Jasper S. Hawkins, Hawkins, Lindsey, Wilson Associates (Architects), Phoenix, Arizona

U.S. Delegation to the XIIth Inter-American Council for Education, Science and Culture (CIECC), Organization of American States (OAS), Buenos Aires, June 8–15, 1981.
Representative
The Honorable, Herbert B. Thompson, Deputy U.S. Permanent Representative to the Organization of American States, Department of State
Advisers
Maureen Bader, Administrative Officer (Secretary of Delegation), Organization of American States, Department of State
Peter P. Bielak, Education, Science, and Cultural Affairs Advisor, Organization of American States, Department of State
Howard Luck, Deputy Mission Director AID, Lima, Peru
Margarita Riva-Geoghegan, Deputy, Educational, Scientific and Cultural Affairs Adviser to the Organization of American States, Agency for International Development
Donald E. J. Stewart, International Organizations Adviser, Organization of American States, Department of State
Private Sector Adviser
Mari-Luci Jaramillo, Special Assistant to the President, University of New Mexico, Albuquerque, New Mexico

U.S. Delegation to the Conference on Airport and Route Facility Economics, International Civil Aviation Organization (ICAO), Montreal, May 19 to June 5, 1981.
Delegate
Bruce Selfon, Chief, International Aviation Division, Office of the Assistant Secretary for Policy and International Affairs, Department of Transportation
Alternate Delegates
Edward A. Corboy, Bureau of International Affairs, Civil Aeronautics Board
Joan S. Gravatt, Aviation Programs and Policy Division, Bureau of Economic and Business Affairs, Department of State
Bernard Myers, International Aviation Division, Office of the Assistant Secretary for Policy and International Affairs, Department of Transportation
Private Sector Advisers
George Howard, Chief, Aviation Economics, Port Authority of New York and New Jersey, New York, New York
William M. Hawkins, Vice President, Finance and Taxation, Air Transport Association of America, Washington, D.C.

U.S. Delegation to the Twenty-Fifth Session of the Harmonized Systems Committee of the Customs Cooperation Council (CCC), Brussels, May 18—June 5, 1981
Representative
Eugene A. Rosengarden, Director, Office of Tariff Affairs, U.S. International Trade Commission
(May 25—June 5)
Alternative Representative
Dale O. Torrence, Senior Attorney (Customs), U.S. Customs Service, Department of the Treasury
(May 18–29)
Advisers
Jo Ann Hallquist, Foreign Agricultural Service, Department of Agricultural
(May 18–29)
Ronald Heller, Nomenclature Analyst, Office of Tariff Affairs, U.S. International Trade Commission
Walter Neece, Chief, Industry and Commercial Classification Branch, Bureau of the Census, Department of Commerce
Dennis C. Sequeira, Custom Attache, U.S. Mission to the European Communities, Brussels

Private Sector Adviser
Irene W. Meister, Vice President, International American Paper Institute, Inc., New York, N.Y.

[FR Doc. 81-20528 Filed 7-13-81; 8:45 am]
BILLING CODE 4710-19-M

[Public Notice CM-8/421]

Study Group B of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 23, 1981 at 10:00 a.m. in Room 3524 of the Department of State, 2201 C Street, N.W., Washington, D.C. This Study Group deals with international telegraph operations.

The Study Group will discuss preparations for the meeting of CCITT Study Group VIII scheduled for October 5–16, 1981 at Geneva. It will review proposed U.S. contributions for that meeting.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangments are made in advance of the meeting. It is suggested that prior to July 23, members of the general public who plan to attend the meeting so advise Mr. Richard H. Howarth, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632-1007. All non-Government attendees must use the C Street entrance to the building.

Dated: July 1, 1981.

Richard H. Howarth,
Chairman, U.S. CCITT National Committee.

[FR Doc. 81-20488 Filed 7-13-81; 8:45 am]
BILLING CODE 4710-07-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Effective Date of Certain Staged Tariff Rate Reductions

On June 30, 1981, the President announced that import relief under section 203 of the Trade Act of 1974 with respect to footwear, implemented by Presidential Proclamation 4510 of June 22, 1977, would not be extended. As a result of that decision, the import relief has terminated with respect to articles entered, or withdrawn from warehouse for consumption on and after July 1, 1981. Therefore, the first stage of tariff rate modifications proclaimed in section D of Annex III to Proclamation 4707 of December 11, 1979 (44 FR 72529) for column 1 ad valorem rates of duty of 8.1%, 3.4%, and 4.8%, on items 774.50, 791.20, and 791.27, respectively, of the Tariff's Schedules of the United States became effective for articles entered, or withdrawn from warehouse for consumption, on and after July 1, 1981. Each subsequent stage shall become effective annually on the first day of July for the next seven years with the eighth and final stage becoming effective on July 1, 1988.

William E. Brock,
United States Trade Representative.

July 10, 1981.

[FR Doc. 81-20645 Filed 7-13-81; 8:45 am]
BILLING CODE 3190-01-M

VETERANS ADMINISTRATION

Consolidated Warehouse at the Veterans Administration Medical Center, Aspinwall Division, Pittsburgh, Pennsylvania; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impact that they may occur as a result of the construction of a new warehouse at the Veterans Administration Medical Center, (VAMC) Aspinwall Division, Pittsburgh, Pennsylvania.

The project proposes to consolidate the three existing warehouse spaces, which are in different locations on the medical center, into one efficient building at one easily accessed site. The proposed site is in the area of the power plant, maintenance shops, and old quarters buildings. This site would involve demolition of one to four buildings. If demolition is eliminated from this project, the warehouse will be located adjacent to these buildings in an open space.

Alternatives considered include relocation of the warehouse function to another medical center in Pittsburgh and the No Action alternative.

Development of the project will have minor impacts on the human and natural environment as they affect topography, surface runoff and erosion. In addition, construction noise, dust, fumes and visual impacts will exist during construction of the project. If buildings are demolished, solid waste will be generated which will be disposed of on local approved disposal sites. The medical center is part of an architectural set of Veterans Administration Medical Centers constructed in the Georgian Colonial Style so demolition and new construction would affect the historic character of the medical center However, the State Historic Preservation Office has determined that the buildings are not eligible for the National Register of Historic places. A determination from the Department of the Interior is pending.

Findings conclude the proposed action will not cause a significant adverse effect on the physical and human environment, and therefore does not require preparation of an Environmental Impact Statement.

Mitigation of the project's impact on the environment include erosion control measures, and on-site noise abatement methods. Compatible exterior architectural material will be provided. Historic Preservation coordination and planning will be undertaken.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C., (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Office of Environmental Affairs (003A), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: July 8, 1981.

Donald L. Custis, M.D.,
Acting Administrator.

[FR Doc. 81-20514 Filed 7-13-81; 8:45 am]
BILLING CODE 8320-01-M

Development of 13 Acres in Sante Fe, New Mexico National Cemetery; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur

as a result of developing 13 gross acres in Santa Fe National Cemetery, Santa Fe, New Mexico.

The project provides for the development of the acreage in the northwest section of the existing cemetery for an estimated 6,300 gravesites. At the current usage rate of approximately 500 gravesites per year, the development will meet burial requirements through the year 1996.

The development will include clearing, grubbing, grading, drainage system, utilities, fencing, monumentation of gravesites, roads and curbs, extension of underground irrigation system, turf and landscape planting. The development will be staged to provide sufficient time for turf and landscape planting to become established.

This acreage was the last undeveloped area in the cemetery and was the only alternative considered besides the "No Action" option. It is a general policy of the VA to minimize costs where applicable and conserve by using existing space.

The "No Action" alternative would establish the continuance of existing land use patterns, with a projected cemetery closing date in January 1984. At that time the cemetery would become inactive and veterans and their survivors would utilize the limited number of gravesites at other VA cemeteries. The "No Action" alternative would not result in any significant adverse impact or loss of resources.

Development of the project will have temporary impacts on the human and natural environment affecting soil stability, air quality, water quality, noise levels, vehicular traffic and aesthetics.

This National Cemetery is eligible for listing on the National Register of Historic Places and has been nominated by the Veterans Administration for inclusion on the Register. Any exterior land or building expansion and/or modifications at the cemetery will have to comply with the National Historic Preservation Act requirements. Coordination with the appropriate Federal, State and local historic preservation officers will be required.

Mitigative measures to control adverse environmental conditions will be implemented through the construction and operational phases. All Federal, State and local codes will be adhered to and construction contract documents will include the VA construction specifications which include the Environmental Protection section.

The commitment of resources, energy and labor to implement the development of the project is irreversible and permanent once the project is in place; however, products utilized in project operations can be reclaimed and recycled. The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C., (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Office of Environmental Affairs (003A), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: July 8, 1981.

Donald L. Custis, M.D.,

Acting Administrator.

[FR Doc. 81-20513 Filed 7-13-81; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Mediterranean Fruit Fly Eradication Program Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Animal and Plant Health Inspection Service has prepared an environmental assessment of the alternatives available for the Mediterranean fruit fly eradication program being conducted in Alameda, San Mateo, and Santa Clara Counties, California. On the basis of the assessment, the Animal and Plant Health Inspection Service has determined that no significant impact will result from the implementation of any of the identified alternatives. Therefore, an environmental impact statement (EIS) on this program will not be prepared.

FOR FURTHER INFORMATION CONTACT: Ed L. Ayers, Jr., Staff Officer, Pest Program Development Staff, PPQ, APHIS, USDA, Room 630 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8745 or Wayne Granberry, Mediterranean Fruit Fly Project Headquarters, PPQ, APHIS, USDA, Ralph Berry School, 14855 Oka Street, Los Gatos, CA 95030, (408) 275-7648.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA), in cooperation with the California Department of Food and Agriculture (State), intends to eradicate an outbreak of Mediterranean fruit flies (Medfly) in certain parts of California. If this outbreak is not eradicated, significant adverse effects could result to California agriculture and to the Nation through the damage caused to plant products by this plant pest and by increased control costs. This would ultimately be expected to result in substantially increased costs of plant products to consumers. Additionally, the establishment of the Medfly in California may result in action by foreign countries to restrict or prohibit the import of American agricultural products into such countries.

On April 17, 1981, APHIS published in the **Federal Register** (46 FR 22403-22404) a notice of availability of an environmental assessment based on the alternatives available for the Medfly eradication program being conducted in Santa Clara and Alameda Counties in California.

Medfly is considered to be the most destructive fruit fly in the world attacking over 200 fruit and vegetable crops. The current California eradication program consists of various components. These components have included the trapping of wild Medflies by using trimedlure to detect the presence of the pest, stripping of host fruit, the ground application of malathion bait spray, the ground application of fenthion [1], sterile Medfly release, and requiring host plant products moving out of the infested areas and immediately surrounding environs to be subjected to cold treatment or fumigation to kill the pest. Treatment will also include the aerial application of malathion bait spray should conditions warrant. The treatments are carried out by and under

[1] The use of fenthion was discontinued on February 25, 1981, since tests have shown it to be of marginal effectiveness in Santa Clara and Alameda Counties. Apparently soil type and high pH causes fenthion to undergo a rapid hydrolysis.

the control of the State with the assistance and cooperation of APHIS personnel. The pesticide treatment components of the program have been monitored by the Environmental Protection Agency (EPA) and others, and the aerial application of malathion bait, when used in the program, will also be monitored to determine direct and indirect effects on the environment.

In developing the current eradication program, a number of alternatives were available and were considered. In developing these alternatives, consideration was given to previous Medfly eradication programs. The Medfly has invaded the United States a total of eight times and has been eradicated six of those eight. The first invasion, 1910 in Hawaii, was not eradicated and Hawaii continues to be infested with Medfly. The second infestation occurred in Florida in 1929. It was eradicated using massive fruit stripping combined with ground spraying of lead arsenate, a material no longer registered for pesticide use in the United States. The third and fourth invasions of the Medfly occurred in 1956–1957 and 1962–1963, both in Florida. Both were eradicated using aerial application of malathion bait spray. The fifth outbreak in Texas in 1966 was also eradicated using aerial application of malathion bait spray. The next U.S. Medfly outbreak occurred in Los Angeles in 1975–1976. There a new technique was used involving only spot applications of malathion bait combined with the ground and aerial release of millions of steril Medflies in the infested area. The Los Angeles infestation ultimately numbered 4 larval sites and 77 adult Medflies were caught. It was the largest Medfly infestation to be successfully eradicated using the sterile Medfly technique.

The seventh and eighth Medfly infestations occurred in 1980 in Los Angeles, Santa Clara, and Alameda Counties. In both instances, the initial eradication treatment program consisted of spot applications of malathion bait and fenthion [1], soil treatments combined with stripping of fruit on the properties where larvae had been found as well as the release of millions of sterile Medflies. Although this treatment program was successful in Los Angeles and eradication was declared in December 1980, it has been successful in Santa Clara and Alameda Counties and the program in those counties is continuing. Additionally, Medfly infestations have recently occurred in San Mateo County and the eradication program has been extended to that county.

A series of alternatives to eradicate the pest are available and considered. These alternatives are:

(a) No action.

(b) Bait station application of malathion, soil treatment with fenthion [1], and release of sterile Medflies.

(c) Full-coverage foliar treatment with malathion protein bait spray using ground equipment, soil treatment with fenthion [1], and release of sterile Medflies.

(d) Fruit stripping, full-coverage foliar treatment with malathion protein bait spray using ground equipment, soil treatment with fenthion [1], and release of sterile Medflies.

(e) Aerial strip spraying with malathion protein bait spray, soil treatment with fenthion [1], and release of sterile Medflies.

(f) Fruit stripping, aerial strip spraying with malathion protein bait spray, soil treatment with fenthion [1], and release of sterile Medflies.

(g) Aerial full-coverage treatment with malathion protein bait spray, soil treatment with fenthion [1], and release of sterile Medflies.

(h) Fruit stripping, aerial full-coverage treatment with malathion protein bait spray, soil treatment with fenthion [1], and release of sterile Medflies.

(i) Soil treatment with fenthion [1], and release of sterile Medflies.

(j) The release of sterile Medflies.

Alternative (b) was used in the treatment of the 1980 infestation of Medfly in Los Angeles. Only the larval property and adjacent property were stripped and sprayed with fenthion [1]. The malathion bait was applied as bait stations until sterile Medfly shipments arrived in significant numbers. Two properties were sprayed once with fenthion [1] and six properties were sprayed with malathion bait using a hand sprayer. This infestation was eradicated and released from quarantine in December 1980.

A similar but expanded approach was used in Santa Clara and Alameda Counties from June 1980 until January 5, 1981. However, it was apparent that this alternative was not achieving eradication. Based on USDA trapping reports, wild Medflies were continuing to be captured during the fall and winter months and larvae were still present in the originally infested area as late as January 1981; also the infested area had grown significantly. Because of this, it was decided that alternative (d), which included massive fruit stripping and more extensive and intensive ground spraying would be put into effect in January 1981. In Santa Clara County, all properties within a 1 square mile area of each larval find were stripped of host fruit. The area stripped totaled 50.1 square miles (the 43.5 square mile core area plus 6.6 additional square miles in areas more than ½ mile from any previous larval find but adjacent to the core).

After stripping was completed on February 5, host trees on properties within the 43.5 square mile area known to be infested were sprayed with malathion bait using ground hydraulic rigs and hand sprayers. Sixty-one thousand eight hundred properties were sprayed at least three times between January 1 and mid-March. Malathion bait sprays are continuing to be applied every 10 days to these properties.

In addition, approximately 100 million sterile Medflies are being released weekly in the quarantine area.

Evaluation of the effectiveness of the current eradication effort is an ongoing project activity. There are approximately 3,000 Medfly traps in the quarantine area which are checked weekly. Collections of host fruits are being made at a rate of over 1,000 samples per week and are being held and checked weekly for a period of 3 weeks for signs of larval infestation.

The trap catches declined from November 1980 to the Spring of 1981. This decline was influenced by the colder temperatures resulting in this downward trend. Alternative (d) which includes stripping of fruit was used from December 1980 to the present to try to eradicate the Medfly in Santa Clara and Alameda Counties. Alternative (g) (aerial application) will be used because additional finds of Medfly have indicated that alternative (d) has not succeeded in eradicating the infestation.

The decision to implement any alternative to address a pest problem is dependent upon an evaluation of available data. Through such analysis, a reasoned decision can be made concerning the necessity for and appropriateness of a particular alternative. This is particularly apparent in the present Medfly situation. Of central concern is to determine whether or not the Medfly is reproducing. Since the beginning of July many Medfly larvae have been found in Santa Clara and San Mateo Counties indicating that the fly is continuing to reproduce. The decision to move from one eradication measure to the next depends upon the evaluation of such factors as the location of detection of the pest, the stage of development of the pest, the distances between detections, prevailing weather conditions, and availabilty of host material. The following which are based upon the collective expertise of

Medfly experts and private consultants of the USDA, State, and the USDA and State staffs are used to identify what particular eradication measure is required in the infested areas or when it will be necessary to move from one eradication measure to another:

(a) *Larval finds.*

(1) A finding of one or two larval infestations [2] indicates the need for increased trapping and detection efforts and will require continued localized control through ground application of pesticides.

(2) Three or more larval infestations within a single Medfly generation evidencing three district populations would indicate that reproduction is continuing and that aerial application of pesticides is necessary to prevent further reproduction.

(b) *Adult finds.*

(1) Due to the high Medfly population levels experienced in the mid-fall of 1980, some emergency of adult wild Medflies is to be expected into late winter or early spring, particularly as temperatures increase. Generally, detection of a few adult Medflies should not be cause for concern provided the ratio of sterile to wild Medflies of at least 100:1 is maintained in each 1 square mile quadrant where a wild Medfly is detected. A caveat to the foregoing is that if 10 more more wild Medflies are detected after 720 hours at soil temperatures of 60° F or above during a single generation, this would strongly indicate that reproduction is taking place, the ratio of sterile to wild Medflies notwithstanding, and the aerial application of pesticides might be needed.

In delimiting the treatment area for aerial application, should alternative (g) be implemented, consideration would be given to the history of the infestation and the biology of the Medfly. The treatment area would, at a minimum, include the area within a 1½ mile radius of the site or sites where wild Medfly finds indicate reproduction is occurring.

It is recognized that broad-scale aerial application of pesticides has generated concern and controversy by various segments of the public. Among these concerns are:

(a) Human health issues—

(1) malathion as a carcinogen;

(2) malathion as a teratogen;

(3) malathion as a spermatogen; and

(4) hazards of pesticides to sensitive members of the population.

(b) Biology of the Medfly in California.

(c) Impact of treatment on nontarget beneficial insects, including bees.

(d) Degradation of malathion in water and soil.

These issues were addressed in the environmental assessment prepared by APHIS. When aerial application of malathion bait (alternative (g)) is undertaken public informational efforts will be expended to further advise the public of any additional precautions to be taken. To the extent possible, this will include door-to-door written notice, the holding of public meetings in the potential treatment area, and increased use of available media.

Based on the assessment, it is concluded that:

Considering the nature and amount of the pesticides involved, no significant adverse environmental effects are anticipated from the implementation of any of the program alternatives. A review of environmental effects of malathion has been made. APHIS feels that based on the properties of the malathion involved in this program, the rates of applciation, and existing toxicological data, there would be no cumulative or secondary adverse effects on the environment.

Considering the nature and amount of the pesticides involved, no significant adverse environmental effects are anticipated from the implementation of any of the program alternatives. With respect to human impacts, the toxic properties of malathion have been studies extensively. The material has a relatively low potency requiring measurably large doses to produce its toxic effects in humans. Based on proposed application rates, the amount of malathion to be introduced into the environment represents virtually no acute toxic hazard to individuals who may come in contact with the materials. Malathion and malaoxan, a metabolite, have been evaluated for their potential to induce tumors. The final interpretation of these studies by the scientists charged with reviewing this information for purposes of public safety are that neither malathion nor malaoxan is associated with tumor induction under the conditions of study. Other studies have demonstrated that administration of malathion to pregnant animals does not result in miscarriages or birth defects.

Prolonged administration of malathion has not been associated with any permanent nerve damage to animals exposed to maximum tolerated doses. There is no evidence of delayed onset toxicity subsequent to the administration of acutely toxic doses of malathion.

Malathion has been tested for allergic sensitivity. Under extreme conditions of direct application of malathion to the skin followed by covering the application area, it has resulted in skin reactions which later subside.

Employees handling malathion during its manufacture, who show a tendency for production of skin sensitivity when tested with occlusive dressings as described above, do not demonstrate these same reactions when exposed to material under normal conditions. There is no relationship to the chemical reaction with paint and any potential for malathion to cause skin damage. Under the proposed applications of malathion, no health hazard has been identified other than that which might occur in association with accidents, such as concentrated spills on workers handling concentrated materials or in the unlikely event of an aircraft accident, wherein the physical damage is far more threatening than any potential toxic hazards.

With respect to all other environmental effects of malathion, a review has also been made. It is felt that based on the properties of the malathion involved in this program, the rates of application, and existing toxicological data, there would be no cumulative or secondary adverse effects on the environment.

[2] A larval infestion is considered to exist when one or more larvae are found at one location.

It should be noted that the use of malathion in this program is at a rate which is lower than that which has been approved by EPA for public health mosquito control. Furthermore, EPA has reviewed this proposed use of malathion and, as a result of that review, has issued an exemption pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing its use in the Medfly cooperative program in California.

Done at Washington, D.C., this 13th day of July 1981.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 81-20801 Filed 7-13-81; 12:18 pm]

BILLING CODE 3410-34-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 134
Tuesday, July 14, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

[M-322, July 9, 1981]

TIME AND DATE: 9:30 a.m., July 16, 1981.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Draft NPRM to allow carriers to charge the sum of the fares for segments on a route between two points instead of the through fare, when the sum of the segments is less. (Memo 629, OGC, BIA, BDA)
3. Docket 38470—Amendment to Part 296, Permission for Cooperative Shippers Association To Act As Agents of Direct Carriers. (Memo 118-B, OGC, BDA)
4. Docket 36244, Notice of intent of Pioneer Airways to suspend service at McCook, Kearney, Hastings and Columbus, Nebraska. (BDA, OCCR)
5. Docket EAS-759—Appeal of Bowling Green—Warren County Airport Board of the essential air service eligibility determination for Bowling Green, Kentucky. (Memo 639, OGC, OCCR, BDA)
6. Docket EAS-791—Appeal of the City of Moab, the Grand County Commission, and the Utah Air Travel Commission of the section 419(b) essential air service eligibility determination for Moab, Utah. (Memo 641, OGC, OCCR, BDA)
7. Docket EAS-634 and 37703, Essential Air Service Determination for Aguadilla, Puerto Rico and Carrier Selection for Aguadilla. (Memo 333-A, BDA, OCCR, OGC)
8. Docket EAS-555 and 34513, Petition of the Port of Astoria for determination of essential air transportation at Astoria/Seaside, Oregon. (Memo 646, BDA, OCCR, OC)
9. Dockets 39027 and 39031, Petition of Big Sky Airlines for amendment of final subsidy rate for service at Jamestown and Devils Lake, North Dakota. (Memo 426-A, BDA, OCCR, OC)
10. Docket 38744, Time limits for filing overcharge claims in international air transportation. (BDA, BIA, BCCP)
11. Commuter carrier fitness determination of Trans California Airlines, Inc. (BDA)
12. Commuter carrier fitness determination of Pinehurst Airlines, Inc. (BDA)
13. Commuter carrier fitness determination of Comair, Inc. (Memo 647, BDA)
14. Docket 32660, IATA agreements proposing major revisions in the IATA fare construction rules for international passenger services. (Memo 559, BIA, BDA, OGC)
15. Dockets 39542, 39543, 39539, Applications of Eastern, Republic and Northwest for issuance of certificates to operate between the United States and Canada. (BIA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1076-81 Filed 7-10-81; 3:05 pm]

BILLING CODE 6320-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 13, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Applications for Federal deposit insurance (proposed new banks):

Northridge Bank, a proposed new bank, to be located at the southwest corner of Corbin Avenue and Nordhoff Place, Los Angeles (Northridge), California.

Lumpkin County Bank, a proposed new bank, to be located at the corner of Maple and Chestatee Streets, Dahlonega, Georgia.

First Missouri Bank of Washington, a proposed new bank, to be located at the intersection of Missouri Highway A and Highway 100, Washington, Missouri.

Applications for Federal deposit insurance (United States branches of foreign banks):

Banco Safra S.A., Sao Paulo, Brazil, for Federal deposit insurance of deposits received at and recorded for the account of its branch located at 1114 Avenue of the Americas, New York, New York.

Bank Hapoalim B.M., Tel Aviv, Israel, for Federal deposit insurance of deposits received at and recorded for the account of its branch located at 6501 Wilshire Boulevard, Los Angeles, California.

United Mizrahi Bank, Ltd., Tel Aviv, Israel, for Federal deposit insurance of deposits received at and recorded for the account of its proposed branch to be located at 727 West Seventh Street, Los Angeles, California.

Applications for consent to merge and establish branches:

United Bank & Trust Company, Hartford, Connecticut, for consent to merge, under its charter and title, with Vernon National Bank, Vernon, Connecticut, and to establish the three offices of Vernon National Bank as branches of the resultant bank.

Suffolk Franklin Savings Bank, Boston, Massachusetts, for consent to merge, under its charter and with the title "Mutual Bank for Savings," with Mutual Bank for Savings, Newton (P.O. Newton Centre, Massachusetts, and to establish the eleven offices of the Mutual Bank for Savings as branches of the resultant bank.

The Berlin City Bank, Berlin, New Hampshire, for consent to merge, under its charter and title, with Peoples National Bank of Groveton, Groveton, New Hampshire, and to establish the sole office of Peoples National Bank of Groveton as a branch of the resultant bank.

The Mason Village Savings Bank, Greenville, New Hampshire, for consent to merge, under its charter and with the title "Village Savings Bank", with Peterborough Co-Operative Bank, Peterborough, New Hampshire, and to establish the sole office of Peterborough Co-Operative Bank as a branch of the resultant bank.

American Bank and Trust Co. of Pa., Reading, Pennsylvania, for consent to merge, under its charter and title, with The Brownstown National Bank, Brownstown, Pennsylvania, and to establish the three offices of The Brownstown National Bank as branches of the resultant bank.

NorthWest Bank, Seattle, Washington, for consent to merge, under its charter and title, with Bank of Kirkland, Kirkland, Washington, and to establish the sole office of Bank of Kirkland as a branch of the resultant bank.

Request for repeal of conditions previously imposed in granting consent to merge:

Central Bank, Oakland, California.

Request for rescission of a condition imposed in granting consent to purchase bank premises:

Bank of Orchard Mesa, Grand Junction, Colorado.

Request by the Comptroller of the Currency that the Corporation, pursuant to section 10(b) of the Federal Deposit Insurance Act, assist in an examination of a national bank.

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks:

Names of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Recommendations regarding First Pennsylvania Bank N.A., Bala-Cynwyd, Pennsylvania, and First Pennsylvania Corporation, Philadelphia, Pennsylvania.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,809-NR—First National Bank of Ursa, Ursa, Illinois
Case No. 44,832-L—Birmingham Bloomfield Bank, Birmingham, Michigan
Case No. 44,847-L—Southern National Bank, Birmingham, Alabama
Memorandum and Resolution re: Franklin National Bank, New York, New York
Memorandum and Resolution re: Bank of Enville, Enville, Tennessee

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), and (c)(8), (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Reports of committees and officers:

Report of the Director, Office of Corporate Audits:
Audit Report re: Receivership Dividend System.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 6, 1981.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1069-81 Filed 7-10-81; 9:34 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 13, 1981, to consider the following matters:

Disposition of minutes of previous meetings.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.
Morgan, Lewis & Bockius, Philadelphia, Pennsylvania, in connection with the liquidation of Centennial Bank, Philadelphia, Pennsylvania.
Francis, Doval, Munoz, Acevedo, Otero & Trias, San Juan (Hato Rey), Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,838-SR—The Citizens State Bank, Viola, Kansas
Memorandum and Resolution re: Gateway National Bank of Chicago, Chicago, Illinois and Guaranty Bank & Trust Company, Chicago, Illinois

Memorandum and Resolution re: Amendments to Part 328 of the Corporation's rules and regulations, entitled "Advertisement of Membership."

Memorandum and Resolution re: Amendments to the Corporation's statement of policy entitled "Applications Under Section 19 of the Federal Deposit Insurance Act."

Memorandum and Resolution re: Publication of Plan for Review of Rules, as required by the Regulatory Flexibility Act of 1980.

Memorandum proposing the appointment of an agent for service of process in the State of North Carolina.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 6, 1981.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1070-81 Filed 7-10-81; 9:43 am]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, July 20, 1981.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: July 10, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1077-81 Filed 7-10-81; 3:41 pm]

BILLING CODE 6210-01-M

5

NATIONAL SCIENCE BOARD.

(Executive Committee, acting on behalf of the Board)

DATE AND TIME: July 17, 1981, 11 a.m.

PLACE: Room 520, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

STATUS: This meeting will be closed to the public.

MATTER TO BE CONSIDERED: Recommendations to the Administration and the Congress for fiscal year 1983 and subsequent years on science and engineering education.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, 202/357–9582.

[S-1073-81 Filed 7-10-81; 1:32 pm]

BILLING CODE 7555-01-M

6

NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-81-24]

TIME AND DATE: 9 a.m., Tuesday, July 21, 1981.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Cascade Airways, Inc., Beech 99A, N390CA, Spokane, Washington, January 20, 1981.

2. *Recommendation* to the Federal Aviation Administration regarding interference of cockpit voice levels with flightcrew speech communication.

3. *Aircraft Accident Report:* McDonnell-Douglas, Inc., DC-9-80, N1002G, Yuma, Arizona, June 9, 1980.

4. *Pipeline Accident Report:* William Pipe Line Company Gasoline Explosion and Fire, Roseville, Minnesota, April 16, 1980: *Recommendations* to the Williams Pipe Line Company, the American Petroleum Institute, the American Gas Association, and the Interstate Natural Gas Association of America.

5. *Highway Accident Report:* East Side Church of Christ Bus Skid and Overturn, U.S. Route 183, Near Luling, Texas: *Recommendations* to the Texas Department of Public Safety, the Texas Department of Highways and Public Transportation, the Federal Highway Administration, and the National Highway Traffic Safety Administration.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–382–6525.

July 10, 1981.

[S-1074-81 Filed 7-10-81; 2:09 pm]

BILLING CODE 4910-58-M

7

NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-81-25]

TIME AND DATE: 9 a.m., Thursday, July 23, 1981.

PLACE: NTSB Board Room National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Study:* Railroad Locomotive Safety Control Devices; *Recommendations* to the Federal Railroad Administrations.

2. *Letter* to Ms. Paula G. Morton regarding reconsideration of probable cause—Butler Aircraft, Inc., Douglas DC-7, Klamath Falls, Oregon, September 14, 1979.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–382–6525.

July 10, 1981.

[S-1075-01 Filed 7-10-81; 2:10 pm]

BILLING CODE 4910-58-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: Week of July 13, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Friday, July 17* (3:00 p.m.):

1. Affirmation/Discussion Session (Public Meeting)

Affirmation and/or Discussion and Vote:

a. PRM to Reduce or Eliminate Requirements with Respect to Financial Qual. for Power Reactor Applicants, and to Require Power Reactor Licensees to Maintain Property Damage Insurance (delayed from July 9)

b. Physical Security Requirements for Nonpower Reactor Licensees Possessing a Formula Quantity of SSNM (tentative) (delayed from July 9)

ADDITIONAL INFORMATION: Affirmation of Provision of Free Transcripts to all Full Participants in Adjudicatory Proceedings scheduled for July 9 was cancelled.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary

July 10, 1981.

[S-1078-81 Filed 7-10-81; 3:54 pm]

BILLING CODE 7590-01-M

9

PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining offices at Bethesda, Maryland, Headquarters)

[1PO401]

TIME AND DATE: 9:30 a.m., Thursday, July 16, 1981.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 7 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5926.

[S-1079-81 Filed 7-10-81; 3:57 pm]

BILLING CODE 4410-01-M

10

POSTAL SERVICE.

Board of Governors

Notice of Closed Meeting

During its July 7, 1981, meeting the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting. The portion to be closed was to involve a discussion of the

Decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Governors of the United States Postal Service* v. *United States Postal Rate Commission*.

The Governors determined, pursuant to 5 U.S.C. 552b(c)(10) that the portion of the meeting to be closed was exempt from the open meeting requirement of the Sunshine Act in that it was likely to specifically concern agency participation in a civil action or proceeding.

The Governors voting in favor of closing this portion of the meeting were: Camp, Ching, Hardesty, Hughes, Hyde, Jenkins and Sullivan. Governor Babcock was absent.

Prior to the July 7 meeting, the Board of Governors gave due public notice of its intention to hold the meeting, the notice and the proposed agenda for the meeting having been published in the **Federal Register** on June 30, 1981, (46 FR 33695). On July 7, the Governors determined that the timely discharge of their responsibilities required that the portion of the meeting in question should be closed, notwithstanding the fact that the published agenda for the meeting had not stated that this portion would be closed.

The Governors determined that the public interest did not require that this portion of the meeting be open to the public, since a failure to discuss litigation strategies without the inhibitions to candor that might result from holding such a discussion in public (quite possibly with opposing counsel in attendance) would be inconsistent with the public's interest in having the Governors arrive at their Decision only after a candid analysis of how the various alternatives open to them might best be analyzed in the light of pending litigation.

In accordance with 5 U.S.C. § 552b(c)(10), the General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting to be closed might properly be closed to public observation.

Louis A. Cox,

Secretary.

[S-1071-81 Filed 7-10-81 10:24 am]

BILLING CODE 7710-12-M

11

POSTAL SERVICE.

BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on July 7, 1981, the Board of Governors of the United States Postal Service voted to close to public observation a portion of its meeting scheduled for August 4, 1981. Each of the members of the Board who were present voted in favor of closing this portion of the meeting. The meeting is expected to be attended by the following persons: Governors Babcock, Camp, Ching, Hardesty, Hughes, Hyde, Jenkins, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary of the Board Cox, and Counsel to the Governors Califano.

The portion of the meeting to be closed will consist of a continuation of the discussion of the Postal Service's possible strategies and positions in connection with collective bargaining negotiations involving parties to the 1978 National Agreements between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1981.

In making the decision to schedule this matter for its August 4 meeting, the Board noted that the Postal Service hopes to reach agreement with the other parties before that time, and that, in this event, the matter will not need discussion at that meeting.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. § 552(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and position be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3), and (9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and sections 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

Louis A. Cox,

Secretary.

[S-1072-81 Filed 7-10-81; 10:24 am]

BILLING CODE 7710-12-M

federal register

Tuesday
July 14, 1981

Part II

Department of Health and Human Services

Office of the Secretary
Food and Drug Administration

Periodic Review of Agency Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Periodic Review of Rules

AGENCY: Department of Health and Human Services (HHS), Office of the Secretary.

ACTION: Notice of plan for periodic review of rules.

SUMMARY: This notice describes the Department's plan for periodic review of rules to minimize regulatory burdens, as required by the Regulatory Flexibility Act and Executive Order 12291. This notice also invites the submission of data, information, and views to assist the Department in deciding priority order of the review.

DATE: Data, information, and views by September 15, 1981.

ADDRESSES: Addresses for submitting comments and information in response to this notice are listed at the end of the notice.

FOR FURTHER INFORMATION CONTACT: Walton Francis, Director for Policy Analysis and Research, Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, Department of Health and Human Services, Washington, D.C. 20201, (202) 245-0291, or the contact person for a specific division or agency of the Department listed at the end of this notice.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act, Public Law 96-354, was enacted on September 19, 1980. The Act's basic purpose is to improve Federal rulemaking by requiring agencies to analyze alternative regulatory approaches to minimize cost burdens on small businesses and other small entities.

Section 610 of the Act requires each agency to publish in the **Federal Register** a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities. The plan must provide for the review of all such agency rules existing on January 1, 1981, within ten years. The plan must also provide for the review of all such rules adopted after January 1, 1981, within ten years of their publication as final rules.

The purpose of the periodic reviews of regulations is to determine whether such rules should be continued without change, or should be amended or rescinded, to minimize any significant econmic impact of the rules upon a substantial number of small businesses, small organizations, or small governmental jurisdictions.

Similarly, the President issued Executive Order 12291 on February 17, 1981. The basic purpose of the Executive Order is to minimize unnecessary regulatory burden. Section 3 of the Executive Order requires that each agency initiate a review of its currently effective rules and determine whether these rules should be retained without change, modified, or revoked.

Both the Act and the Executive Order separately require that we publish a list of the rules that are to be proposed, including revisions of existing rules, during the succeeding twelve months. We intend to use the semiannual regulations agenda, which we publish in October and April each year, to keep our periodic review lists current. Our April agenda, which appears at page 24424 of the April 30, 1981 issue of the **Federal Register** (FR) lists several regulations under development or review that are identified as potentially having a significant economic impact on a substantial number of small entities, or as otherwise involving the possibility of reducing regulatory burdens.

Review Plan

To implement the Regulatory Flexibility Act and E.O. 12291, the operating divisions of the Department and those staff divisions which administer rules will inventory and review all regulations for the purpose of selecting those regulations that should receive early, indepth review and revision, where necessary, to reduce regulatory burdens. Existing regulations will be scheduled for review and reviewed in an order of priority established by each division, subject to Secretarial approval.

In prioritizing existing regulations for review, agencies and offices of the Department will seek to identify for earliest review those regulations for which revision will most advance the following principles:

1. Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

2. Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

3. Provide maximum flexibility to State and local governments.

4. Minimize Federal, State, local, and private costs.

5. Prevent fraud, abuse, waste, and inefficiency.

6. Eliminate regulations not serving a compelling Federal interest, or reform those not implemented in the least intrusive means available.

The Department has undertaken review of three major sets of regulations in connection with activities of the President's Task Force on Regulatory Relief. These regulations have a significant impact on small entities. These reform activities already underway are:

1. Reform of new drug application procedures of the Food and Drug Administration.

2. Revision of Medicaid regulations to provide for greater flexibility and more cost-efficient administration for States.

3. Reduction of regulations involving health care certifications and surveys under the Medicare and Medicaid programs.

The Department's divisions are also preparing annual regulations plans. These plans will be a significant means for implementing the requirements of the Regulatory Flexibility Act pertaining to review of existing regulations. The plans will describe how each agency head intends to accomplish the agency's and the Department's regulatory goals through either the development of new regulations or the revision and elimination of existing regulations.

The Department's semiannual agenda will advise the public of regulations selected for review pursuant to the plans and the status of regulations under review.

In addition to reviewing specific regulations in their entirety, the Department will review groups of regulations for specific kinds of issues that cut across program lines. For example, the Deparmtent is currently reviewing all reporting and recordkeeping requirements prescribed by regulations, in order to comply with the review requirements of the Paperwork Reduction Act.

Careful review of regulations can require a significant amount of time and resources. Regulations that have been developed and amended over many years may have economic impacts that cannot be readily or hastily assessed. Therefore, a division may review only a few of its more complex regulations each year or it may review serveral less complex regulations. In deciding how much review activity can be undertaken each year, the Department will consider what is practicable and reasonable in light of its current resources and other responsibilities. Although the Department will prioritize regulations for review and provide information on the order in which they will be reviewed, establishing long range schedules with specific dates for the

beginning and ending of reviews is not feasible at this time. However, the Department will meet the objective of screening all regulations that may affect small entities, reviewing those selected for priority review as soon as possible, and reviewing all others within the 10-year period required by the Act. Agencies within the Department may issue supplementary notices or take other initiatives to help implement the regulation review requirements of the Act and Executive Order 12291. The Food and Drug Administration is issuing a notice, which follows this one, announcing its plan for review of its rules to minimize regulatory burdens while maintaining an acceptable level of consumer protection.

Public Participation

In order to achieve the maximum benefit from the review and modification of existing rules, it is important that to the extent possible the more costly and burdensome rules be reviewed first. This, in turn, requires information on the potential for cost reduction. We believe that the public, especially those most affected by existing rules, is uniquely able to advise us on this potential. Accordingly, we are inviting data, information, and views to assist us in deciding priority order of review.

The Department has already received, and will continue to take, comments and information concerning the review of existing regulations from a wide range of sources. The Department already has comments on its regulations furnished to the President's Task Force on Regulatory Relief. Several States have submitted extensive suggestions directly to the Department. The Regulations Review Task Force of the Health Care Financing Administration has also solicited and received suggestions. These and other suggestions need not be resubmitted, as the Department will consider them thoroughly.

Comments will be most helpful when they clearly identify the regulation to which the comment is addressed and clearly and specifically explain why and how the regulation imposes unnecessary or disproportionately burdensome demands on those regulated, particularly small entities, adversely affects competition in the marketplace, discourages innovation or restricts improvements in productivity, creates entry barriers in an industry or restricts improvements in productivity, creates entry barriers in an industry or discourages potential entrepreneurs from introducing beneficial products and processes, or otherwise imposes unnecessary costs. The submission of information or references to information, particularly data concerning the costs of the regulation, that supports the comment is encouraged.

Comments should, wherever possible, be sent directly to the division of the Department which administers the particular rule(s) discussed. The major divisions of the Department are (1) the Office of Human Development Services which administers a broad range of social and rehabilitation services and human development services programs designed to deal with the problems of specific populations, including the elderly, children of low income families, persons with mental or physical handicaps, runaway youth, and Native Americans; (2) the Public Health Service, which stimulates and assists States and communities with the development of local health resources and the further development of education for health professions; assists with improvement of the delivery of health services to all Americans; conducts and supports research in the medical and related sciences and disseminates scientific information; protects the health of the Nation against impure and unsafe foods, drugs and cosmetics, and other potential hazards; and provides national leadership for the prevention and control of communicable disease and other public health functions; (3) the Health Care Financing Administration, which oversees the Medicare program, which provides basic health benefits to recipients of social security, and the medicaid program, which provides grants to States for medical services for the needy and medically needy; (4) the Social Security Administration, which administers the national program of contributory social insurance, the supplemental security income program for the aged, blind, and disabled, and the black lung benefits provisions of the Federal Coal Mine Health and Safety Act of 1969; and (5) the Office of the Secretary, which administers civil rights compliance and enforcement policies pertaining to programs of the Department as well as Departmentwide rules concerning grants and contracts.

Comments should be sent to the addressees listed below, depending on the regulations addressed. Comments may be sent to the Office of the Secretary when the responsible division is not known, or when the comment covers several regulatory areas crossing agency lines.

Health Care Financing Administration

Jodi Dunn, Director, Executive Operations, 789 E. High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594-7952

Office of Human Development Services

Johnnie Brooks, Director, Division of Policy Coordination, Office of Policy Development, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 722E, Washington, D.C. 20201, (202) 472-4415

Social Security Administration

Charles Rollins, Director, Division of Regulations, OOPP, OR, Social Security Administration, 3B4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6695

Public Health Service (other than FDA)

Robert Spencer, PHS Regulations Officer, Parklawn Building, Room 17B08, Rockville, Maryland 20857

Food and Drug Administration

See the **Federal Register** notice appearing in this issue for information on submission of comments to the FDA.

Office for Civil Rights

William Van den Toorn, Director, Office of Intergovernmental Affairs, Office for Civil Rights, Department of Health and Human Services, Room 5411, North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-9469

Office of the Secretary (other than OCR)

Glenn Kamber, Deputy Executive Secretary (Regulations), Department of Health and Human Services, Room 631-H, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-3161

(5 U.S.C. 610)

Issued in Washington, D.C. on July 6, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-20531 Filed 7-13-81; 8:45 am]

BILLING CODE 4110-12-M

Food and Drug Administration

[Docket No. 81N-0200]

Review of Agency Rules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its plan for reviewing its rules to minimize regulatory burdens while maintaining an acceptable level of consumer protection. This notice invites the submission of

data, information, and views to assist FDA in deciding priority order of the review.

DATE: Data, information, and views by September 14, 1981.

ADDRESS: Data, information, and views to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For information on rules:

Richard T. Hunt, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480, and

For information on submitting data:

Dennis T. Strickland, Planning and Management Communications Staff (HFP-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1527.

SUPPLEMENTARY INFORMATION: FDA is undertaking a systematic review of its rules. This review is designed to revise or revoke rules imposing significant unnecessary cost burdens and to satisfy the requirements for review in the Regulatory Flexibility Act, Pub. L. 96-354, and Executive Order 12291.

Background

On September 19, 1980, Pub. L. 96-354, the Regulatory Flexibility Act (the Act), was enacted. A provision of the Act, section 610, requires that each Federal agency publish in the **Federal Register** a plan for the periodic review of both existing and new rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. The reviews are to determine whether changes are necessary "to minimize any significant economic impact of the rules upon a substantial number of such small entities." Similarly, Executive Order 12291, issued by the President on February 17, 1981, requires in section 3 that each agency initiate a review of its currently effective rules and, applying the criteria that the Executive Order applies to the development of new rules, determine whether the agency's existing rules should be retained without change, modified, or revoked.

Elsewhere in this issue of the **Federal Register**, the Department of Health and Human Services is issuing a notice on its plan for the periodic review of rules. This notice supplements the Department plan with additional information about FDA procedures for reviewing existing rules.

FDA strongly supports the concept of a periodic review of rules as called for by the Act and the Executive Order.

Changes over the years in technology, relative costs, consumer behavior, medical practice, and industry standards and practices clearly justify the agency's reexamination of its rules in order to determine which ones need to be revised or eliminated. The agency is issuing this notice to announce its review plan and to invite public participation in its implementation.

Approach

The review of FDA rules will be a major, resource-intensive undertaking. In order for the agency to conduct the review in a thorough manner and with limited resources, it will be necessary for FDA carefully to establish priorities for the review.

The principal criteria that FDA will use in establishing its priorities are (1) the potential for cost reduction and (2) the availability of data. Based on these criteria the regulations will generally be reviewed in the following order:

1. Regulations that appear to offer the greatest opportunity for cost reduction and where data are immediately available to make an informed analysis;
2. Regulations with potential opportunities for cost-reduction but where data are not readily available but are necessary to make an informed analysis; and
3. Regulations that offer little potential cost-saving.

FDA encourages full public participation throughout this review process and in this notice specifically solicits information from the public to assist the agency in establishing its priorities under this plan.

The Plan For Reviewing Existing Rules

FDA is gathering all available information that will assist the agency in identifying the existing rules to be reviewed and establishing priorities for their review. FDA has already compiled some data on the impact of regulations as a result of economic analyses and other studies the agency has conducted over the past 5 years. The agency has also received comments on regulatory burdens in recent months, including those forwarded in response to the request of the President's Task Force on Regulatory Relief. However, FDA believes there are many more relevant information and data bases in the possession of the regulated industry, trade associations, universities, and other interested parties that can make an important contribution to the agency's determination of which regulations should be reviewed and establishing priorities for their review. FDA invites, and indeed encourages, the submission of data, information, and views on the following:

1. Identification of the specific existing regulations or groups of regulations which are perceived to be unnecessarily costly or otherwise burdensome or without significant public benefit. Respondents should, if possible, cite CFR part or section number when listing those regulations to be reviewed. If respondents identify a large category of regulations, e.g., labeling requirements, they should suggest priorities for the review of individual regulations within that category.

2. Sources of available information concerning the potential cost reductions to be derived from revising or revoking rules. Respondents should, if possible, describe the type of the data (direct costs, indirect costs, tangible benefits, etc.); the source of the data (corporate records, privately funded studies, etc.); the scope of the information (one firm, one industry, etc.); and any special sector impacts (small business, importers, private label manufacturers, etc.). The most useful information is that which isolates cost reductions or benefits attributable to modification or elimination of a specific FDA regulation, i.e., those that can separate FDA's regulatory burden from the nonregulatory costs attributable to general advances in scientific sophistication, changing production processes or different medical, legal, or societal standards. However, other cost data such as the total costs attributable both to FDA and to other factors may be of use.

Based upon its review and evaluation of any data, information, and views submitted in response to this notice along with other available data, FDA will (1) establish review priorities in each program area; and (2) combine these program priorities into an agency-wide priority list.

Conduct of Reviews

When a regulation is selected for review, the analysis will be conducted in accordance with Executive order 12291, to determine, among other things, whether "the potential benefits to society from the regulation outweigh the potential cost to society," to the extent permitted by law. The agency anticipates that the first step in any such review will be the assemblage of all relevant data on the cost and benefits of the specific regulation. The agency will request as necessary further data and information on each specific rule as it is

reviewed under this plan. The actual review of each regulation will also consider the following factors:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the rule from the public;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and to the extent feasible, with State and local governmental rules; and
5. The length of time since the rule has been evaluated or the degree to which technology, economic consideration, or other factors have changed in the area affected by the rule.

FDA will list in its semi-annual agenda of regulations, published in the **Federal Register** in April and October of each year, those rules that the agency intends to review during the succeeding 12 months. As each rule is revised or revoked, interested persons will be provided an opportunity to participate fully through rulemaking procedures.

Periodic Reconsideration

The inventory of FDA rules will change over time as a result of this review and the promulgation of new rules. Consequently, the agency believes that the list of priorities established as a result of the present priority setting effort will need periodic review and revision. The agency will review the priority list at appropriate intervals and, with input from interested parties, revise the priority order of all rules published prior to the date of the revision.

Interested persons may, on or before September 14, 1981, submit to the Dockets Management Branch (HFA–305), address above, data, information, and views in response to this notice. Submissions should be in four copies (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. Received submissions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 81–20532 Filed 7–13–81; 8:45 am]

BILLING CODE 4110–03–M

federal register

Tuesday
July 14, 1981

Part III

Department of Education

Law School Clinical Experience Program

DEPARTMENT OF EDUCATION

34 CFR Part 639

Law School Clinical Experience Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations for the Law School Clinical Experience Program. These final regulations implement Title IX, Part E of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. These final regulations give guidance to applicants by broadly defining the types of projects the Secretary intends to support under this program. These regulations also specify the selection criteria to be used in evaluating applications.

EFFECTIVE DATE: Unless the Congress takes certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register.** If you want to know if there has been a change in the effective date of these regulations, call or write the Department of Education contact person. At a future date, the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, Telephone (202) 245–2347.

SUPPLEMENTARY INFORMATION: The Law School Clinical Experience Program provides assistance to accredited law schools to establish or expand their programs of clinical experience for students in the practice of law. Clinical programs are designed to instill professional responsibility and to improve learning among law students, through actual or simulated legal services to clients. Under the provisions of the Higher Education Act, prior to reauthorization, support has been provided almost solely to those programs concerned with the trial and preparation of cases. The Higher Education Act, as amended, broadens the focus of the program to include training for prospective lawyers in a wide variety of lawyering skills through simulated experiences as well as actual client services. However, consistent with the legislative history of the statute, preference in the award of funds will continue to be given to those programs providing (1) experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom, and (2) service to persons who have difficulty in gaining access to legal representation.

The legislation permits the Secretary to pay up to 90 percent of the costs of projects at law schools. These final regulations permit the Secretary to establish annually a lower maximum Federal share. In implementing this provision we are establishing, in the application notice for fiscal year 1981, a maximum Federal share of 80 percent. The funding level for the Law School Clinical Experience Program is expected to be $3 million for fiscal year 1981.

These final regulations include sections on eligible parties, authorized activities, selection criteria to be used by the Secretary in evaluating applications, and eligible project costs.

Summary of Comments and Responses

In the Notice of Proposed Rulemaking published in the **Federal Register** on December 31, 1980 (45 FR 86890), the Secretary of Education invited comments on the proposed regulations to implement Title IX, Part E of the Higher Education Act of 1965, as amended. Some commenters agreed with all of the provisions of the proposed regulations. The following is a summary of the other comments received and the responses of the Department of Education.

Comment: Two commenters noted that the funding preference for programs concerned with the trial and preparation of actual cases seems to place simulation programs at a severe disadvantage and will stifle the possibility of creating new simulation programs.

Response: No change has been made in the regulations. These regulations broaden the focus of the program to include, for the first time, training for lawyers through simulated experience. However, consistent with the legislative history of the statute (S. Rept 96–733 at 73; H. Rept 96–520 at 55 on the bills in the 96th Congress enacted as the Education Amendments of 1980 (Pub. L. 96–374)), preference in the award of funds will be given to those programs providing legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

Comment: One commenter asked that authorized activities be expanded to include the establishment and development of a legislative program.

Response: No change has been made in the regulations. Section 639.10(a)(2)(i) specifies that legal skills may be taught by involving the students in "judicial, administrative, executive, or legislative proceedings."

Comment: One commenter asked that the description of the program in § 639.1(b) be expanded to include volunteer legal services.

Response: No change has been made in the regulations. This section is intended to define in a general way the major activities supported under the program. Specific types of legal services are not identified.

Comment: One commenter suggested that the funding criteria be expanded to list disadvantaged children in the definition of groups served under the program.

Response: No change has been made in the regulations. Section 639.30(a)(1) gives priority to clinical programs that prepare and try actual cases and serve clients who have difficulty gaining access to legal representation. Legal services to disadvantaged children would come within this provision.

Comment: One commenter questioned whether the funding criterion relating to faculty supervision of students meant only full-time, tenure-track faculty.

Response: While faculty supervision of students is an important element of an effective clinical legal education program, these final regulations are not intended to specify how a law school should provide that supervision. The quality of the plan of supervision will be judged by a panel of field readers based solely upon its merits.

Comment: Two commenters noted that the limitation of the Federal grant to less than 90 percent of the project cost, the maximum established in the statute, would place financial hardship on a law school and might decrease the likelihood of clinical legal education being offered.

Response: No change has been made in the regulation. A major objective of this program is to increase the financial commitment of a law school to clinical legal education. Support of clinical legal education is not considered a permanent Federal responsibility. This is recognized by the statute, which authorizes the Secretary to pay "not to exceed" 90 percent of project costs. The proposed reduction of the Federal share from 90 percent in FY 1980 to 80 percent in FY 1981 mentioned in the preamble to the Notice of Proposed Rulemaking supports the program's objective.

Comment: One commenter noted that the maximum award limit of $100,000 per institution per fiscal year was an insufficient amount given the expenses of a clinical legal education program.

Response: No change has been made in the regulations. The $100,000 limit per institution is established by section 951(c) of the statute and cannot be changed by regulation.

A number of technical changes have been made in the regulations. Also, the provision on eligible costs has been revised and section 639.40(d), which prohibited paying stipends to students, has been deleted.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.097, Law School Clinical Experience Program)

Dated: July 9, 1981.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 639 of Title 34 of the Code of Federal Regulations to read as follows:

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

Subpart A—General

Sec.
639.1 Law School Clinical Experience Program.
639.2 Eligible parties.
639.3 Regulations that apply to the Law School Clinical Experience Program.
639.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

639.10 Authorized activities.

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

639.30 How does the Secretary evaluate an application?
639.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

639.40 Costs.

Authority: Part E of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134n-1134p).

Subpart A—General

§ 639.1 Law school clinical experience program.

(a) The Law School Clinical Experience Program provides assistance to accredited law schools for establishing or expanding programs of clinical experience for students in the practice of law.

(b) Expanding programs of clinical experience includes, but is not limited to, any of the following:

(1) Development of new areas of clinical experience.

(2) Increase in the number of participating students.

(3) Provision of appropriate and improved supervision.

(4) Development and implementation of new teaching techniques.

(20 U.S.C. 1134n)

§ 639.2 Eligible parties.

The following are eligible to apply:

(a) Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary.

(b) A combination or consortium of accredited law schools.

(20 U.S.C. 1134n(d))

§ 639.3 Regulations that apply to the law school clinical experience program.

The following regulations apply to grants under the Law School Clinical Experience Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions); and

(b) The regulations in this Part 639.

(20 U.S.C. 1221e-3; 3474)

§ 639.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant
Application
Award
Contract
Department
EDGAR
Grant
Project
Secretary

(b) *Definitions that apply to this part.* The following definition applies to this part:

"Simulation" is a learning exercise that examines and helps to explain a theory or concept by requiring a law student, as an active participant, to simulate the role of a lawyer confronted with a legal problem of a client (See § 639.10(b) for exclusions).

(20 U.S.C. 1134n(a))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 639.10 Authorized activities.

(a) Authorized activities under this program include the development—through simulation, or actual experience, or both—of skills usable in the practice of law.

(1) These skills include, but are not limited to, interviewing witnesses, factual and related investigation and analysis, counseling clients, negotiating compromises, drafting documents, advocacy before legal decision-makers, and training in professional responsibility.

(2) These skills may be taught by involving the students in any one or more of the following:

(i) judicial, administrative, executive, or legislative proceedings;

(ii) office or house counsel problems; or

(iii) factual investigation, empirical research, or policy or legal analysis.

(b) The Secretary does not fund moot court activities or student exercises of the type usually performed in courses on legal research and writing.

(20 U.S.C. 1134n(a); H. Rept. 96-520 at 55-56)

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 639.30 How does the Secretary evaluate an application?

(a)(1) Unless other applications are of outstanding quality, the Secretary first funds applications that propose the following activities:

(i) Preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(ii) Service to persons who have difficulty in gaining access to legal representation.

(2) As used in paragraph (a)(1) of this section, the term "applications of outstanding quality" means those applications that score in the top 10 percent of all applications for which funds are available.

(b) Subject to paragraph (a) of this section, the Secretary evaluates an application on the basis of the criteria in § 639.31.

(1) The Secretary awards up to 100 possible points for these criteria.

(2) The maximum possible score for each criterion is indicated in parentheses following the title.

(c) Among applications of relatively equal quality, the Secretary may give priority to applications that:

(1) Ensure a wide geographic distribution throughout the United States of law school clinical experience programs; and (20 U.S.C. 1134o(b))

(2) Ensure that a wide variety of client groups are served.

(20 U.S.C. 1134n(a); S. Rept. 96-733 at 72-73; H. Rept. 96-520 at 55)

§ 639.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows

the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Fiscal commitment.* (15 points)

The Secretary looks for information that shows the degree to which the institution's regular budget provides funds for its clinical legal education program.

(g) *Faculty supervision.* (20 points)

The Secretary reviews each application for information that shows the extent to which the proposed project will increase the participation of law school faculty in the supervision of students under the clinical legal education program.

(h) *Academic credits.* (10 points)

The Secretary reviews each application for information that shows that the proposed program of law school clinical experience provides for the award of academic credits to participating students.

(20 U.S.C. 1134n(a))

Subpart E—What Conditions Must a Grantee Meet?

§ 639.40 Costs.

(a)(1) The Secretary makes available funds to cover up to 90 percent of the cost of establishing and expanding a Law School Clinical Experience project, subject to the limitations and applicable cost principles in EDGAR.

(2) The Secretary annually may establish a lower maximum Federal share that may take into account the number of years that a grantee has been funded under this program.

(b) Federal funds for a particular law school or consortium of law schools may not exceed $100,000 in any fiscal year, no part of which may be used to pay for indirect costs or charges.

(c) Allowable costs are direct costs incurred in carrying out an approved project, including:

(1) Planning;

(2) Training of faculty members and salary for additional faculty members;

(3) Travel and per diem for faculty and students;

(4) Reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

(5) Equipment and library resources;

(6) Involving practicing lawyers in the process of training law students to perform as lawyers; and

(7) Such other items as are allowed pursuant to these regulations.

(20 U.S.C. 1134n(b) and (c))

[FR Doc. 81-20593 Filed 7-13-81; 8:45 am]

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federal register

Tuesday
July 14, 1981

Part IV

Department of Education

State Student Incentive Grant Program

DEPARTMENT OF EDUCATION

34 CFR Part 692

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These regulations simplify existing rules for the State Student Incentive Grant (SSIG) Program and incorporate statutory changes made by the Education Amendments of 1980.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect August 28, 1981. If you want to know if there has been a change in the effective date of these regulations, call or write the Department of Education contact person. At a future date the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Lanora G. Smith, Acting Chief, State Student Incentive Grant Program, Regional Office Building 3, Room 3674, 7th and D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 472–4265.

SUPPLEMENTARY INFORMATION: On December 30, 1980, a notice of proposed rulemaking was published in the **Federal Register** (45 CFR 86304–86306).

The proposed regulations simplified the language and requirements of the existing regulations, telescoped initial and continuation awards into a single program, and otherwise conformed the regulations to changes made by the Education Amendments of 1980 (Pub. L. 96–374). Interested parties were given 45 days to submit comments and recommendations. In response to one comment, a technical adjustment was made in the regulations regarding State determination of student financial need (§ 692.41). No other comments were received.

The regulations for the SSIG program were initially published in the **Federal Register** on September 14, 1977 as Part 192 of Title 45 of the Code of Federal Regulations. As a result of the creation of the Department of Education, the regulations were recodified as Part 692 of Title 34 of the Code of Federal Regulations. In the notice of proposed rulemaking published in the **Federal Register** on December 30, 1980, the program regulations were reorganized. The following table shows where the previous regulations have been incorporated into these regulation.

Previous regulations	These regulations
(34 CFR Part 692—Formerly 45 CFR Part 192)	
§ 692.1	692.1, 692.10
692.1–1	692.3
692.2 (Definitions of "continuation award," "cost of education," "dependent student," "expected family contribution of a dependent student," "expected family contribution of an independent or self-supporting student," "half-time student," "independent student," "initial award," "National of the United States," "undergraduate student").	Deleted
692.2 (All other definitions)	692.4
692.3	Deleted (covered by the statute)
692.4(a)–(c), (e)–(h), (j)	692.21
692.4(d)	692.40
692.4(i)	Deleted (covered by section 1203 of the Act)
692.5	692.20(b)
692.6	692.40
692.7	692.41
692.8	Deleted
692.9	692.21(h)
692.10	692.21(g)

Invitation to Comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirements of reducing regulatory burdens, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: July 8, 1981.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.069: State Student Incentive Grant Program)

The Secretary revises Part 692 of Title 34 of the Code of Federal Regulations to read as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A—General

Sec.

692.1 What is the State Student Incentive Grant Program?
692.2 Who is eligible to participate in the State Student Incentive Grant Program?
692.3 What regulations apply to the State Student Incentive Grant Program?
692.4 What definitions apply to the State Student Incentive Grant Program?

Subpart B—What Does the Department Assist Under This Program?

692.10 For what purposes may a State use its payments under this program?

Subpart C—How Does a State Apply To Participate in This Program?

692.20 What agreement must a State have with the Secretary?
692.21 What requirements must be met by a State program?

Subpart D—[Reserved]

Subpart E—How Does a State Select Students for Grants?

692.40 What are the requirements for student eligibility?
692.41 What standards may a State use to determine substantial financial need?

Authority: Secs. 415A–415D of Title IV of the Higher Education Act of 1965, as amended, 86 Stat. 255, 90 Stat. 2094, 91 Stat. 218, 94 Stat. 1406–1407 (20 U.S.C. 1070c–1070c–3), unless otherwise noted.

Subpart A—General

§ 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States that provide grants to eligible students who attend institutions of higher education and have substantial financial need.

(20 U.S.C. 1070c–1070c–3)

§ 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(a) *State participation.*

A State that meets the requirements in §§ 692.20–692.21 is eligible to receive payments under this program.

(b) *Student participation.*

A student who meets the requirements of §§ 692.40 is eligible to receive a grant from a State under this program.

(20 U.S.C. 1070c–1)

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692;

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), and in 34 CFR Part 77 (Definitions).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the Act (Federal-State Relationship Agreements).

(20 U.S.C. 1070c)

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Nonprofit
Secretary
State

(b) *Definitions in 34 CFR Part 668.* The following definitions in 34 CFR Part 668 apply to the regulations in this part:

Public or private nonprofit institution of higher education (§ 668.2).

Proprietary institution of higher education (§ 668.3).

Postsecondary vocational institution (§ 668.4).

Recognized equivalent of a high school diploma (§ 668.5).

Ability to benefit (§ 668.6).

One year training program (§ 668.7).

Six month training program (§ 668.8).

(c) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

(4) Nine hundred clock hours of instruction.

"Act" means the Higher Education Act of 1965, as amended.

"Clock hour" means a period of time that is equivalent to—

(1) A 50- to 60-minute class, lecture, or recitation; or

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship.

"Full-time student" means a student carrying a full-time academic workload—other than by correspondence—as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

(20 U.S.C. 1070c–1070c–3)

Subpart B—What Does the Department Assist Under This Program?

§ 692.10 For what purposes may a State use its payments under the program?

A State may use its payments under this State Student Incentive Grant Program to—

(a) Make grants to students under new student grant programs; or

(b) Award or expand grants under existing student grant programs by—

(1) Making grants to eligible students;

(2) Increasing the size of grants; or

(3) Awarding grants to additional students.

(20 U.S.C. 1070c)

Subpart C—How Does a State Apply to Participate in This Program?

§ 692.20 What agreement must a State have with the Secretary?

To participate in the State Student Incentive Grant Program, a State must—

(a) Enter into an agreement with the Secretary under section 1203 of the Act (Federal-State Relationship Agreement); and

(b) For each fiscal year that it wishes to participate, submit an application that contains information that shows that the State's student grant program meets the requirements in § 692.21.

(20 U.S.C. 1070c–2(a))

(**Cross-reference:** See 34 CFR Part 604, Federal-State Relationship Agreements)

§ 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the Act;

(b) Awards grants only to students who meet the eligibility requirements in § 602.40;

(c) Provides that a grant to a full-time student will not be more than $2,000 for each academic year;

(d) Provides for the selection of students to receive grants on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves.

(**Cross-reference:** See § 692.41.)

(e) Provides that all nonprofit institutions of higher education in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978.

(f) Provides that, with the approval of the State agency, an institution of higher education may use any proportion of the payments under this program for grants to students who are less than half-time students.

(g) Provides that—

(1) The State will pay at least 50 percent of each grant; and

(2) The amount that the State expends during a fiscal year for grants under this program represents an additional amount for grants to students attending institutions of higher education over the amount expended by the State for that purpose during the second fiscal year before the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years; and

(i) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(20 U.S.C. 1070c–2)

Subpart D—[Reserved]

Subpart E—How Does a State Select Students for Grants?

§ 692.40 What are the requirements for student eligibility?

(a) To be eligible for a grant and to receive payments under the grant, a student must—

(1)(i) Be a United States citizen or National;

(ii) Be a permanent resident of the United States;

(iii) Provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a permanent resident of the United States; or

(iv) Be a permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands;

(2) Be enrolled or accepted for enrollment at an institution of higher education;

(3) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary;

(4) Maintain satisfactory progress in a course of study in accordance with the standards and practices of the institution at which he or she is enrolled;

(5)(i) Not owe a refund on a grant received for attendance at that institution under the Pell Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant programs;

(ii) Not be in default on a loan made by the institution under the National Defense Student Loan or National Direct Student Loan programs unless he or she has made arrangements, satisfactory to the institution, to repay the loan; and

(iii) Not be in default on a loan insured under the Guaranteed Student Loan or the Parent Loans for Undergraduate Students (PLUS) program received to meet the cost of attending that institution unless the Secretary (for a federally insured loan) or a guarantee agency (for a loan

insured by that guarantee agency) determines that he or she has made satisfactory arrangements to repay the loan; and

(6) File with the institution (or with the lender, in the case of a loan or a loan guarantee) a statement that the money attributable to the grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at the institution.

(b) The Secretary does not consider a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

(20 U.S.C. 1070c–2, 1091)

§ 692.41 What standards may a State use to determine substantial financial need?

A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use:

(a) The standards for determining need promulgated by the Secretary under section 482 of the Act; or

(b) The needs analysis systems approved for campus-based Federal student assistance programs; or

(c) The State's own needs analysis system if approved by the Secretary; or

(d) A combination of these systems, if approved by the Secretary.

(20 U.S.C. 1070c–2, 1089)

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing July 9, 1981

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.J. Res. 238 / Pub. L. 97-21 To approve a Constitution for the United States Virgin Islands (July 9, 1981; 95 Stat. 105) Price: $2.

H.R. 3807 / Pub. L. 97-22 Defense Officer Personnel Management Act Technical Corrections Act (July 10, 1981; 95 Stat. 124) Price $1.75.



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Book 2 of 2 Books
Tuesday, July 14, 1981

Part V

Department of Defense

Office of the Secretary

Defense Acquisition Regulations

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-25]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-25. The changes consist of revisions to Section VI, Foreign Acquisitions, and related changes to other parts of the Regulation which resulted from the revisions to Section VI.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D 1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-25.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-25, issued October 31, 1980. The following is a summary of the amendments:

Foreign Acquisitions. The Department of Defense and several nations, particularly NATO countries, have concluded a number of agreements that anticipate the forbearance of U.S. "buy-national" laws or regulations in the acquisition of defense equipment from those nations. These agreements are classified in one of three categories: a reciprocal arrangement, an arrangement pursuant to a foreign military sale, or an arrangement pursuant to a treaty or other international agreement. Two fundamental characteristics of these agreements with respect to acquisition are (i) the waiver of the Buy American Act and "buy-national" regulations by the Department of Defense, and (ii) the promise to solicit for products from these countries. This DAC implements these agreements and provides the procedures for the solicitation and evaluation of offers of end products or components from countries which have a memorandum of understanding with the United States, an FMS/offset arrangement negotiated pursuant to a, foreign military sale, or a defense cooperation agreement. As a result of these agreements, there are three categories of products: (i) domestic products as newly defined; (ii) products from selected foreign countries granted special status (with certain exceptions) whereby they are treated as if they are domestic products, hereafter referred to as "qualifying" products; and (iii) products from all other foreign countries, hereafter referred to as "nonqualifying" products. Implementation of these agreements required additions and revisions to Section VI and to other portions of the DAR to clarify the distinctions between these three categories of products. Solicitation and evaluation procedures have been revised and appropriate clauses have been added or revised. The major changes are outlined below:

Paragraph 6-001 includes an expanded definition of "domestic end product," as well as definitions of new terms.

In view of the policy for broadening opportunities to supply DoD needs with qualifying country end products, the conditions of the Buy American Act and the Balance of Payments Program must be foreseen in the majority of solicitations. To reduce the complexity, a single clause has been developed to encompass both conditions.

The exceptions for specialty metals and chemical protective warfare clothing have been redrafted to reflect the DoD policy.

Paragraph 6-602 has been revised to state explicitly what is implied in 7-104.31(b): a contractor must reduce its price in order to receive a duty-free entry certificate if the award was based on the contractor's representation that it would be furnishing a domestic end product or component. A new paragraph has been added, stating the requirement for insertion of the duty-free entry clause for qualifying country end products and components.

Part 8 of Section VI, concerning application of the Balance of Payments Program to acquisitions for use overseas, has been modified to waive the "buy-national" restriction with respect to "qualifying countries." Balance of Payment procedures have been simplified by elimination of presolicitation evaluations. The exceptions to the Balance of Payments Program procedures listed in 6-803.2 have been revised. Another significant change in Part 8 is the raising of the dollar thresholds for Secretarial Determination and Findings (D&Fs) required for perishable subsistence purchases, nonavailability determinations, and unreasonable cost determinations to $2 million, and permitting further redelegation below the threshold of $500,000. Likewise, the dollar thresholds for 6-803.2(d)(1) and (2) have been raised for Secretarial D&Fs dealing with the acquisition of scientific and technical knowledge.

The most significant addition in Part 13 deals with the implementation of the FMS/offset arrangement agreements at 6-1310. This material directs that the solicitation and evaluation of FMS/offset arrangement country offers be done generally in the same manner as for NATO participating country offers (Part 14). Also, a sample format has been provided for processing the D&Fs necessary to waive the Buy American Act on a case-by-case basis. FMS/offset arrangement agreements are reprinted at 6-1315 for information purposes.

Part 14 sets forth in detail the solicitation procedures and the evaluation procedures to be used for qualifying country offers. Part 14 contains the list of items restricted from qualifying country offers. Each memorandum of understanding which has an effective Secretarial D&F waiving the application of the Buy American Act is reprinted in 6-1406 for information. The D&Fs are not reprinted.

For those agreements with countries which are neither members of NATO nor part of an FMS/offset arrangement, Part 15 implements "defense cooperation agreements."

Special limitations on sales commissions and contingent fees for certain FMS customers are included in new paragraphs 6-1305.6 and 7-104.107.

In summary:

6-104.5 and 6-803.1(e) specify clauses and conditions to be included in solicitations and contracts.

The former procedures in 6-103.5 on Canadian Supplies are deleted in their entirety.

Reference to purchase from Panama in Part 2 are deleted as the result of the Panama Canal Treaty of 1977 (but see 6-803.2(iv)) for purchases by and for the use of U.S. Forces in Panama.

There are four clauses which have been modified or added to the DAR:

7–104.3, Buy American Act and Balance of Payments Program, has been revised to combine the requirements of both the Buy American Act and the Balance of Payments Program.

7–104.32, Duty-Free Entry of Qualifying Country Supplies, is based on the former Duty-Free Entry for Canadian Supplies clause which has been redrafted to implement the waiver agreements with all qualifying countries.

7–104.105, Offset Arrangement, has been relocated from 6–1310 to Section VII.

7–104.106, Qualifying Country Sources as Subcontractors, required by 6–104.5 and 6–1403.3, puts contractors on notice that a qualifying country source is equally eligible for a subcontract as a domestic subcontractor and that qualifying country sources should not be discriminated against.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on October 31, 1980.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–25. The number at the top of each page (for example, 1:15) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1–39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

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1-201.12	1:16.
1-706.1	1:142-A.
1-803	1:154.
1-804.1	1:154.
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M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

July 8, 1981.

BILLING CODE 3810-70-M

Part 2—Definition of Terms

1–201 Definitions. As used throughout this Regulation, the words and terms defined in this paragraph 1–201 shall have the meanings set forth below, unless (i) the context in which they are used clearly requires a different meaning, or (ii) a different definition is prescribed for a particular Section or portion thereof.

1–201.1 *Change Order* means a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor (see 16–103).

1–201.2 *Contract Modification* means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (i) bilateral actions such as supplemental agreements, and (ii) unilateral actions such as change orders, orders for provisioned items, administrative changes, notices of termination, and notices of the exercise of a contract option.

1–201.3 *Contracting Officer* means any person who, either by virtue of his position or by appointment in accordance with procedures prescribed by this Regulation, is currently a contracting officer (see 1–400) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term also includes the authorized representative of the contracting officer acting within the limits of his authority. NOTE: Recent assignments of contract administration responsibilities have necessitated a separation of duties related to procurement, with some duties normally performed at a purchasing office and some normally performed at a contract administration office. For convenience of expression, when requiring performance of specific duties by a contracting officer, this Regulation may refer to a contracting officer at the purchasing office as the procuring contracting officer (PCO), and to a contracting officer at a contract administration office as an administrative contracting officer (ACO). Additionally, a contracting officer, responsible for the settlement of terminated contracts, may be referred to as the termination contracting officer (TCO). It is recognized that a single contracting officer may be responsible for duties in any or all of these areas, and reference in this Regulation to PCO, ACO, or TCO does not of itself require that duty be performed at a particular office or activity or restrict in any way a contracting officer in the performance of any duty properly assigned. For example, a duty specified by this Regulation to be performed by the ACO will be performed by a contracting officer at the purchasing office when contract administration or responsibility for that duty has been retained in the purchasing office in accordance with 20–703.3.

1–201.4 *Contracts* means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

1–201.5 *Department or Military Department* includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

1–201.6 *Department of Defense* comprises the Office of the Secretary of Defense and the Military Departments.

1–201.7 *Head of Procuring Activity* includes the chief, commander, or other official in charge of a Procuring Activity.

1–201.8 *Includes* means "includes but is not limited to"

1–201.9 *Labor Surplus Area Concern.* See 1–801.1.

1–201.10 *May* is permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

1–201.11 *Negotiate and Negotiation*, when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

1–201.12 *Possession* in a geographic sense includes the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, or trust territories.

1–201.13 *Procurement* includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of supplies and services, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

1–201.14 *Procuring Activity* includes:

FOR THE ARMY:

Office of the Deputy for Materiel Acquisition, Assistant Secretary of the Army (Installations and Logistics);

Directorate of Procurement & Production, Headquarters, U. S. Army Materiel Development and Readiness Command;

U. S. Army Armament Materiel Readiness Command;

U. S. Army Armament Research and Development Command;

U. S. Army Missile Command;

U. S. Army Communications Research and Development Command;

U. S. Army Electronics Research and Development Command;

U. S. Army Communications and Electronics Materiel Readiness Command;

U. S. Army Troop Support Agency;

U. S. Army Troop Support and Aviation Materiel Readiness Command;

U. S. Army Tank-Automotive Materiel Readiness Command;

U. S. Army Tank-Automotive Research and Development Command;

U. S. Army Aviation Research and Development Command;

U. S. Army Training and Doctrine Command;

U. S. Army Test and Evaluation Command;

U. S. Army Forces Command;

U. S. Army Health Services Command;

(vii) a class set-aside of the time or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal"

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

(L) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

1-706.2 *Contract Authority.* Contracts for total (including) combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the noninitiation of a set aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

Example B. DEF Company, manufacturing in a surplus area bids on a contract at $1,000. DEF Company will incur the following costs:

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

DEF Company does not qualify as a labor surplus area concern since its manufacturing and production costs do not exceed 50% of the contract price regardless of whether UVW's supplier manufactures in a labor surplus area.

1-801.2 *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Department of Labor and listed as such by that Department in its publication "Listing of Eligible Labor Surplus Areas Under DMP No. 4A and Executive Order 10582".

1-801.3 *Small Business Concern.* See 1-701.

1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Section I, Part 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to 1-704.3.

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1-803 Application of Policy.

(a) Within the policy set forth in 1-802, the following shall be applied to contracts which are estimated to exceed $10,000:

(i) negotiated contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;

(ii) when appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 1-706.7 or 1-804 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(iii) each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(iv) when less than a complete bidders list is to be used pursuant to 2-205.4, at least a pro rata number of prospective LSA concerns shall be solicited;

(v) subcontracting with concerns in LSA shall be encouraged in accordance with 1-805;

(vi) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $10,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in 1-110 and Section XXI, Part 1. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $10,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

1-804 Partial Set-Asides for Labor Surplus Area Concerns.

1-804.1 *General.*

(a)(1) In accordance with the policy set forth in 1-802 and 1-803 (see also 1-706.7), a portion of each acquisition shall be set aside for LSA concerns if:

(i) the acquisition is severable into two or more economic production runs or reasonable lots; and

(ii) one or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this con-

1-903.4 *Ability to Meet Certain Minimum Standards.* Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see 1-906), acceptable evidence of his "ability to obtain" such things as resources, equipment, facilities, and personnel (see 1-903.1(i) and 1-903.2) shall normally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

1-904 Determinations of Responsibility and Nonresponsibility.

1-904.1 *Requirement.* No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of 1-903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see 1-905.4) and SBA certificate of competency (see 1-705.4), shall be included in the contract file.

1-904.2 *Affiliated Concerns.*

(a) Affiliated concerns (see 2-201(a)B(ii) and (b)(xvii) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see 1-701.1 with respect to status as a small business concern).

(b) Notwithstanding the above, the record of performance and integrity of affiliated concern which may adversely affect the responsibility of the prospective contractor shall be considered by the contracting officer when making a determination of responsibility.

1-904.3 *Acquisitions From Concerns in Qualifying Countries.* Awards to concerns in qualifying countries are subject to this Part 9 (see 6-1403.1(b)). A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of 1-906 as the basis for his determination under 1-904.1. In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1-905 Procedures for Determining Responsibility of Prospective Contractors.

1-905.1 *General.*

(a) Before making a determination of responsibility (see 1-904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in 1-903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(c) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information. If a contract administration office becomes aware of a prospective contract award to a contractor about whom unfavorable information exists and no pre-award survey has been requested, it shall (i) immediately notify the purchasing office concerned, and (ii) secure the details of such unfavorable information as if it were performing a pre-award survey and advise the purchasing office concerned. The purchasing office shall give full consideration to such advice in determining whether an award should be made.

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award.

1-905.2 *When Information Will Be Obtained.* Generally, information regarding the responsibility of a prospective contractor (including pre-award surveys (see 1-905.4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see 1-903.1(i)) and performance capability (see 1-903.1 (ii)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

1-905.3 *Sources of Information.* Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(i) The Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see 1-601).

(iii) Each release shall state that the estimate is based on the best information available at the time of publication, the information is subject to modification, is in no way binding on the Government, and that more specific information relating to any individual item or class of items will not be furnished until the proposed procurement is synopsized in the *Commerce Business Daily* (see 1-1003), or the solicitation issued.

(iv) Each release shall contain the name and address of the purchasing office which will process the procurement.

(v) Modifications to the original release shall be publicized as expeditiously as possible, in the same manner as the original.

(vi) Each proposed release shall be coordinated with small business, public information, and public relations personnel, as appropriate.

(vii) Each release shall contain, if applicable, a statement to the effect that small business or labor surplus area set-asides may be involved in some of the procurements, and that the determination of the applicability of these factors can be made only at the time that procurement action is initiated.

(viii) Each release shall contain the name or description of the item, and the estimated quantity to be purchased by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last purchased, the unit price, and the name of the last supplier.

1-1007.4 *Commerce Business Daily Announcements.*

(a) *General.* In addition to the publication of estimates as provided in 1-1007.3, further publication, where consistent with the needs of the individual case, shall be accomplished by announcements in the *Commerce Business Daily* reflecting the fact that long-range procurement estimates have been published and are obtainable, on request, from the issuing organization.

(b) *Preparation and Transmittal.* Activities publishing long-range procurement estimates shall, in accordance with (a) above, publicize them in the *Commerce Business Daily* by forwarding to the address listed in 1-1003.9(a) an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

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

1-1007.5 Classified Information shall be released through existing security channels in accordance with the DOD Industrial Security Regulation (DOD 5220.22R).

Part 11—Qualified Products

1-1101 General.

(a) It is sometimes necessary to test products in advance of any purchase action to determine if a product is available that will meet specification requirements. In such cases, the specification may require qualification of the product. Qualification is the entire process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then identified on a list of qualified products. Qualification is performed in advance and independent of any specific purchase action.

(b) A Qualified Products List (QPL) identifies the specification, manufacturer or distributor, item by part or model number or trade name, place of manufacture, and the test report involved. Suppliers whose products have successfully passed qualification and who furnish evidence thereof are eligible for award although not yet included on the QPL.

(c) Chapter IV of the Defense Standardization Manual 4120.3-M (formerly M200) is the basic instruction concerning qualified products and qualification procedures. Specifications which require a QPL are identified in the Department of Defense Index of Specifications and Standards. Copies of the Index and the Manual 4120.3-M may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) Qualifying country sources (see 6-001) are not to be precluded from the opportunity to have their supplies listed on the Qualified Products List under 1-1105.

1-1102 Responsibility for Qualification. A Federal or Military specification is the only medium for establishing a requirement for qualification. The preparing activity identified in the specification is responsible for qualification.

1-1103 Justification for Inclusion of Qualification Requirements. Subject to approval by: in the case of the Army, the Army Materiel Command (AMCRD-EM); in the Navy, the Chief of Naval Material; in the Air Force, Directorate of Engineering and Maintenance (AF/LGYE), Departmental Standardization Office, USAF; in the Defense Logistics Agency, the Executive Director for Purchasing; in the National Security Agency, the Director of Procurement; in the Defense Communications Agency, the Director; in the Defense Nuclear Agency, Deputy Director, Operations and Administration; and in the Defense Mapping Agency, Staff Director of Logistics; a qualification requirement may be included in a specification when one or more of the following conditions exist.

(i) The time required to conduct one or more of the examinations and tests to determine compliance with all the technical requirements of the specification will exceed 30 days (720 hours). (Use of this justification should advance product acceptance by at least 30 days (720 hours).)

(ii) Quality conformance inspection would require special equipment not commonly available.

(iii) It covers life survival or emergency life saving equipment. (See 1-1902(b)(ii).)

1-1104 Availability of Lists. Qualified products lists are intended for the use of the Government and its contractors, subcontractors, prospective bidders, and suppliers. Lists may be obtained by prospective bidders or suppliers who require these lists in furnishing supplies or services to the Government or its contractors. Lists are also available to the public upon request. When a person is provided with, or given access to, a qualified products list he should be advised as follows:

(i) the list has been prepared for use by or for the Government in the acquisition of products covered by the specification and such listing of a product is not intended to and does not connote indorsement of the product by the Department of Defense;

(ii) all products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;

(iii) the list may be revised or amended as necessary, and subject to change without notice;

(iv) the listing of a product does not release the supplier from compliance with the specification requirements; and

(v) use of the information for advertising or publicity purposes is permitted, *provided* that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Defense in any way recommends or endorses the manufacturer's product.

1-1105 Opportunity for Qualification. Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois 60680, requesting publication in the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contracts Award". The publicity given to the requirement for qualification testing shall include the following:

(i) an intention to establish a qualified products list for a product,

(ii) the specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(iii) notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list.

Lists shall always be kept open for inclusion of products from additional suppliers, including suppliers from qualifying country sources (see 6-001).

1-1106 Clarification of Qualification Requirements. When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity.

1-1107 Acquisition of Qualified Products.

1-1107.1 *General.*

(a) Whenever qualified products are to be obtained by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable Qualified Products List at the time set for opening of bids or award of negotiated contracts shall be considered in making awards.

(b) Whenever a qualified product is to be obtained by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a

component which has been tested and qualified for inclusion in the applicable Qualified Products List by the time of award of the subcontract. Delay resulting from the prime contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by (1) through (4) below.

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with 1-1003, promptly upon receipt of purchase requests.

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract. As a minimum, however, contracting officers shall allow 30 calendar days between the dates of issuance and opening (award, in the case of negotiated contracts), *provided* that periods of less than 30 days may be set in cases of urgency when the justification for a shorter period is set forth in writing and made a part of the procurement file. In appropriate cases, advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices. Such notices shall identify the specification requiring qualification.

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified.

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity.

1-1107.2 *Contract Provisions.*

(a) When qualified end products are to be procured, insert the provision in 7-2003.6.

(b) When qualified products are to be procured as components of end items, insert the clause in 7-2003.7.

1-1107.3 *Effect of Debarment or Suspension.* Notwithstanding any other provision of this Part, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Section I, Part 6. With reference to Type B listings, the provisions of this paragraph shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see 1-603).

1-1108 Waiver of Qualification Requirement. When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification. In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements. A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for

(xi) *New Guinea-Australia:* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(xii) *East Asia:* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(xiii) *Hawaii-Central Pacific:* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(xiv) *Alaska and Aleutian Islands:* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(xv) *U.S. Northwest:* Includes all Oregon and Washington ports.

(xvi) *U.S. West Coast:* Includes all California.

(xvii) *Western Mexico and Central America:* Includes the western coast of Mexico and the western coast of Central America.

(xviii) *Western South America:* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(xix) *Exempt Areas:*

(A) Alaska north of Cape Prince of Wales.

(B) Greenland, except Narsarssuak.

(C) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(D) Ports and facilities under security restrictions in otherwise nonexempt areas.

(E) Antarctica.

(b) The procedures set forth below are applicable to all ocean shipments of supplies except:

(i) shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(ii) shipments which originate or terminate in "exempt areas" as established in (a) above;

(iii) shipments which originate and terminate in the same geographic area; *provided*, however, that supplies of the type described in 1-1402(i)(A) above shall be transported in United States-flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates;

(iv) shipments aboard vessels of the Panama Canal Commission; and

(v) shipments of classified supplies where the classification prohibits the use of non-Government vessels.

1-1404 Procedures.

(a) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation of supplies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Accordingly, any contract which may involve ocean transportation of property owned by the Government and in the possession of the contractor or any of his subcontractors (including any contract under which title to property may pass to the Government prior to shipment) shall include a clause substantially as in 7-104.19(a). Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this Part and applicable regulations. The Commander of the Military Sealift Command or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

(b)(1) Except as provided in paragraph (2) below, procuring activities shall include the clause in 7-104.19(b) in any contract which may involve the ocean transportation of supplies of the type described in 1-1402(i)(B) and (C). Additional provisions concerning the vessels to be used may be inserted in accordance with Departmental procedures.

(2) The contract shall include the clause in 7-104.19(c) in lieu of the clause in 7-104.19(b):

(i) when determined by the Head of a Procuring Activity, or his designee, to be necessary to assure proper implementation of the policy expressed in 1-1402; or

(ii) when the procuring activity has been instructed that particular supplies of the type described in 1-1402(i)(B) and (C) above are to be carried exclusively in private United States vessels.

1-1405 Responsibilities of the Contracting Officer. The contracting officer shall forward the applicable shipping document specified in the clauses set forth in 7-104.19(b) to the Department of the Navy (Commander, Military Sealift Command, Attn: M-5), Washington, D.C., 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command.

1-1406 Reserved.

1-1407 Reserved.

1-1408 Reserved.

1-1409 Construction Contracts. It is the policy of the Department of Defense to require construction contractors, including subcontractors and suppliers, engaged in overseas work to utilize United States-flag vessels to the extent that such vessels are available at fair and reasonable rates for United States-flag vessels. This policy is applicable to any supplies, materials, or equipment shipped from the United States for either the performance of the work or for incorporation in the work. To carry out this policy, the clause in 7-603.41 shall be included in any construction contract which may involve the ocean transportation of materials. Upon request of the contracting officer, the Commander, Military Sealift Command, or his representative, will furnish advice as to the availability of United States-flag vessels for any particular shipment. These requirements shall not apply to Military Assistance Program projects, Agency for International Development

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1-2207 Restricted Purchases for Preservation of Domestic Industrial Base.

1-2207.1 *General Policy.* To insure the continued existence of an industrial mobilization base necessary for national defense and in the public interest, it has been determined to restrict purchases of the following items to United States or United States and Canadian manufactured products. However, if the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base, offers of qualifying country end products may be accepted for such greater quantities of the items listed here and at 6-1405.

1-2207.2 *Jewel Bearings and Related Items.*

(a) *Definitions.* As used in this paragraph, the following definitions apply.

(1) *Jewel Bearing* means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, which has one or more polished surfaces and the function of which is to provide a supporting surface or low friction contact area for revolving, oscillating or sliding parts in an instrument, mechanism, subassembly or part. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of types of jewel bearings are: watch hole—olive, watch hole—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cup, double cups.

(2) *Related Item* means a piece of synthetic corundum (sapphire or ruby) which satisfies the following requirements:

(i) made from material produced by the Verneuil flame fusion process;

(ii) a geometric shape (other than a jewel bearing) up to a maximum of one inch in any dimension;

(iii) requires fabrication techniques to include extremely close tolerances and highly polished surfaces identical to those involved in the manufacture of jewel bearings.

A related item may be unmounted or mounted in a retaining or supporting structure. Basic shapes and terminology commonly used for related items are: window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, notched plate.

(3) *Price List* is the official U.S. Government Price List for jewel bearings and related items produced by the William Langer Plant in Rolla, North Dakota, which is issued periodically by the General Services Administration.

(4) *Plant* means the Government-owned William Langer Plant, Rolla, North Dakota, which is operated through a contractor by the General Services Administration.

(b) *Policy.* Except as otherwise provided below, it has been determined that Defense requirements for jewel bearings must be obtained from the Plant and that related items must be obtained from a domestic source of manufacture including the Plant.

(c) *Procedures.*

(1) All contractor purchases of jewel bearings shall be made from the Plant unless it cannot meet the requirement. All contractor purchases of related items shall be made from a domestic source of manufacture, including the Plant, unless these sources cannot meet the requirement.

(2) In every solicitation and contract in which items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, are specified to be delivered, insert the clause in 7-104.37, except that such clause shall not be used:

(i) in small purchases using small purchase procedures;

(ii) when the procuring contracting officer has positive knowledge that the items being procured do not contain jewel bearings or related items (the contractor's certification, as set forth in (3) below, does not in itself satisfy this requirement);

(iii) in contracts or solicitations for items both procured and used outside the United States, its possessions and Puerto Rico.

(3) In every solicitation for items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, require that contractors certify, as an attachment to each proposal or bid, in the form set forth below, that the items to be supplied do or do not include jewel bearings or related items, and that if they are included, that they will be procured in accordance with the clause entitled "*Required Source for Jewel Bearings and Related Items*". Failure to submit this certification shall not render such bid or proposal nonresponsive, but the certification must be obtained from the prospective contractor prior to award. This certification is not required for research and development effort, nor is it required in categories listed in (2) above.

JEWEL BEARING AND RELATED ITEMS CERTIFICATE

This is to certify that jewel bearings and/or related items will / will not (*delete one*) be incorporated in any item covered by this proposal or bid; that if jewel bearings are required, purchase orders will be placed with the William Langer Plant, as provided in the clause entitled "*Required Source for Jewel Bearings and Related Items*"; and that if related items are required, such related items will be procured in the order of priority as follows:

1. From a domestic source, including the Plant, which manufactures such items from the basic hard material, *i.e.*, synthetic ruby or sapphire, or the like.

2. In the event that no domestic source, including the Plant, produces or will produce the required related items, then and only then, will the contractor procure such items from a foreign source.

Estimates of quantity, type, size (including tolerances), of jewel bearings and related items, plus identification of those specific items, components, or subassemblies which require jewel bearings or related items are provided as an attachment to this certificate.

Date of Execution _____

Solicitation No. _____

Name _____

Title _____

Firm _____

Address _____

(End of Certificate)

(4) One copy of each affirmative certification by the contractor and its attachment identifying those specific items, components or subassemblies which contain jewel bearings or related items will be annotated with the contract number, the cognizant CAO, and date of award and forwarded by the PCO to the Plant and the ACO. The Plant will compare certification information with actual orders and notify the ACO having cognizance over the contractor if serious discrepancies exist.

(5) The ACO having cognizance over a particular contractor will conduct reviews of appropriate contractor records when information is received from the Plant of serious discrepancies between certifications and orders, or when the

(xviii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).
(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.
(i) such general contract provisions (contract clauses) as required by law and by this Regulation;
(ii) such additional general provisions as may be applicable to the acquisition; and
(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.
(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.
(i) Standard Form 33, Part 2 (Representations and Certifications);
(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);
(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be

included in invitations for bids that do not involve set-asides for labor surplus area concerns;
(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;
(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;
(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;
(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.7-2003.14(b)(1), (2), and (3);
(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section I, Part II);
(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;
(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);
(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);
(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));
(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;
(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;
(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);
(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

SECTION M - Evaluation Factors for Award.
(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation.

(The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.
(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);
(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);
(iv) discount provision (see 2-407.3);
(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);
(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);
(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);
(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);
(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);
(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);
(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);
(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

at the end of the statement: "(See paragraph ____** ____ of the invitation for bids)".

* *A 30-day bid acceptance period is normal, but may be less, and in unusual circumstances a period of 60 days may be specified.*

** *Identify specific paragraph in the invitation for bids which includes the provision in (B) below.*

(B) Include a provision in the invitation for bids substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Bids allowing less than the number of calendar days specified in the "Bid" portion of SF 19 (or on the reverse of SF 21 as applicable) for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xiii) any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments (see Appendix E, E-504), patent rights (see 18-908), liquidated damages, profit limitations, or Buy American Act (see 7-2003.65);

(xiv) such general contract provisions or conditions as are required by law or by this Regulation;

(xv) any applicable wage determinations of the Secretary of Labor;

(xvi) a statement of the exact basis upon which bids will be evaluated and award made; to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provision for economic price adjustment as factors for evaluation (see 18-201). (The amount of any royalty payable under the royalty sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(xvii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, the provision in 7-2003.12 shall be included in the invitation for bids. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(xviii) directions for obtaining copies of any documents, such as plans, drawings, and specifications, as well as information as to charge, if any, to be made for drawings and specifications (see 16-401.2(c)(iii)(2)(B));

(xix) in accordance with 6-1104, the United States owned foreign currency provisions in 7-2003.62;

(xx) information regarding bidding material which shall include Instructions to Bidders, the Bid Form, the Contract Form, the General Provisions, any conditions, the specifications and drawings (see 1-1203);

(xxi) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318);

(xxii) a statement that prospective bidders may submit inquiries by writing or calling (*collect calls not accepted*) Mr. (*insert name and address, telephone area code, number, and extension*);

(xxiii) a statement that prospective bidders should indicate in the bid the address to which payment should be mailed, if such address is different from that shown for the bidder;

(xxiv) invitations for bids which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xxv) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

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

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

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);

(xxvi) the applicable small business size standard (see 1-701 and 1-703);

(xxvii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(xxviii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xxix) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;

(xxx) except when a waiver has been granted (see 18-110) prior to solicitation, if the solicitation contains one or more items subject to statutory cost limitation, the Cost Limitation provision in 7-2003.27;

(xxxi) if a construction contract is estimated to exceed $1,000,000 or in appropriate contracts under $1,000,000, the clause set forth in 7-603.15 and a statement that the successful bidder must furnish the contracting officer within (number) days after award the items of work which he will perform with his own forces and the estimated cost of those items unless he has submitted those items with his bid;

(lvii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*");

(lviii) insert the Woman-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(c) Master Solicitation. A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DOD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. As a general rule, bidding time shall be no less than 30 calendar days. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) This rule need not be observed in special circumstances; for example, where the contracting officer has valid reason to determine that bidders in the second step of two-step formal advertising can prepare and submit their bids in less than 30 calendar days, or where the urgency for the supplies or services does not permit such delay. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1; for construction contracts, see 18-202(b); and for brand name or equal items, see 1-1206.2.

2-202.2 *Telegraphic Bids.* As a general rule, telegraphic bids will not be authorized. However, when, in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples.*

(a) *Definition.* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product. It may be appropriate to require bid samples, for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

(f) *Unsolicited Descriptive Literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See 2-404.4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

2-203 Methods of Soliciting Bids.

2-203.1 *Mailing or Delivery to Prospective Bidders.* Invitations for bids (or pre-invitation notices) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition and, in accordance with 1-1002.1, may be provided to others having a legitimate interest to the extent invitations for bids are available. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by international air mail if security classification permits. For bidding time, see 2-202.1.

2-203.2 *Dissemination of Information Concerning Invitations for Bids.* For procedures concerning displaying of bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing, see 1-1002.4, 1-1002.5, 1-1002.6, and 1-1003.

2-204 Office of Permanent Record. Each purchasing activity is the office of permanent record for every invitation for bids issued and distributed by it and for each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

2-205 Bidders Mailing Lists.

2-205.1 *Establishment of Lists.*

(a) Bidders mailing lists shall be established by purchasing activities to insure access to adequate sources of supplies and services except where the requirements of the purchasing office can be obtained within the local trade area through utilization of the simplified small purchases procedures (Section III, Part 6), or are nonrecurring.

(b) All eligible and qualified suppliers who have submitted bidders mailing list applications, or whom the purchasing activity considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list. Planned producers under the Industrial Readiness Planning Program shall be included on the bidders mailing list for their planned items. See also 1-1006(b). When new prospective suppliers are placed on the bidders mailing list, they shall be notified. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Those not meeting the criteria for placement on the bidders mailing list also shall be notified accordingly.

(c) Business firms listed on Bidders Mailing List (BML) will be identified by size as per 1-701. The size status should be established prior to initially listing a business firm on a purchasing activity's BML. Minority firm designation will be shown on the BML whenever noted on the SF 129 submitted by a particular firm.

(d) Bidders Mailing list Application (Standard Form 129) shall be used for obtaining information needed, as prescribed in 16-810, in the establishment and maintenance of bidders mailing lists. Supplemental information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

(e) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists."

2-205.2 *Removal of Names from Bidders Mailing Lists.*

(a) The name of each concern failing to respond to an invitation for bids, or pre-invitation notice (see 2-205.6) may be removed from the bidders mailing list without notice to the concern but only for the item or items involved in such invitation or notice. Where a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interest of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitation for bids or pre-invitation notices.

(b) The names of concerns which have been (i) debarred from entering into Government contracts or (ii) otherwise determined to be ineligible to receive an award of a Government contract, including ineligibility because of suspension or

other disqualifications, shall be removed from the bidders mailing lists to the extent required by such debarment or other determination of ineligibility.

2-205.3 *Reinstatement on Bidders Mailing Lists.* Concerns which have been removed from bidders mailing lists may be reinstated upon request or new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or ineligibility.

2-205.4 *Excessively Long Bidders Mailing Lists.*

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the numbers of firms to be solicited may be reduced by any method consistent with the foregoing, including those described in (b) below and 2-205.6. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of bid sets upon request made by concerns not invited to bid.

(b) *Rotation of Lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies rotation. Consideration also should be given as to whether time permits utilization of the pre-invitation notice (see 2-205.6). In rotating a list, the interest of small business (see 1-702(b)(v)) and the existence of labor surplus areas (see 1-803(a)(v)) shall be considered. Whenever the rotation method is employed, the successful bidder on the previous procurement for the same or similar items and those prospective suppliers who have been added to the bidders mailing list since the last procurement shall be solicited, in addition to those bidders comprising that segment of the list selected for use in a particular procurement, except where such action would be precluded by use of the small business total set-aside procedures.

2-205.5 *Release of Bidders Mailing Lists.*

(a) The comprehensive bidders mailing list established by purchasing offices under this section shall be made available to the public upon written request made in accordance with 1-329. When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request, and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders and other having a bona fide interest in such information, will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications.

2-205.6 *Pre-Invitation Notices.* In lieu of initially forwarding complete bid sets, the purchasing activity may send pre-invitation notices to concerns on the mailing list. The notice shall:

(i) specify the date by which bidders should return the notice in order to receive a complete bid set;

(ii) describe the requirement, or include the schedule of the invitation for bids, so as to furnish an item description and a condensation of

other essential information providing concerns with an intelligible basis for judging whether they have an interest in the acquisition; and

(iii) expressly notify concerns that if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved.

Drawings, plans, and specifications normally will not be furnished with the pre-invitation notice. The return date in the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable to major contracting activities where lengthy invitations for bids and long bidders mailing lists are common.

2-206 Small Business and Labor Surplus Area Set-Asides. See Section I, Parts 7 and 8.

2-207 Pre-Bid Conference. The pre-bid conference is a procedure which may be used, generally in complex acquisitions, as a means of briefing prospective bidders (e.g., acquisitions that were formerly negotiated are to be formally advertised) and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. Since the invitation for bids itself must be sufficiently clear and complete to insure that bidders are bidding on the same basis, the need for this procedure should be rare. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous invitation, and may be used only when approved at a level higher than the contracting officer. It shall be conducted in accordance with the procedure prescribed in 3-504. All interested parties, including representatives from qualifying country sources, shall be invited. (See 6-1403.1(a)(8), 6-1310.3(b), and 6-1502.1.)

2-208 Amendment of Invitation for Bids.

(a) If, after issuance of an invitation for bids but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids, using Standard Form 30 (see 16-101), whether or not a pre-bid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, whether or not a pre-bid conference is held, if such information is necessary to the bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

(d) In each award where preference is to be given under this Section, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

2-407.7 *Reserved.*

2-407.8 *Protests Against Award.*

(a) *General.*

(1) Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest. (See 1-308(b)(i).) (See 1-703(b) for protests of small business status and 12-604(a) for protests involving eligibility under the Walsh-Healey Public Contracts Act.) An interested party wishing to protest to the Comptroller General of the United States against an award of a contract should do so in accordance with General Accounting Office Regulations, Title 4, Chapter 1, Part 20 of the Code of Federal Regulations.

(2) When a protest, before or after award, has been lodged with a higher authority or the Comptroller General and the contracting officer is requested to submit a report, the file should include:

(i) a copy of the protest;

(ii) a copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iii) a copy of the invitation for bids including the specifications or portions thereof relevant to the protest;

(iv) a copy of the abstract of bids or relevant portions thereof;

(v) any other documents which are relevant to the protest; and

(vi) a statement signed by the contracting officer setting forth his findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the award was made after receipt of the protest, the contracting officer's report will include the determination prescribed in (b)(3).

(3) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest. They shall also be advised that they may submit their views and relevant information to the contracting officer within a specified period of time, normally within one week, and that copies of such submissions should be furnished directly to the General Accounting Office when the protest has been filed with that office.

(4) Timely action on protests is essential to avoid undue delay in procurements and to assure fair treatment to protesting firms or individuals. Accordingly, protests should be handled on a priority basis. Upon receipt of informal advice that a protest has been filed with the General Accounting Office, the contracting officer shall immediately begin compiling the information necessary for a report to that office. To expedite processing, the Departmental official who furnishes the Department's report to the General Accounting Office (GAO) should upon request of the protestor or the GAO simultaneously furnish a copy (except for classified or privileged information) to the protester, and advise the GAO that this has been done. In such cases, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the General Accounting Office as well as to the contracting officer.

(5) To facilitate these submissions to the GAO, each Department shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests.

(b) *Protests Before Award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under (3) below.

(2) When a protest has been received before award, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. When it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award under (3) below must be approved at an appropriate level above that of the contracting officer, in accordance with Departmental procedures. While award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(C) REGULAR DEALER-MANUFACTURER (applicable only to supply contracts exceeding $10,000)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

(D) CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(Insert the provision in 7-2003.1 in accordance with 1-115(a).)

(ii) when a request for proposals form other than SF 33 is used, a requirement for stipulation of a time within which the Government may accept the proposal;

(iii) when SF 33 is not used, the Contingent Fee clause in 7-2002.1 (if required by 1-506.1) and the following:

TYPE OF BUSINESS ORGANIZATION

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check all applicable boxes or blocks.)

He operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a corporation, incorporated under the laws of the State of _____.

(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;

(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administra- Services Regional Office);

(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1), (2), and (3);

(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;

(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;

(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;

(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;

(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production

and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));

(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;

(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);

(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-110(a));

(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;

(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;

(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;

(xix) the Clean Air and Water certification in 7-2003.71;

(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xxi) insert the Woman-Owned Business representation in 7-2003.80;

(xxii) insert the Percent Foreign Content representation in 7-2003.81;

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.

(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;

(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;

(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);

(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;

(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;

(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);

(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);

(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);

(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;

(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;

(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);

(xix) the applicable size standard and product classification (see 1-701 and 1-703);

(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);

(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

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(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;
(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;
(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);
(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;
(xxvi) statutory cost limitation, if any;
(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;
(xxviii) a statement covering special technical capabilities that the offeror must possess;
(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);
(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;
(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(h)), the provision in 7-2003.43 shall be included;
(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;
(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;
(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxviii) the provision in 7-2003.40;
(xxix) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318);
(xxx) such general contract provisions or conditions as are required by law or by this Regulation;
(xxxi) Reserved;
(xxxii) when the acquisition involves a set-aside for small business concerns, the following provision will be placed on the face of the solicitation form or on a cover sheet:

THIS IS A ____% SET ASIDE FOR SMALL BUSINESS CONCERNS.

(xxxiii) a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) Mr. (insert name and address; telephone area code, number, and extension);
(xxxiv) Requests for Proposals which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;
(xxxv) a statement requesting the prospective offeror to list the names and telephone numbers of persons authorized to conduct negotiations;
(xxxvi) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;
(xxxvii) in accordance with 6-1104, the provision in 7-2003.62;
(xxxviii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

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

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

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);
(xxxix) the applicable small business size standard (see 1-701 and 1-703);
(xl) *Reserved;*

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);
(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);
(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*").

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

(e) *Master Solicitation.* Master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 2-201(c).

3-502 Solicitation for Informational or Planning Purposes. See 1-309.

3-503 Methods of Soliciting Proposals.

3-503.1 *Bidders Mailing Lists.* Bidders mailing lists for negotiated contracts shall be established, maintained, and utilized in accordance with 2-205.

3-503.2 *Delivery of Solicitations to Prospective Offerors.* When a purchasing office is located in the United States, any solicitation sent to a prospective offeror located at a foreign address shall be sent by international air mail, if security classification permits.

3-504 Pre-proposal Conferences.

3-504.1 *General.*

(a) The pre-proposal conference is a procedure which may be used, generally in complex negotiated acquisitions, as a means of briefing prospective offerors after a solicitation has been issued but before offers or proposals are prepared.

(b) Such a conference permits the Government to explain or clarify complicated specifications and requirements to interested firms. It may also be used to provide an opportunity for interested firms to examine a model of the equipment being acquired, where for reasons such as security or limited quantities, such model can only be shown at a specific time and location.

3-504.2 *Procedure.*

(a) When it is determined to be in the best interests of the Government to hold a pre-proposal conference, the contracting officer shall make the necessary arrangements and shall notify all those to whom solicitations have been issued as to the time, place, and general nature of the proposed conference. Such a determination may be made as a result of questions and problems raised by prospective offerors. Adequate notice shall be given to prospective offerors, including qualifying country sources (6-001), so that all who wish to may arrange for representation. The notice shall define as explicitly as possible the nature and scope of the conference. If time permits, prospective offerors should be asked to submit any questions they may have in advance, in order to give the purchasing office time to prepare and to make the conference as fruitful as possible.

(b) The pre-proposal conference shall be conducted by the contracting officer or his representative, and attended by technical and legal personnel as appropriate.

(c) All prospective offerors shall be furnished identical information in connection with the proposed acquisition. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgment and receipt of solicitation amendments shall be applied. A complete record shall be made of the conference.

3-505 Amendment of Request for Proposals and Request for Quotations—Prior to Closing Date.

(a) If, after issuance of a request for proposals or quotations but before the closing date of their receipt, it becomes necessary to make a significant change in quantity, specifications, or delivery schedules, or to make any change in closing dates, or to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request, whether or not a preproposal conference is held. Standard Form 30 (see 16-102.3) shall be used for amending a request for proposals. Requests for quotations may be amended by letter.

(b) When it is considered necessary to issue an amendment to a request for proposals or request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, consideration should be given to notifying offerors or quoters of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective offeror or quoter concerning a request for proposals or request for quotations shall be furnished promptly to all other prospective offerors or quoters as an amendment to the request, whether or not a pre-proposal conference is held, if such information is necessary to offerors or quoters in submitting proposals or quotations on the request, or if the lack of such information would be prejudicial to uninformed offerors or quoters. No award shall be made on a request for proposals unless such amendment thereto has been issued in sufficient time to permit prospective offerors to consider such information in submitting or modifying their proposals.

3-506 Late Proposals and Modifications of Proposals.

(a) This paragraph does not apply to simplified small purchases made pursuant to Section III, Part 6.

(b) Offerors are responsible for submitting proposals and modifications of proposals, including final modifications at the conclusion of negotiations, so as to reach the designated Government office on time. Proposals and modifications of proposals received in the office designated in the request for proposals after the exact time specified are "late" and shall be considered only if the circumstances outlined in the provision in 7-2002.4 are applicable. Unless a specific time for receipt of proposals is stated in the request for proposals, the time for receipt shall be the time for normal close of business of the office designated for receipt of proposals on the date proposals are due.

(c) When a late proposal or modification of proposal is received and it is clear from available information that it cannot be considered for award, the Contracting Officer shall promptly notify the offeror that it was received late and will not be considered (see also 3-506(e)). Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 would suffice. However, when a late proposal or modification of proposal is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the offeror shall be promptly notified substantially in accordance with the notice

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotations that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

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PROCUREMENT BY NEGOTIATION

(i) When the acquisition is not reserved, quotations based on supplying foreign end products shall be evaluated in accordance with the procedures in 6-104.4.

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $500.* Small purchases not exceeding $500 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administra-

PROCUREMENT BY NEGOTIATION

in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services:

(A) the following clauses shall be inserted in the Schedule—

(I) the Specification clause in 7-1201.4;

(II) the Delivery and Performance clause in 7-1201.7;

(III) the Subcontracting clause in 7-1201.8;

(IV) the Inspection clause in 7-1902.4;

(V) the Professional Requirements clause in 7-1201.11,

(VI) the Facility Requirements clause in 7-1201.12; and

(VII) the Preparation History clause in 7-1201.13;

(B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause.

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) This contract may be terminated for default by written notice if during the performance of this contract

(C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(i)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided*:

(i) the procurement is unclassified;

(ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—

(A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.

(B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44

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SECTION VI

FOREIGN ACQUISITIONS

6-000 Scope of Section. This Section includes restrictions and procedures affecting acquisitions of foreign-made items; restrictions on purchases from Communist countries or areas; procedures affecting acquisitions from Canadian sources; guidance on the use of duty-free entry procedures for foreign items; special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; procedures for use of U.S.-owned foreign currency for payment of contracts; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

6-001 Definitions. As used throughout this Section, the words and terms defined in this paragraph shall have the meanings set forth below unless a different definition is prescribed for a specific Part.

6-001.1 End Products.

(a) End products means articles, materials, and supplies that are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

(b) Defense cooperation agreement country end product means an item listed in the defense cooperation country agreement and produced in that country.

(c) Domestic end product means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-103.3).

(d) Foreign end product means an end product other than a domestic end product.

(e) FMS/offset arrangement country end product means (i) an unmanufactured end product mined or produced in a FMS/offset arrangement

country, or (ii) an end product manufactured in a FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid. To obtain the waivers necessary to accord preferential treatment for a FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(f) Participating country end product means (i) an unmanufactured end product mined or produced in a participating country, or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid.

(g) Qualifying country end product means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

6-001.2 Components.

(a) Components means those articles, materials, and supplies, which are directly incorporated in end products.

(b) Qualifying country component means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

6-001.3 Defense equipment means any equipment, item of supply, component, or end product purchased by the Department of Defense.

6-001.4 Source (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

6-001.5 Countries.

(a) A defense cooperation country is a foreign country which has a defense cooperation agreement and for which a Determination and Findings was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 6-1504.

(b) A FMS/offset arrangement country is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case by case basis. These countries are listed at 6-1310.1.

(c) A participating county is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S. and for which a blanket Determination and Finding was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 6-1401.

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

6-001.6 Offer.

(a) Defense cooperation country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifing country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an incorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

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Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

(b) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (i) a mandatory Federal Supply Schedule which includes a domestic end product, or (ii) a nonmandatory Federal Supply Schedule.

(c) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50 percent evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(d) In the case of coordinated acquisition under Section V, Part II, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department (see 5-1106.3(b)).

6-103 Exceptions.

6-103.1 Use Outside the United States. The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisitions of supplies and applicable services for use outside the United States (see Section VI, part 8).

6-103.2 Nonavailability in the United States.

(a) The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in 6-105.

(b) A nonavailability determination is not required for end products or components listed in (c) below or in 6-105. Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(i) at a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(ii) by the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(iii) by the head of the contracting activity (HCA) or his immediate deputy or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(iv) by the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

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

(c) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this 6-103.2:

(i) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;

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

(iii) Swords and scabbards; and

(iv) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which domestic editions are not available.

6-103.3 Unreasonable Cost or Inconsistency With the Public Interest. The restrictions of the Buy American Act and the Balance of Payments Program (see 6-102.2) do not apply when it is determined by the Secretary concerned (a) that the cost of a domestic end product would be unreasonable (see 6-104.4(b)) or (b) that acquisition of a domestic end product would be inconsistent with the public interest.

6-103.4 Scrap. Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

6-103.5 Reserved.

6-103.6 Reserved.

6-103.7 Commissary Resale. The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in 6-104.4.

6-104 Procedures.

6-104.1 Applicability. The following procedures apply to all contracts involving the acquisition of defense equipment including contracts exclusively for articles, materials, or supplies for use outside the United States.

6-104.2 Solicitation of Offers.

(a) Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-105) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis (see 6-103.2 and 6-105), or the price for the offered foreign end product meets the evaluation criteria in 6-104.4.

6-104.3 Reserved.

6-104.4 Evaluation of Offers.

(a) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (b) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest. (See 6-103.3.)

(b) Except as provided in this subparagraph (b) and in (d) and (f) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50 percent of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6 percent of that offer, whichever results in the greater evaluated price, except that a 12-percent factor shall be used instead of the 6-percent factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both, (ii) small purchase procedures (see Section III, Part 6) are not used, and (iii) any contract award to a domestic concern which would result from applying the 12-percent factor, but which would not result from applying the 6-percent or 50-percent factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12-percent factor is applied, but would not be made if the 6-percent or 50-percent factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. (See 6-103.3.) If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tie-breaking procedures in 2-407.6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F

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below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(c) The following examples illustrate how the procedure in (b) above should be applied. Throughout these examples, "domestic offer--large" means a domestic offer which is not from a small business or labor surplus area concern, "domestic offer--small" means a domestic offer which is from either a small business concern or a labor surplus area concern or both.

EXAMPLE A

Nonqualifying Country Offer, including duty of $4,500.....$14,500
Domestic Offer--Large..... 15,100
Domestic Offer--Small..... 15,110

Award on Domestic Offer--Large. Domestic Offer--Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50-percent factor, would be $14,500 less $4,500 duty, (i.e., $10,000), plus 50-percent of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6-percent factor, it would be $14,500 plus 6 percent of $14,500 (i.e., $870), or $15,370; therefore, the 6-percent factor is added and Domestic Offer--Large is the low evaluated offer.

EXAMPLE B

Nonqualifying Country Offer, including duty of $2,000.....$12,000
Domestic Offer--Large..... 15,000

Award on Domestic Offer--Large. Nonqualifying Country Offer, adjusted by 50-percent factor, is $15,000; adjusted by 6-percent factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer--Large.

EXAMPLE C

Nonqualifying Country Offer, including duty of $3,500.....$13,500
Domestic Offer--Large..... 17,000
Domestic Offer--Small..... 15,100

Award on Domestic Offer--Small. Nonqualifying Country Offer, adjusted by 50-percent factor is $15,000; adjusted by 12-percent factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer--Small.

EXAMPLE D

Nonqualifying Country Offer, including duty of $70,000.....$270,000
Domestic Offer--Large..... 310,000
Domestic Offer--Small..... 302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50-percent factor is $300,000; adjusted by 12-percent factor, it is $302,400; adjusted by 6-percent factor, it is $286,200. Therefore, Domestic Offer--Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

EXAMPLE E

Nonqualifying Country Offer, including duty of $2,000.....$8,000
Domestic Offer - Large..... 10,500
Domestic Offer - Small..... 8,900
Qualifying Country Offer..... 8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is 9,000; adjusted by 12-percent factor it is 8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE F

Nonqualifying Country Offer, including duty of $2,000.....$8,000
Domestic Offer - Large..... 10,500
Domestic Offer - Small..... 9,500
Qualifying Country Offer 8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is $9,000; adjusted by 12-percent factor it is 8,960. Therefore it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE G

Nonqualifying Country Offer.....$10,000
Qualifying Country Offer..... 11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(d) Where a qualifying country offer is received for defense equipment listed in 6-1405 or 1-2207, rejection of that offer in the interest of protecting the domestic mobilization base is required except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization

base for those items. In those instances where it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. Where rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 6-1405 or 1-2207, a copy of the proposed decision shall be forwarded to OUSDRE(AP) (International Acquisition), 10 working days in advance of issuance of the rejection.

(e) When proposed awards are submitted for Secretarial decision pursuant to (b) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(f) When performing the evaluation in (b) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50-percent evaluation factor of the Balance of Payments Program, but shall be subject to the 6-percent and 12-percent evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of 6-103.3.

6-104.5 Clauses. Except for simplified small purchase procedures, insert the clauses at 7-103.10, 7-104.3, 7-104.32, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-104.6 Reserved.

6-105 List of Excepted Articles, Materials, and Supplies. Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (See 6-001, or for construction material, 18-506.4).

Acetylene black
Asbestos, amosite
Bananas
Beef extract
Bismuth
Brazil nuts, unroasted
Cadmium, ores and flue dust
Calcium cyanamide
Capers
Cashew nuts
Chestnuts

Chicle
Chrome ore or chromite
Cinchona bark
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean
Cork, wood or bark and waste
Diamonds, industrial stones
Emetine, bulk
Ergot, crude
Fair linen, altar
Fibers of the following types: Abace, agave, coir, flax, jute, and palmyra.
Goat and kid skins
Graphite, natural
Hand sewing needles
Hemp yarn
Hog bristles for brushes
Hyoscine, bulk
Ipecac, root
Leather, sheepskin, hair-type
Menthol, natural bulk
Mica
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts
Nitroguanidine (also known as picrite)
Olive oil
Olives (green), pitted or stuffed in bulk
Opium, crude
Petroleum, crude oil; unfinished oils and finished products (See definitions below)
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars
Pyrethrum flowers
Quartz crystals
Quebracho
Radium salts
Rosettes
Rubber, crude and latex
Rutile
Silk, raw
Sperm oil
Spices and herbs in bulk
Sugars, raw (Part 3 of Section VI, however, applies)
Talc, block, steatite
Tantalum
Tapioca flour and cassava
Tartar, crude; tartaric acid and cream of tartar in bulk
Tea in bulk

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Thread, metallic (gold)
Tin
Vanilla beans
Venom, cobra
Wax, carnauba
Woods of the following species: Angelique, balsa, ekki, greenheart, lignum vitae, mahogany and teak

Petroleum Definitions, as used in this Part

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

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

(i) liquefied gases--hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

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

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

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

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

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

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

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

(ix) natural gas products--liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and which, when recovered and without processing

in a refinery, otherwise fall within any of the definitions of products contained in (ii) through (v), inclusive, of this paragraph (b).

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

6-106 Buy American Act-Construction Contracts. See Section XVIII, Part 5.

Part 2—Reserved

6-200 Reserved.

Part 3—Appropriations Act Restrictions

6-300 Scope of Part. This Part implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or specialty metals. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This Part also implements the restriction on acquisition of foreign buses contained in Section 404 of Public Law 90-500 (see 6-306), and the restriction on R&D contracting with foreign sources contained in Section 744 of Public Law 92-570 (see 6-307), and the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 6-308). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program (see Parts 1 and 8 of this Section).

6-301 Definitions. As used in this Part, the following terms have the meaning set forth below.

(a) Possessions. As used in the phrase "United States or its possessions", the term "possessions" includes Puerto Rico.

(b) United States means the States and the District of Columbia.

(c) Specialty metals means:

(i) steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

6-302 Restriction. Except as provided in 6-303, there shall not be acquired supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

6-303 Exceptions. The restriction of 6-302 does not apply to the following:

(i) acquisitions outside the United States in support of combat operations;

(ii) acquisitions by vessels in foreign waters;

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(iii) emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(iv) acquisitions of those supplies listed in 6-105 as to which the list does not make this Part expressly applicable;

(v) small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(vi) acquisitions of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item; Provided, That the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater;

(vii) any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(viii) supplies purchased specifically for commissary resale (see 6-103.7);

(ix) purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(x) purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and

(xi) purchases of specialty metals (see 7-104.93(b)) or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).

6-304 Procedures.

6-304.1 Acquisition of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Supplies containing Mohair or Cotton, or Specialty Metals. Except as permitted by 6-303, food, clothing (not covered by 6-304.2), woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, any form of mohair or cotton, or specialty metals including stainless steel flatware will be

acquired, only if grown, reprocessed, reused, melted, or produced in the United States or its possessions.

6-304.2 Acquisition of Items Containing Wool (Except Mohair).

(a) The Secretaries have determined that to the extent that application of the procedures in this subparagraph 6-304.2 results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(b) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) manufactured in the United States or its possessions from domestic wool;

(ii) manufactured in the United States or its possessions from foreign wool; and

(iii) manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(c) Each solicitation for supplies of which wool is a component part will contain the provision in 7-2003.48. The evaluation factor will be computed in accordance with (f) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision in 7-2003.48.

(d) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (f) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100-percent-domestic wools, the contract will be awarded for domestically produced articles using 100-percent-domestic wools and the procedure set forth in (e) and (f) below will be disregarded.

(e) In the evaluation of offers under this Part, an evaluation factor computed in accordance with (f) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(f) The evaluation factor to be used under (e) above will be 10 percent of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative Type and Grade	Price Clean Basis per pound
	Dollars
Group 1--Grades 60's and finer	
Category 1--Staple, Average and Good French Combing (worsted type)	

The average of the following grades:
Territory Original Bag Wool
Average and Good French Combing, 64's and finer....1.7748
Graded Territory and Texas Wool
Staple and Good French Combing, One-half Blood, 60's/62's.....1.6946
Graded Fleece Wool
Staple and Good French Combing, 64's and finer.....1.7862
Staple and Good French Combing, One-half Blood, 60's/62's.....1.6259

Category 2--Short Average and Good French Combing and Clothing (woolen type)
The average of the following grades:
Territory Original Bag Wool
Short, French Combing and Clothing, fine (64's, not to exceed 15% of 60's/62's).....1.5801
Graded Territory and Texas Wool
Average and Good French Combing, One-half Blood, 60's/62's.....1.6145
Graded Fleece Wool
Average and Good French Combing, 64's and finer....1.7061
Average and Good French Combing, One-half Blood, 60's/62's.....1.5343

Group 2--Grades 50's-60's

Category 3--Staple and Good French Combing (worsted)
The average of the following grades:
Graded Territory and Texas Wool
Staple and Good French Combing, Three-Eighths Blood, 56's/58's.....1.4656
Staple and Good French Combing, 50's/48's, One-Quarter Blood.....1.3397
Graded Fleece Wool
Staple and Good French Combing, Three-Eighths Blood, 56's/58's.....1.3626
Staple and Good French Combing, 50's/48's, One-Quarter Blood.....1.2710

Category 4--Average French Combing (woolen type)
The average of the following grades:
Graded Territory and Texas Wool
Average French Combing, Three-Eighths Blood, 56's/58's.....1.3053
Average French Combing, 50's/48's, One-Quarter Blood.....1.2023
Graded Fleece Wool
Average French Combing, Three-Eighths Blood 56's/58's.....1.2137
Average French Combing, 50's/48's, One-Quarter Blood.....1.0878

Group 3--Grades Below 50s

Category 5--Staple and Good French
The average of the following grades:
Graded Fleece Wool
Low One-Quarter Blood, 46's, 4 inches or more in length.....1.1565
Common and Braid, 44's/36's, 5 inches or more in length.....1.0763

(g) See Section VI, Part 11, for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

6-305 Contract Clauses. See 7-104.13 and 7-104.93.

6-306 Acquisition of Foreign Buses. Section 404 of the Act of September 20, 1968 (Public Law 90-500), the Department of Defense Appropriation Authorization Act for Fiscal year 1969, provides that:

> "No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States."

The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(i) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(ii) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a

recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(iii) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

6-307 Restriction on R&D Contracting with Foreign Sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Public Law 92-570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in Section IV, Part 1, (see in particular 4-102 and 4-106). However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government. Criteria for evaluating cost estimates are contained in 4-106.5.

6-308 Hull and Superstructure of Naval Vessels. Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

> "Provided, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: Provided further, That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards."

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under Shipbuilding and Conversion, Navy.

Part 4--Purchases from Certain Communist Areas

6-401 General Policy. It is the general policy of the Department of Defense that supplies which originated in, were located in, or were transferred from or through the communist areas of North Korea, Vietnam, or Cuba (except supplies which have been lawfully imported into the United States, its possessions, or Puerto Rico), shall not be acquired for public use, notwithstanding the provisions of any Part of this Section, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any supplies or services originating from such Communist areas.

6-402 Exceptions.

(a) Supplies from the Communist areas of North Korea, Vietnam, or Cuba may be acquired only in unusual situations; for example, in an emergency or when the supplies are not available from any other source and a substitute supply is not acceptable. For small purchases (as defined in Section III, Part 6), the contracting officer shall determine that there is need for an exception in accordance with Departmental procedures. For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required in emergency purchases or where supplies are not available from any other source and substitute supplies are not acceptable.

(b) For procedures for using U.S.-owned foreign currency for payment of contracts for foreign end products, see Section VI, Part 11.

6-403 Procedures.

(a) With respect to contracts for supplies, services, or construction when acceptance is to take place within the United States, its possessions, or Puerto Rico, the contracting officer shall assume that any supplies not produced in the United States have been lawfully imported into the United States and, consequently, that the requirements of this Part have been met.

(b) In all contracts for supplies, services, or construction when acceptance is to take place outside the United States, its possessions, or Puerto Rico, insert the clause in 7-103.15; except that the clause need not be included as provided in 6-402.

(c) Additional restrictions pertaining to the acquisition of steel mill products containing chromium are set forth in Section VI, Part 3.

Part 5--Canadian Purchases

6-501 Mutual Canadian-American Interests. Because of the close geographical proximity of the United States and Canada and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(i) greater integration of military production,
(ii) greater standardization of military equipment,
(iii) wider dispersal of production facilities,
(iv) establishment of supplemental sources of supply, and
(v) greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Parts 1 and 8 of this Section; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the Defense Acquisition Regulation if the Department were placing the contracts with U.S. concerns.

6-502 Agreement With the Government of Canada

(a) The agreement set forth in 6-1406.1(a) dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (6-1406.1(b)) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement (see 6-1406.1(a)) and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 6-504.2.)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

6-503 Guarantee by Canadian Government. The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

6-504 Procedures for Canadian Purchases.

6-504.1 Bidding Procedures.

(a) Solicitation of Canadian Firms.

(1) Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(2) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see 2-205.1(b)).

(3) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6, Canada.

(4) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(5) Small purchases (see Section III, Part 6) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation (but see 3-603.1(g)).

(b) Submission of Offers.

(1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate

its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100 percent with the offeror.

(2) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly, Provided, That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting office prior to bid opening or the closing date for receipt of proposals.

(3) All formally advertised bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(4) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates. (See 6-1406.1(a).)

6-504.2 Contracting Procedures.

(a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Ave., Hull, Quebec, Canada, (mail address - Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6 Canada), and at 2450 Massachusetts Ave., N.W., Washington, D.C. 20008. Contracts should normally be awarded to and administered through the Export Supply Centre office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, Provided, however, That the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(b) The general policy in (a) above need not be followed for purchases negotiated for experimental, developmental, or research work under 3-205 or 3-211, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-1406.1(b); purchases negotiated under 3-202 for public exigency; purchases negotiated under 3-203 for small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(c) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian.

6-504.3 Termination Procedures. The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts (see 8-216). The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Comercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this Regulation.

6-504.4 Acceptance of Canadian Supplies. Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (6-1406.1(a)), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

6-504.5 Industrial Security. Industrial Security for Canada shall be in accordance with 6-1403.4 and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

6-505 Contract Administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

DCASMA, Ottawa
6th Floor, Canadian Building
219 Laurier Avenue, West
Ottawa, Ontario, Canada (K1A0S5)

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-All other DoD components) whether payment is in Canadian or U.S. dollars shall be:

Disbursing Office, Defense Contract Administration
Services Region, Cleveland
1240 East 9th St., Anthony J. Celebrezze Federal Building
Cleveland, Ohio 44199

Part 6--Duty and Customs

6-601 Scope of Part.

(a) This Part sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This Part prescribes the uses and limits of these two exceptions.

(b) This Part does not deal with or affect the evaluation of offers of foreign supplies. Rules for such evaluation are in Parts 1, 3, 13, 14, and 15 of this Section. Although the procedures of this Part may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

6-602 Policy. The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations lest they result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates wherever there is reasonable assurance that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that the full benefit of the certificates inures to the Government. A contractor which has been awarded a fixed price-type-contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with 7-104.31(b) without an appropriate reduction in contract price.

6-603 Emergency Purchases of War Materials Abroad.

6-603.1 Definition. Any acquisition of foreign supplies constitutes "an emergency purchase of war material" if:

(i) the supplies comprise--
  (A) weapons, munitions, aircraft, vessels, or boats;
  (B) agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or
  (C) supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (A) or (B) above; and

(ii) the acquisition--
  (A) is made in time of war or during a national emergency;

  (B) is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;
  (C) is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or
  (D) consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

6-603.2 Requirements.

(a) To assure that the policy of 6-602 is carried out for emergency purchases of war materials abroad, one or both of the clauses in 6-603.3(a) and (b) shall be included in each negotiated contract in excess of $100,000 unless the minimum dollar limits in 6-603.3 (a) and (b), respectively, apply. Notwithstanding these dollar limits, either or both of the clauses in 6-603.3(a) and (b) may be inserted in any other negotiated contract where the contracting officer determines that to do so would further the policy in 6-602 and would be consistent with the limitations in (b) below, and in any such case the dollar figure in paragraphs (a) and (d) of the clause in 7-104.31(b) may be reduced appropriately.

(b) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 6-603.3. Consistent with 6-602, duty-free entry certificates may be issued in connection with any other contract for an "emergency purchase of war material" that falls within one of the following categories:

(i) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States, Providing, the contract states that the final price is exclusive of duty;

(ii) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases abroad by a fixed-price contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes, provided (A) the fixed- price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion

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thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer. In any such case, the procedures required by the clauses in 6-603.3 and by 6-603.4 shall be followed to the extent practicable.

6-603.3 Contract Clauses.

(a) Duty-Free Entry for Specified Items. Within the limits of 6-603.2(a), the clause in 7-104.31(a) and the provision in 7-2003.49 shall be used when the contracting officer knows at the time of execution of the contract that foreign supplies (other than those for which duty-free entry is to be accorded pursuant to (c) below) on which the estimated aggregate duty exceeds $1,000, are to be imported into the United States, its possessions, or Puerto Rico, in connection with performance of the contract.

(b) Duty-Free Entry for Items Not Identified in the Contract. Within the limits of 6-603.2(a), the clause in 7-104.31(b) shall be used unless the contracting officer anticipates that, in connection with the performance of the contract, neither the prime contractor nor any first-tier subcontractor will make any purchase of foreign supplies in excess of $10,000 that would not be covered by the clauses in (a) or (c) of this paragraph.

(c) Duty-Free Entry - Qualifying Country End Products and Components. The clause in 7-104.32 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted in the case of simplified small purchase procedures and in contracts for supplies exclusively for use outside the United States. (See 6-104.5.)

6-603.4 Customs, Entries and Duty-Free Certificates.

(a) When a prime contract involving foreign supplies contains the clause in 7-104.31(a) or (b) and the prime contractor sends a notification of a purchase of foreign supplies under the contract to the Contract Administration Office (CAO) designated in the contract, the CAO will verify that the prime contract includes the Duty-Free Entry for Certain Specified Items clause for the items identified or the Notice of Imports--Possible Duty-Free Entry clause; and in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for a reduction in contract price in the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013. The notification will be forwarded as an enclosure to the information provided in the format shown below.

To: Commander
DCASMA, New York
Attn: Transportation Officer
Contract.....issued to.....(Contractor).

Enclosed is a contractor notification of the purchase of foreign supplies. Verification has been made that:

(...) The prime contract includes DAR Clause 7-104.31(a) Duty-Free Entry for Certain Specified Items for the items identified on the enclosed notification.
(...) The prime contract includes DAR Clause 7-104.31(b) Notice of Imports--Possible Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

The contract is expected to be completed by.....
Signature.....
Title.....

(b) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses in 7-104.31, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(c) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with (d) below and forward two copies of Customs Form 7501 and one copy of Customs Form 7501A to the District Director of Customs submitting the request.

(d) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(date).....

I certify that the acquisition of this material constituted an emergency purchase of war material abroad by the (indicate Department) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name).....
(Title).....
(Title of Government representative who has been designated to execute free entry certificates for the above-named Department.
(Organization).....

6-603.5 Immediate Release Permits. Immediate release permits, executed on Customs Form 3461 (Application for Special Permit for Delivery

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of Perishable and Other Articles, Immediate Delivery of Which Is Necessary), entitle all shipments qualifying as "emergency purchases" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Form 7501 and 7501A and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Form 7501 and 7501A and appropriate duty-free entry certificates. Each Department shall designate the individuals responsible for issuance of Immediate Release Permits.

6-604 Supplies for Vessels or Aircraft Operated by the United States.

(a) Subject to the considerations set forth in 6-602, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment". The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(date).....

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name).....
(Title).....
(Organization).....

6-605 Reserved.

Part 7--Military Assistance Program Acquisitions

6-700 Scope of Part. This part implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (Section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under Section 604(a) of the said Act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

6-701 Reserved.

6-702 Statutory Requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961 as implemented provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(i) to acquire items required for military assistance which are not produced in the United States;
(ii) to make local purchases for administrative purposes;
(iii) to use local currency available for military assistance purposes; or
(iv) where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(iv) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

6-703 Procedures.

6-703.1 Applicability. The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 6-702) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

6-703.2 Method of Purchase. Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 7-2003.51. Except for this restriction on solicitation, acquisition shall be made by formal advertising, wherever practicable, in accordance with the policy of 2-102.1. Subject to the limitations prescribed in Part 1 of Section III and pursuant to the authority of 10 U.S.C. 2304(a), acquisition may be effected by negotiation under any appropriate exception of 10 U.S.C. 2304(a) (see Section III, Part 2). The Foreign Assistance Act of 1961 shall not be used as authority to negotiate under 10 U.S.C. 2304(a)(17).

6-703.3 Certificate. When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and non-Military Assistance Program items, the solicitation

shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include the certificate in 7-2003.50.

6-703.4 Contract Clause. The clause in 7-2003.51 shall be inserted in all acquisitions of end products for the Military Assistance Program.

6-704 Exemption from Examination of Records Requirement.

6-704.1 General. Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and Section 3(b), Public Law 85-804) in the following circumstances:

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

(ii) contracts, and amendments and modifications thereof, entered into pursuant to Public Law 85-804 (see 17-501), Provided, That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to 17-201.

Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (i) above.

6-704.2 Department of Defense Audit and Records. Contracts exempted under 6-704.1(i) from the requirement for examination of records by the Comptroller General shall nevertheless include the Audit by Department of Defense clause set forth in 7-104.41 in accordance with the requirements of that paragraph. When the clause in 7-104.41(a) is used, the second sentence of paragraph (c) shall be deleted.

Part 8--Balance of Payments Program

6-800 Scope of Part.

(a) This Part implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (i) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except Petroleum and Military Assistance Program acquisitions (see Section VI, Part 7), and Foreign Military Sales (see Section VI, Part 13) and (ii) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 6-804. Defense requirements as to the use of U.S. Flag vessels, which affect the Balance of Payments Program, are set forth in Section I, Part 14.

(b) The Balance of Payments Program is an interim measure imposed by the Department of Defense to alleviate the impact of DoD expenditures on the nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the former applies to acquisitions required for use outside the United States, and the latter applies only to acquisitions required for use in the United States. Nevertheless, it is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act (see 6-104 and 6-105).

6-801 Prohibition Against Fragmenting Acquisitions. As to those provisions of this Part which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

6-802 Real Property Construction, Repair and Maintenance. All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4(AR-37-43; AFR 85-6/AFM 86-1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in the project approval.

6-803 Supply and Applicable Service Contracts.

6-803.1 Procedure.

(a) Except as provided in 6-803.2, proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with he evaluation procedures in (d) below.

(b) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-803.2) is available to prospective contractors upon request. When quotations are obtained orally, vendors shall be informed that only domestic and qualified country end products shall be acceptable other than those items which have been excepted either on

a blanket or an individual basis (see 6-803.2) or the price for the nonqualifying country end item meets the evaluation criteria in (d) below. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(c) Reserved.

(d) Evaluation.

(1) In accordance with the Balance of Payments Program, where these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 6-104.4(d), offers shall be evaluated so as to give preference to domestic offers as follows:

a. Each nonqualifying country offer of defense equipment (but see exception in b. below) shall be adjusted for purposes of evaluation by increasing such offer by 50 percent. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in 2-407.6.

b. In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. The nonqualifying country offer, adjusted by 50-percent factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying country offer, adjusted by 50-percent factor is $9,000. It is still lower than the

domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(e) Clauses. Except for simplified small purchase procedures, and as provided in 6-803.2(a) insert the clauses at 7-103.10, 7-104.3, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-803.2 Exceptions.

(a) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the clauses in 7-104.3, 7-104.106 and 7-2003.47 shall not be used.

(i) Treaty or Executive Agreement--acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) Small Purchases--acquisitions by contracting officers located outside the United States, which are estimated not to exceed $10,000 in foreign cost.

(iii) Perishable Subsistence--acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (b)(1) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) Panamanian Products used in Panama--acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) Services. Services which do not primarily involve the acquisition of equipment or supplies.

(vi) Certain Food Items--acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) Miscellaneous--acquisition of the requirements listed below, Provided, they do not duplicate or replace an existing organic service capability:
(A) all items on the list at 6-105;
(B) utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;
(C) maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; Provided, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;
(D) industrial gases;
(E) brand drugs specified by the Defense Medical Materiel Board;
(F) the following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;
(G) overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;
(H) ice (wet or dry);
(I) books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents' Schools; and
(J) ready-mixed asphalt and portland cement concrete Provided, That foreign cost is estimated not to exceed $10,000.

(viii) Excess and Near-Excess Foreign Currencies--acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 6-1106.

(ix) Commissary Resale--purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) Nonavailability in the United States--acquisitions as to which it is determined in advance by the individuals designated in (b) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of

items available in the United States but not available within the time required (for coordinated acquisition specifying a foreign end product, see 5-1106.3(b)).

(xi) Unreasonable Cost--acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost, if so determined in advance by the individuals designated in (b) below.

(b) The individuals listed below, and the immediate deputies of those listed in (1) below, are designated to make the determinations required by (a)(iii) and (xi) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army--
Director for Requirements and Acquisition, U.S. Army Materiel Development and Readiness Command;
Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army; Chief of Staff, Eighth U.S. Army;
Chief, U.S. Army Security Agency;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;
Department of the Navy--
Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
Chief of Naval Material;
Commander in Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force;
Department of the Air Force--
Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Service;
Defense Logistics Agency--Executive Director, Contracting;
Defense Communications Agency--Director.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned.

(c) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) those set forth in (a)(i), (ii) and (viii) above;

(ii) when it is determined in advance, by the individuals designated in (d) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost as determined by the individuals designated in (d) below.

Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Under Secretary of Defense for Research and Engineering.

(d) The individuals listed below (and the immediate deputies of those listed in (1) below) are designated to make the determinations required by (c)(ii) and (c)(iii) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army--
- Commanding General, Army Materiel Development and Readiness Command;
- Commander, Corps of Engineers Command;
- Surgeon General, Army Medical Corps;
- Chief of Research, Development and Acquisition;

Department of the Navy--
- Chief of Naval Research;
- Commander, Naval Air Systems Command;
- Commander, Naval Electronics Systems Command;
- Commander, Naval Sea Systems Command;
- Chief, Bureau of Medicine and Surgery;
- Commander, Naval Supply Systems Command;
- Chief of Naval Development;
- Oceanographer of the Navy;
- Commander, Naval Facilities Engineering Command;
- Military Sea Lift Command;
- DC/S Installations and Logistics Department, Headquarters U.S. Marine Corps

Department of the Air Force--
- Commander, Air Force Systems Command;
- Commander, Air Force Logistics Command;

Defense Agencies--
- Director, Advance Research Projects Agency;
- Director, Defense Nuclear Agency;
- Director, Defense Communications Agency;
- Director, Defense Intelligence Agency.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned, or the Under Secretary of Defense for Research and Engineering in the case of agencies set forth in (d)(1).

(e) Complete documentation justifying acquisitions under (a) and (c) above shall be prepared except for acquisitions made pursuant to (a)(ii) and (a)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (b) and (d) above, and included in the contract file.

6-804 Identification of Expenditures in the United States. DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. It is essential in implementing these provisions that there be appropriate liaison between acquisition and accounting and disbursing personnel at each contracting activity.

(a) Except as provided in (b) below, the clause 7-104.58(a) shall be included in each contract of $10,000 that--

(i) requires the contractor to furnish U.S. end products except that the clause in 7-104.58(a) is not required if the contractor is a domestic concern and the Government will take title to the supplies to be furnished within the United States; or

(ii) in the case of a contract for construction, repair, or maintenance of real property, or for services, to be performed outside the United States, either--

(A) requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(B) is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified in 7-104.58(a), the statement in 7-104.58(b) may be placed prominently on the face of each contract, purchase, or delivery order involving acquisitions of U.S. end products or services where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable.

(c) To provide appropriate reporting of the balance of payments consequences of Defense acquisition for contracts of less than $10,000, the statement in 7-104.58(c) will be placed prominently on the face of each contract.

Part 9--International Agreements and Coordination

6-901 Scope of Part. This Part concerns the applicability of international agreements other than those in Parts 13 through 15 and coordination with overseas commands and activities in purchasing from foreign sources.

6-902 International Agreements.

(a) Various treaties and international agreements in effect between the United States and foreign governments, especially those with governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Particular attention should be given to the provisions in these agreements which pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters relating to acquisition.

(b) Copies of international agreements are filed with the United States European Command (APO 128, New York) covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Many of the agreements are compiled in the "United States Treaties and Other International Agreements" series (TIAS), which is published by the Department of State. Copies of this publication are normally available in overseas legal offices and U.S. diplomatic missions. In addition, Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(c) In placing contracts with contractors outside the United States for performance outside the United States, contracting officers, including those in the United States, shall ascertain the existence and applicability of any international agreements and, subject to the provisions of 1-109.4, shall comply with such agreements.

6-903 Coordination With Overseas Commands and Activities. When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. Where an acquisition may result in a requirement for logistical support of contractor employees or additional Government employees in an overseas location, the contracting officer shall insure that the contract file includes documentation reflecting specific advance approval for such commitment from the appropriate component commander.

Part 10--Exclusion of Examination of Records Clause

6-1000 Scope of Part. This Part sets forth policies and procedures for exempting the requirement for the Examination of Records by Comptroller General clause in contracts with foreign contractors and foreign subcontractors.

6-1001 Statutory Requirements.

(a) In accordance with 10 U.S.C. 2313(c), the Examination of Records by Comptroller General clause may be excluded from negotiated contracts and subcontracts with foreign contractors and foreign subcontractors where:

(i) the Secretary determines, with the concurrence of the Comptroller General or his designee, that inclusion of the clause would not be in the public interest; or

(ii) when

(A) the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and

(B) the Secretary determines, after taking into account the price and availability of the property or services from U.S. sources, that the public interest would be best served by exclusion of the clause.

(b) A determination of the Secretary under (ii) above does not require the concurrence of the Comptroller General or his designee. However, where a determination of the Secretary under (ii)(B) is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department concerned, to the Office of the Assistant Secretary of Defense (Comptroller), Attention: Director for Information Operations.

6-1002 Policy. The Examination of Records by Comptroller General clause shall be included wherever possible. Exclusion of the clause should be allowed only after the contracting officer has made all reasonable efforts to include the clause and has considered such factors as alternate sources of supply, additional cost, and time of delivery. "Foreign contractor" for purposes of this Part 10 is defined as "one that is organized or existing under the laws of a country other than the United States, its territories or possessions."

6-1003 Requests for Determinations and Findings. Request for determinations and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary setting forth all the facts necessary to arrive at an appropriate determination and findings.

6-1004 Determination and Findings. The determination and findings made by the Secretary to authorize exclusion of the Examination of Records by Comptroller General clause from a contract with a foreign contractor or foreign subcontractor under 10 U.S.C. 2313(c) shall:

(i) identify the contract and its purpose, and state that it is a contract or subcontract with a foreign contractor or foreign subcontractor, or that the contractor or subcontractor is a foreign government or agency thereof;
(ii) describe the efforts that have been made to include the clause in the contract or subcontract;
(iii) state the reasons for the contractor's or subcontractor's refusal to include the clause;
(iv) describe the price and availability of the property or services from United States and other sources; and
(v) determine that it is in the public interest to exclude the clause pursuant to the provisions of 10 U.S.C. 2313(c).

Part 11--Use of U.S.-Owned Foreign Currency for Payments

6-1101 Scope of Part. This Part implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

6-1102 Applicability.

(a) This Part applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This Part does not apply to acquisitions (i) funded from Special Foreign Currency Program Appropriations or (ii) made under Section VI, Part 1.

6-1103 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) U.S.-owned foreign currency means currency of a foreign country which currency is:
(i) owned by the United States;
(ii) determined excess or near-excess by the United States Department of the Treasury;
(iii) available in the country of issuance to pay obligations of the United States within that country; and
(iv) disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

(b) Excess foreign currency means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 6-1109(a).

(c) Near-excess foreign currency means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 6-1109(b).

(d) U.S. dollar content means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S.-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

6-1104 Solicitation Procedure.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 7-2003.62 when it can reasonably be expected that (i) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency, or (ii) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described in Section III, Part 6, for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that

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country; and, to the extent feasible within the criteria in 6-1108, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

6-1105 Evaluation of Offers.

6-1105.1 Conversion for Evaluation Purposes. For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

6-1105.2 Excess Foreign Currency Offers. Subject to 6-1105.4 and to the award limitations in 6-1106, preference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(i) the lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(ii) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(iii) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(iv) When responsive offers in combinations described in (ii) and (iii) above are received, the lowest offer evaluated under (ii) above.

(v) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

6-1105.3 Near-Excess Foreign Currency Offers. The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

6-1105.4 Consideration of Combination Offers. When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

6-1105.5 Evaluation Table. The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

EVALUATION TABLE

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S. $	In U.S. dollars only	In U.S. dollars as converted (See 6-1105.1)	U.S. dollars content	Preference: For award	Preference: See footnote
1	360R			$120	0	1	3
2		60R + $80		($20 + $80) $100	0	6	4
3		18R + $95		($ 6 + $95) $101	0	None	4
4		60R + $90		($20 + $90) $110	0	7	4
5			$94	$ 94	0	9	5
6	450R			$150	$50	2	3
7		60R + $90		($20 + $90) $110	$90	4	4
8			$94	$ 94	$50	8	5
9	450R			$150	0	3	3
10		60R + $80		($20 + $80) $100	$50	5	4

NOTES TO EVALUATION TABLE

1. All offers are assumed to be responsive.

2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 6-1106.2.

3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 6-1106.1). Before Offer 6 or 9 could be accepted, they would require referral under 6-1106.2.

4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9 or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority

after referral under 6-1106.2. Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94)(see 6-1105.4).

5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under 6-1106.2. Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

6-1106 Awards.

6-1106.1 Basis. Award shall be made in accordance with 6-1106.2 and 6-1106.3. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

6-1106.2 Awards by the Contracting Officer. The contracting officer shall have authority to award contracts as follows:

(i) to the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50 percent and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(ii) to the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(iii) to the offeror submitting the lowest responsive offer entirely in U.S. dollars, Provided, That payment in U.S. dollars is authorized under 6-1108. (Where a foreign purchase is contemplated under 6-805.2(a)(ix) and is not otherwise excepted, and where payment is to be made in U.S. dollars only, the acquisition shall be made in accordance with 6-806.1.)

6-1106.3 Awards Requiring Approval by Higher Authority.

(a) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (c) below when:

(i) the lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50 percent regardless of the U.S. dollar cost of the contract;

(ii) the lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) the lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(b) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(c) The Secretaries of the Military Departments, the Under Secretary of Defense for Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

6-1107 Determinations of Nonfeasibility and Contract Certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 6-1108 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of $_____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature)_____

(Typed Name and Title of Contracting Officer

_____ _____ _____)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with departmental instructions.

6-1108 Criteria for Nonfeasibility Determinations. The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(i) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(ii) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty,

executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(iii) Responsive offers require payment in U.S. dollars in whole or in part.

(iv) The only responsive offers received require payment entirely in U.S. dollars.

(v) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(vi) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 6-1106.3(c).

6-1109 Excess and Near-Excess Currency Countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat
Egypt	Pound
Guinea	Franc
India	Rupee
Pakistan	Rupee

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

Country	Currency
Morocco	Dirham
Poland	Zloty
Taiwan	Taiwan Dollar
Tunisia	Dinar
Yugoslavia	Dinar

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

6-1110 Contracts With Domestic Concerns. The clause in 7-104.66 shall be included in any contract with a domestic concern (see 6-001.7(a)) when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Part 12—Use of Local Currency in Payment of Foreign Contracts

6-1200 Policy. Consistent with 6-1101, it is the policy of the Department of Defense to price and pay contracts with foreign contractors in a manner that is fair to both parties and will not provide a windfall to either party. Generally, this means that offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States. Exchange rate fluctuations in favor of the local currency, i.e., where the local currency appreciates in value in relation to the dollar, may result in violation of the Anti-Deficiency Act. To avoid this possibility, contracting officers should comply with established Departmental procedures to insure the availability of adequate dollar appropriations to cover any purchases of currency needed from time to time to make payments against the contract price even though the value of the currency should appreciate vis-a-vis the dollar.

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Part 13--Acquisitions For Foreign Military Sales

6-1300 Scope of Part. This Part sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign governmeqt or international organization.

6-1301 Applicable Statutory Provisions.

6-1301.1 Contract Authorization.

(a) Pursuant to Section 22 of the Arms Export Control Act (Public Law 90-629, as amended) the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(b) The Act provides in part that:

(1) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (i) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract, and (ii) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(2) The President may, if he determines it to be in the national interest, issue letters of offer under Section 22 of the Arms Export Control Act, as amended, which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

6-1301.2 Commercial Availability. Section 38(b)(3) of the Arms Export Control Act (22 USC 2778(b)(3)) prescribes that: "No license may

be issued under this Act for the export of any major defense equipment sold under a contract in the amount of $35,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization, Australia, Japan or New Zealand unless such major defense equipment was sold under this Act." DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38-M), Part III, Chapter H, entitled Commercial Availability, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38-M.)

6-1302 Applicability. The Defense Acquisition Regulation shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales (see 1-102).

6-1303 Preparation of DoD Offer and Acceptance, DD Form 1513.

6-1303.1 DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance. (See Appendix F-200.1513.)

6-1303.2 Procedures.

(a) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(b) As a general rule on FMS programs requiring new acquisitions, the Contracting Officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees (see 6-1305), the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

6-1304 Pricing Acquisitions for Foreign Military Sales.

6-1304.1 General. When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same

item. On the contrary, application to FMS contracts of the pricing principles established by Section III, Part 8, and Section XV may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations. (See 2-201(a) Section L, and 3-501(b) Section L).

6-1304.2 Commercial Sales to Foreign Customers. If the contractor has made sales of an item to foreign customers under comparable conditions including quantity and delivery, the pricing of FMS contracts shall be in accordance with 3-800.

6-1304.3 Cost of Doing Business With a Foreign Government or an International Organization.

(a) In pricing FMS contracts, where non-U.S. Government prices as described in 6-1304.2 do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling Expenses (not otherwise limited by 15-205.37(c)); e.g.:
- (A) maintaining international sales and service organizations;
- (B) sales commissions and fees in accordance with 1-505.4 and 6-1305;
- (C) sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered provided that when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR)(22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.
- (D) configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product Support and Postdelivery Service Expenses; e.g.:
- (A) operations or maintenance training, training or tactics films, manuals, or other related data;
- (B) technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the provisions of 15-107, 15-205.3 or 15-205.35, where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(b) Costs that are not allowable under Section XV (e.g., entertainment costs) are not allowable in pricing FMS contracts. (See also 15-205.37.)

(c) The provisions of Section 203, Public Law 91-441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in 15-205.3(d)(2)(A) and (B), and on Independent Research and Development (IR&D) costs incorporated in 15-205.35(d)(1) and (2) shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(d) Pursuant to Section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

6-1304.4 Government-to-Government Agreements. In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of 6-1304.1 through 6-1304.3 above, the language of the government-to-government agreement shall prevail.

6-1305 Sales Commissions and Contingent Fees on Foreign Military Sales.

6-1305.1 Scope of This Paragraph. This paragraph 6-1305 provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 6-1304.3(a)(1), 15-205.37(c) and Section I, Part 5.

6-1305.2 Policy. Sales commissions and contingent fees are allowable under defense contracts provided that, in accordance with 15-205.37(c) and 1-505, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business. For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in 1-505.1) anticipated to be included in

FMS contracts is limited to $50,000 (see 6-1305.4) and such fees or commission shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

6-1305.3 DoD Offer and Acceptance Procedures.

(a) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

(i) the name and address of the sales representative;

(ii) the estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) a statement indicating one of the following, whichever is applicable:

(A) appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;

(B) in the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect together with the rationale therefor; or

(C) the U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(b) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(c) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (a) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(d) If in making the determination required by 1-505 and 6-1305.4 (c) the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

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6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, or Thailand are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commericial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

6-1306.3 Procedures. Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

6-1307 Source Selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in DAR and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, 3-210.2(xviii) provides authority to negotiate on a sole source basis. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The contracting officer shall honor requests for sole source prime and subcontracts from the FMS customer as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A/E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2. of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

6-1308 Limitation of Liability. In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Limitation of Liability clause(s) (see 1-330) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

6-1309 Exercise of Options for Foreign Military Sales. The contract shall contain appropriate notice and recognition of the Government's right to exercise the option on behalf of a foreign country (see 1-1503(e), 1-1505(c)(11), and 7-104.27(d)).

6-1310 Implementation of Offset Arrangements Negotiated Pursuant to Foreign Military Sales Agreements.

6-1310.1 Scope of Paragraph. This paragraph 6-1310 sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place, on a contractural basis and consistent with the guidance in 6-1310.2(b), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill

commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Part 14.

6-1310.2 General.

(a) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(b) Where authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(c) If an exception is granted pursuant to paragraph (a) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government committing the U.S. prime contractor's participation.

(d) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistance Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Under Secretary of Defense for Research and Engineering (OUSDRE) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General informaton regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OUSDRE(AP).

6-1310.3 Procedures.

(a) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weapon system will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OUSDRE may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion

responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (c) below, (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary), and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under 6-103.3, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (b)(1) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(b) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 6-1403.1(a) for participating countries. When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. (See 2-202.1, 2-203.1 and 3-503.2.) For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 6-1403.1(c). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (b)(1) below. The list set forth at 6-1405 shall also apply to FMS/offset arrangement countries.

(1) To obtain an exemption under 6-103.3 of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items or modified as necessary for components (see 6-001.2):

SERVICE OR AGENCY _____
EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d)
DETERMINATION AND FINDINGS

Upon the basis of the following findings and determinations which I hereby make in accordance with the provisions of DAR 6-103.3, acquisition of an _____ (FMS/offset arrangement country) _____ (describe item) _____ may be made as provided below.

FINDINGS

1. The _____ (Contracting Activity) _____ proposes to purchase _____, under contract number _____, mined, produced or manufactured in _____ (country of origin) _____. The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of

_____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD) if necessary, will offer potential DoD requirements suitable for purchases of _____(FMS/offset arrangement country)_____ defense items.

3. The Agreement provides that competitive offers of _____(FMS/offset arrangement country)_____ end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that _____(FMS/offset arrangement country)_____ items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of _____(FMS/offset arrangement country)_____ items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, (7-104.3) which states that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an _____(FMS/offset arrangement country end item)_____ is found to be acceptable.

DETERMINATION

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

_____(Date)_____ _____(Secretary of Department)_____

(c) To assure that the policy of 6-602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clause in 7-104.31(a) or 7-104.31(b), as appropriate, in contracts which either contribute, or are anticipated to contribute, to the fulfillment of an FMS/offset arrangement.

(d) The clause set forth at 7-104.105 shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth).

(e) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals

of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other Parts of this Section VI. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see 6-103.3) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals. (See 6-1403.3.)

(f) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

6-1311 Use of Government Production and Research Property on Work for Foreign Governments or International Organizations. See 13-406.

6-1312 Exclusionary Policies and Practices of Foreign Governments. All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET) and Foreign Military Sales (FMS) shall include the clause in 7-104.97.

6-1313 Nonapplicability of Rates Under 49 U.S.C. Section 10721 (Formerly "Section 22 Rates"). See 19-217.1.

6-1314 Reserved.

6-1315 FMS/Offset Arrangements Negotiated Pursuant to FMS Agreements. The following agreements are provided for information purposes only.

6-1315.1 Australian Memorandum of Discussion.

MEMORANDUM OF DISCUSSIONS

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973

between the U.S. Department of Defense and the Australian Department of Defence. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defence will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: one, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and two, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, D.C.

SUBMITTED:	Leonard A. Alne For the U.S. Department of Defense	Roy W.C. Davies For the Australian Department of Defence
APPROVED:	W.P. Clements, Jr.	L. Barnard, M.O.D.

6-1315.2 Swiss F-5 Agreement.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE UNITED STATES CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offset to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing contracts on a competitive basis with Swiss industries, but in no event will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to those U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capabilities and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use its best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger	Rudolf Gnaegi
The Secretary of Defense of the United States of America	The Chief of the Federal Military Department of the Swiss Confederation
2 July 1975 (Date)	9 July 1975 (Date)

6-1316 Reserved.

Part 14 - Purchases from NATO Participating Country Sources

6-1400 Scope of Part. This Part implements the Memoranda of Understanding (MOU) between the United States and participating countries. (See 6-001.)

6-1401 Policy. In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, and the Government of Denmark. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(i) greater cooperation in research, development, acquisition and production;
(ii) the most rational use of their respective industrial, economic and technological resources;
(iii) the greatest attainable military capability at the lowest possible cost;
(iv) greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 6-1402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries.

6-1402 MOUs with NATO Participating Countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) Applicability: This Part applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 1-2207, (ii); (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act, 6-300) and (4) U.S. Industrial Security Requirements.

6-1403 Procedures for Purchases from Participating Countries

6-1403.1 Solicitation Procedures

(a) Solicitation of Sources in Participating Countries.

(1) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in 2-205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(2) The normal criteria for soliciting and making awards under 1-700 for small business concerns and 1-800 for labor surplus area firms

shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program (6-1406.1(b). Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(3) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 1-2207, 6-104.4(d), 6-1402(b), 6-1405 and (2) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 6-504. When solicitation destinations are outside the United States, international airmail shall be utilized where security classification permits. (See 2-202.1, 2-203.1, 3-503.2.)

(4) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(5) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(6) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, OUSD (Research and Engineering), shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(7) Subject to 6-1402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (see 2-207 and 3-504.2), and like meetings which address U.S. defense equipment needs and requirements. When practical these meetings should be structured so as to allow attendance by representatives of participating country concerns.

(b) Submissions of Offers.

Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(c) Evaluation of Offers from Participating Country Sources.

(1) In furtherance of the objectives set forth in 6-1401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payment Program with respect to acquisition of defense equipment (for items for civil works activities see 6-104.4(f)) which is mined, produced, or manufactured in a participating country.

(2) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 6-104.4 and Section VI, Part 8. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 6-104.4(c), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 6-104.4(c), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 6-104.4(c), Example G.) Participating countries are listed at 6-1401 and defined at 6-001.

(3) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(4) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever such supplies are acquired at a prime contract or at a subcontract level. (See also 6-602 for postaward circumstances of fixed-price-type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 6-603.3.

(5) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances

where such restriction or rejection is considered necessary for reasons of the national interest. (See 6-104.4(d).)

6-1403.2 Subcontracting with Participating Country Sources.

In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contractor does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations. (See 6-104.4(d) and 6-1405).

6-1403.3 Required Clause.

The clause at 7-104.106 shall be inserted in all solicitations and contracts for supplies and for services involving the furnishing of end items (e.g., leasing of equipment).

6-1403.4 Industrial Security for Participating Countries.

Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation, DoD 5220.22-R (implemented for the Army by AR 380-131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5220.22).

6-1404 Contract Administration.

When Contract Administration Services are requested on contracts to be performed in participating countries, except Canada (see 6-505), the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract Administration Services required with respect to DoD subcontracts placed by participating country sources, except Canada (see 6-505), in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components).

6-1405 List of Excluded Items. The policies and procedures of this Part do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers (see 6-504.1(a)(2)). Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OUSDRE(AP), International Acquisition. (See also 1-2207.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items

MK-13 Safe and Arm Device
MK-13 Triggering Device
MK-17 Safe and Arm Device
MK-33 Safe and Arm Device
MK-330 Fuze

MK-334 Fuze
MK-404 Fuze
MK-407 Fuze
FMU-109 Fuze

Missiles and Missile Components

AIM-7F Sparrow Missile
Guidance and Controls Section
MK-58 Rocket Motors
MK-71 Warhead Metal Parts

AIM-9L Sidewinder Missile
Guidance and Control Section
MK-36 Rocket Motors
DSU-15 Target Detector
AN/WDU-17 Warhead
MK 1 Wing and AN/BSU-32 Fins

Trident I (C-4) Missile System
Guidance and Control System
MK-5 Electronic Assemblies (EA)
MK-5 Inertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
Backfit of Poseidon (C-3) SSBNs

Flares

MK-46 Flares, Infrared Decoy

Sonobuoys and Components

AN/SSQ-36
AN/SSQ-41B
AN/SSQ-53A
AN/SSQ-57A
AN/SSQ-62

Ship Gun Systems

MK-75 Gun Mounts

Submarine Systems

Type 188/D Periscope System
TR 155 K 33 Transducers

Military Sealift Cargo

Ocean Transportation and Services

Air Force

MAC Commercial Airlift
GAU-8/A and 30mm Ammo

Defense Logistics Agency

Textiles - Worsted

Army

L.A.P., Manufacturing & testing of projectiles (5.56mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices

TOW Missile and Launcher
2.75 Rocket Items
LAP Motor
Fin & Nozzle Assy
Stabilizer Rod
Felt Washer
Ring Charge Support
O Ring
Metal Spacer
Intervelometer
Igniter
Motor Tube
Seal Rings
Disc Charge Support
Spacer Charge Support
Lockwire
Launcher
Fin Blades
Projectile Metal Parts for Cartridge 105mm (Beehive)
Projectile M406, M107 - 155mm
Projectile M509 - 8 inch
Projectile M735
Projectile M735, Metal Parts and Cores
Projectile M718/M141
155mm Canister, XM625, XM626:
Projectile Metal Parts for Cartridge 90mm
155mm Projectile, AT M718/M741 (RAAM): Component, Electronic Assemblies
Cartridge Case M118, M14B4
Fuze:
M1 Delay
MK-1
MK-30

MK-38 Energizer
MK-40 Energizer
MK-54
MK-73-13
MK-339-1/Inert
MK-379
MK-393/403
MK-404
MK-407
FMU-54B
M19
M42/46
M62A2
M91A2
M84A1
M114 S&A
M118 S&A
M201A1
M213
M19E1
M223
M228
M427/M423
M494/571
M505A3 (MPTS)
M505
M509A2
M564
M565
M567 (Comp Pts/Rewk)
M577/M582
M578
M578 (Comp Pts)
M732:
Elec Head Final Assy
Detonator
Power Supply
Sleeve
Elec Timer, W/IC
M904E3
Casing Burster Warhead, M156
Fin Assy M158, M170
Adapter Rooster - M147, M148
Body Assy and Base Plug, M404
Bomb, M117A1E1
Launcher Rocket 2AU 68A/A
Warhead Flechets WDU 4A/A
M18 Mine Program
Blasting Cap, Firing Device, Metal Parts, Test Sets

Laser Range Finder VVC-2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX-9644 Image Intensifer Tube 25mm
MX-7845 Image Intensifer Tube (1st generation)
MX-8501 Image Intensifer Tube (1st generation)
BA-4386 Battery
AN/PVS-4 Night Vision Sights
AN/PVS-5 Night Vision Goggles
AN/PVS-5A Night Vision Goggles
AN/VVS-2 Viewer
AN/VSS-3 Searchlight
Common Module Program (Thermal Imaging System)
Tactical Night Vision Systems -
AN/TAS-4
AN/TAS-5
AN/TAS-6
CLLD/TAS-4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSC-2
Night Vision Goggles AN/PVS-5A
Image Intensifer Assy MX-9916/UV
Battery, Dry BA-4386
Maintenance of idle portions of 21 GOCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

6-1406 Participating Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding, and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act in order to implement the MOUs contained in this Part.

6-1406.1 Canadian Agreements.

(a) Letter of Agreement With Canada.

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements

facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. They shall also be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit varying rates of profit not exceeding in the case of cost reimbursement type contracts 7 - 1/2 percent of estimated cost plus, in certain cases, a bonus where cost savings have been demonstrated, and not exceeding in the case of negotiated fixed price contracts 10 percent of estimated cost. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum DDP-31 of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in

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accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*now the Department of Supply and Services

(b) Cooperative Agreement with Canada.

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

1. Objectives:

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DoD research and development requirements;

(3) in which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. DoD Procurement of Researched Developed Items:

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third

countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts not in Defense Development Sharing Program:

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. Canadian Access to United States Information:

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms

will have the same access to DoD research and development program information as United States firms.

15. Superseesion of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain inforce indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

6-1406.2 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN P&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT).

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attafnable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/

Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

d. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents of information and technology necessary for the purposes of such facilitation.

e. The Governments, through their appropriate representative, will consult concerning any problems which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of SECTION B of this MOU.

SECTION B: IMPLEMENTATION MACHINERY

1. Both Governments understand that detailed implementing procedures need to be considered and decided upon in order to carry out the provisions of this MOU. Representatives of the Governments will be appointed to develop a coordinated program of such implementing procedures, and to discuss procurement and production needs of the Governments. These representatives will meet as required.

2. The Director, Defense Security Assistance Agency, under the policy guidance of the Assistant Secretary of Defense (International Security Affairs), and in coordination with the Director, Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics and other DoD offices will be the focal point in the US Government for the development of an overall coordinated program of implementing procedures under this MOU. The Director, Defense Research and Engineering will be responsible for matters under this MOU touching upon research, development, test and evaluation as they relate to bilateral arrangements for joint military development. The Assistant Secretary of Defense (Installations and Logistics) will be responsible for managing procurement and production matters under this MOU on a continuing basis, in coordination with OASD(ISA), DSAA and other appropriate DoD offices.

3. The Head of Defense Sales, MOD, under the policy guidance of the Minister of State for Defence, and in consultation, as appropriate with the Chairman and members of the MOD Defence Equipment Policy Committee, will be responsible on the UK side for the development of an overall coordinated program of implementing procedures under this Memorandum of Understanding.

SECTION C: INDUSTRIAL PARTICIPATION

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation.

2. Implementation of this MOU will involve full industrial participating. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

SECTION D: TERMINATION

1. This MOU will be terminated on 1 January 1985 unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1985, any proposal for termination will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination.

SECTION E: FURTHER COOPERATION

Annexes subsequently negotiated by the responsible offices and endorsed by appropriate Governmental authorities will form an integral part of this Memorandum of Understanding.

SECTION F: EFFECTIVE DATE

This Memorandum of Understanding will come into operation upon signature by the Governments.

Signed in duplicate at London this 24th day of September 1975.

James R. Schlesinger For the Government of the United States	Roy Mason For the Government of the United Kingdom of Great Britain and Northern Ireland

Date 24 September 1975

ANNEX I

Implementing Procedures for the "Memorandum of Understanding between the Government of the United States and the Government of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment" of 24 September 1975.

I INTRODUCTION

On 24 September 1975 the Governments of the United States (US) and the United Kingdom (UK) signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment". The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II MAJOR PRINCIPLES

A. Both the US and UK will consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed and produced in the other country. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

B. Offers will be evaluated without applying price differentials under Buy-National laws and regulations.

C. Offers will be evaluated without consideration of the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

D. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK consistent with the policies and criteria of the respective purchasing agencies.

E. Offers will be required to satisfy requirements for performance, quality, delivery, continued logistic support, and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

III ACTION

In implementing the MOU both countries will review and, where considered necessary, revise defense policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be

compatible with the broad aims of NATO Rationalization/Standardization are taken into account. In addition both countries will:

A. Ensure that their respective requirement offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU, which are complemented by the "Arrangements for Joint Military Development by the US and the UK" of 1963.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist industries in carrying out the supporting actions to maximize industrial participation.

F. Review defense items submitted as candidates for respective requirements. Indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility.

G. Make best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

H. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements (for the maintenance of a defense mobilization base) are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from nonnational sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

I. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

IV COUNTING PROCEDURES

The US and UK Governments will decide between them to which items of defense equipment this MOU will apply but in principle all defense items (and associated services included in a procurement contract) purchased

by either country will be counted against the goals of this MOU as long as they meet the following criteria:

A. Direct purchases by either Government from the other, including its Agencies;

B. Direct purchases by either Government from the industry of the other country;

C. Purchases by Industry from the Government or Industry of the other country in aid of Government defense contracts;

D. Purchases by a third country government from either US or UK Government or industrial sources as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded projects to which the US and/or UK are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The applicability of such purchases to this MOU will be agreed between MOD/OSD in each case.

F. License fees, royalties and other associated income resulting from orders placed by Industry and/or Government with a licensed company in the other country.

V ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual US/UK Statement of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any

US-UK Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above.

HOWARD M. FISH	R. Anderson
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
2 April 1976	2 April 1976
Date	Date

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

INTRODUCTION

1. In furtherance of the principles governing reciprocal Defence purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the US Department of Defense (DoD) and the UK Ministry of Defence (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defence procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organisations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, drawn up in accordance with Section E of the MOU, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defence systems are considered:

a. Those still under development.

b. Those for which development is complete.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies,

procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry
For the Government of the United States

9 October 1978
Date

Sir Clifford Conford
For the Government of the United Kingdom of Great Britain and Northern Ireland

9 October 1978
Date

ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I GENERAL

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defence equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

- Survey of contractor's capability;
- Pre-contract audit;
- Audit during contract performance;
- Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
- Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
- Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

II PURPOSE AND SCOPE OF AUDITS

The purpose of these audits will be to examine proposed or incurred costs and supporting data in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits performed under the provisions of this Annex will cover all elements of cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III AUDIT AGENCIES

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

- For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).

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- For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS(PE)) of the Ministry of Defence.

IV AUDIT REQUEST PROCEDURES

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

- Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
- The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

- Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V OPERATING RULES

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or sub-contract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the questions contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If, due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI PROTECTION OF INFORMATION

Each audit report will be prepared by the audit agency and submitted in confidence. No report, or data therein, will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation purposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII NATIONAL SECURITY

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

William Levitt	Leonard Salthouse
United States	United Kingdom
21 June 1979	21 June 1979
(date)	(date)

6-1406.2
ARMED SERVICES PROCUREMENT REGULATION

6-1406.3 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NORWAY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

* Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

* Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

* Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment

have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement

organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

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2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

ARTICLE V

Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway	For the United States Government
The Minister of Defense	The Secretary of Defense
Rolf Hansen	Harold Brown
Date May 19, 1978	Date May 19, 1978

ANNEX I

I. INTRODUCTION

On 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

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B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and adivse the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely

fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOU and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government | For the Government of Norway

6-1406.4 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

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ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventonal defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower,

Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

ARTICLE V

Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and

keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands The Minister of Defense	For the Government of the United States of America The Secretary of Defense
Willem Scholten	Harold Brown
Date August 24, 1978	Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation is research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into

account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insure free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and

services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

K. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. COUNTING PROCEDURES

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) directly purchased by the MoD or DoD from one another; or

(2) directly purchased by the MoD or DoD from the industry of the other country; or

(3) purchased by the industry of one country from the Government or industry of the other country; or

(4) purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) license fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the other country.

B. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. ADMINISTRATION

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hemsen
Date 22 December 1978	Date 22 December 1978

(Appendices to Annex I not included)

ANNEX II

Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

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4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

ANNEX III

TERMS OF REFERENCES

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

6-1406.5 MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard of interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree

that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding.

Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

ARTICLE IV

Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to

evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any h contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

6-1406.6 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North American within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other

will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the US Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

ARTICLE V

Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government	For the Government of the Italian Republic
Harold Brown	Attilio Ruffini
Date 11 September 1978	11 September 1978

6-1406.7 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by natonal laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36437

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification

designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal
The Secretary of Defense	The Minister of Defense
Harold Brown	
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition

procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

4. COUNTING PROCEDURES

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case by case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply

unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX III

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

TERMS OF REFERENCE

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from

it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU.

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

6-1406.8 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of their respective resources allocated to defense,
- Promote the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interests of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, as well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either

party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the exent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

ARTICLE II

Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representative for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

ARTICLE IV

Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

ARTICLE V

Annual Statement

An annual United States - Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian - United States Committee for Mutual Cooperation, in accordance with its terms of reference.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of the Kingdom of Belgium
The Secretary of Defense	The Minister of Defense
Harold Brown	Jose Desmarets
Date 12 December 1979	12 December 1979

6-1406.9 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the vent of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

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ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Denmark for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classifed by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure

equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

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such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America	The Kingdom of Denmark
The Secretary of Defense	The Minister of Defense
Harold Brown	Poul Sǿgaard
Date 30 January 1980	Date 2 January 1980

6-1407 Reserved.

Part 15 - Purchases From Defense Cooperation Country Sources

6-1500 Scope of Part. This Part implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

6-1501 Policy. In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Government of Israel have entered into a defense cooperation requirement (see 6-001). The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 6-1402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of Defense Cooperation country end products shall be treated as if they were participating country end products.

6-1502 Procedures for Purchases from Defense Cooperation Country Sources.

6-1502.1 Solicitation Procedures. Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 6-1403.1(a) shall apply.

6-1502.2 Submission of Offers. Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. (See 6-1504.) However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions of the Buy American Act and Balance of Payments Program restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, OUSDRE(AP).

6-1502.3 Evaluation Procedures. Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 6-1403.1(c)(2) shall apply.

6-1502.4 Other Procedures. Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 6-1403.3, 6-1404, 6-1405, and throughout this Regulation shall apply.

6-1503 Reserved.

6-1504 Defense Cooperation Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act for items listed in the appropriate annexes in order to implement the agreements listed in this Part.

6-1504.1 MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN RESEARCH AND DEVELOPMENT, SCIENTIST AND ENGINEER EXCHANGE, AND PROCUREMENT AND LOGISTIC SUPPORT OF SELECTED DEFENSE EQUIPMENT.

The following Agreement is provided for information purposes only.

PREAMBLE

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

Noting previous agreements on Data Exchange (signed on 22 December 1970) and the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971) and

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, in order to:

- Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and
- Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by affording Israeli sources improved opportunities to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperations in conventional defense equipment research

and development, and procurement and logistic support of agreed upon defense supplies and services.

ARTICLE I

PRINCIPLES GOVERNING RECIPROCAL DEFENSE COOPERATION

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by affording each other's national sources improved opportunities to offer products and services identified in Annex B hereto. Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organizations for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperations. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

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4. Technical information, including Technical Data Packages (TDPs), furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third part transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

IMPLEMENTING PROCEDURES

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logisitics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director, General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be

assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

ARTICLE III

SECURITY

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. The operating procedures for the implementation of the General Security Information Agreement, dated 25 March 1963, between the Governments apply to activities under this Memorandum of Agreement.

ARTICLE IV

DURATION

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Sections 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

For the Government of Israel The Minister of Defense	For the United States Government The Secretary of Defense
E. Weizman	Harold Brown
Date 19 March 1979	Date 19 March 1979

ANNEX A

LISTING OF COOPERATIVE R&D EFFORTS

I. Development Data Exchange Program. General revitalization of existing annexes to improve exchange of development data with specific emphasis in the following areas:

(To be jointly determined by both Governments)

II. Complementary/Competitive Development Programs

(To be jointly determined by both Governments. "Competitive Development Programs" refers to programs to be conducted in one of the countries addressing defense equipment needs that the subject of development work in the other country with the objective of affording an alternate means for satisfying such needs.)

III. Scientist-Engineer Exchange Program

(To be jointly determined by both Governments)

ANNEX B

Listing of non R&D items of equipment and services covered by this MOA.

(To be jointly determined by both Governments)

ATTACHMENT 1

Membership, terms of reference for the joint U.S. DoD Israel MOD Committee, designated points of contact, and arrangements concerning implementation of the MOA.

7-103.14 *Discounts.*

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-103.15 *Certain Communist Areas.* In accordance with 6-403, insert the following clause.

CERTAIN COMMUNIST AREAS (1980 FEB)

(a) Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract:

(i) any supplies or services originating from sources within the communist areas of North Korea, Vietnam, or Cuba;

(ii) any supplies, however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)

7-103.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

(a) In accordance with 12-301 and 12-302, insert the following clause.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1971 SEP)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

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

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day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours.

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

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

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

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

(End of clause)

(b) The following clause shall be used, in addition to the clause in (a) above, when firefighters or fireguards are to be used.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION — FIREFIGHTERS AND FIREGUARDS (1974 APR)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards under the following conditions:

(i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight (8) hours per day in a standby or on-call status; and

(ii) If the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and

(iii) *provided* that in determining the daily and weekly overtime requirements of the Act in any particular worksheet of any such employee whose established worksheet begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of eight (8) hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(End of clause)

7-103.17 *Walsh-Healey Public Contracts Act.*

WALSH-HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

(End of clause)

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1968 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10-403(d)(2) (see also 10-502(c)).

REIMBURSEMENT FOR WAR HAZARD LOSSES (1968 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-103.4, 6-103.7, and 6-803.2(a)(i) - (xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-104.4).

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/offset arrangement country, or

(B) an end product manufactured in an FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(ix) "Defense Cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the contractor to supply a qualifying country end product or, at the contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of clause)

sated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the _____,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 9 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Excess Profit.*

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000, known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFIT (1957 JUN)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; *provided* however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(End of clause)

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U.S.C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U.S.C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U.S.C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (1957 JUN)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation, or fire control, the provisions of 10 U.S.C. 2382 and 7300 are not applicable to this contract.

(End of clause)

7-104.12 *Military Security Requirements.* Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254 and, if applicable, 254c) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M), and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities.* The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplies. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1980 OCT)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate part of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1976 OCT)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

(g) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor; and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(h) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered. (1974 APR)

(b) In accordance with 1–1903, insert the following clause when the Government is responsible for conducting first article approval test:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (1969 SEP)

(a) The first article is _____ unit(s) of Lot/Item _____ and shall, within _____(—) calendar days from the date of this contract, be delivered to the Government at _____ (*set forth consignee and address*) for first article approval tests. The documentation accompanying the first article shall contain this contract number and the Lot/Item identification. The performance or other characteristics which the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.

(b) The Contracting Officer shall, by written notice to the Contractor within _____(—) calendar days after receipt of the first article by the Government, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons therefor.

(c) If the first article is disapproved by the Government, the Contractor may be required, at the option of the Government, to submit an additional first article for first article approval test. After each notification by the Government to submit an additional first article, the Contractor shall at no additional cost to the Government make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. Such additional first article shall be furnished to the Government under the terms and conditions and within the time specified in the notification. The Government shall take action on this first article within the time limit specified in (b) above. The costs of additional first article approval tests and all costs related to such tests shall be borne by the Contractor. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.

(d) If the Contractor fails to deliver any first article for test within the time or times specified, or if the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract, and this contract shall be subject to termination for default; *provided*, that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

(e) Where the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the Contractor (i) may deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance, and (ii) shall be

responsible for removal and disposition of any first article from the Government test site at his expense.

(f) In the event the Contracting Officer does not approve, conditionally approve, or disapprove the first article within the time specified in (b) or (c) above, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided in the "Changes" clause. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(g) The Contractor shall be responsible for spare parts support and repair of the first article during any first article approval test.

(h) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor, and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(i) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered.(1974 APR)

(c) In accordance with 1–1902(c), the following paragraph may be substituted for paragraph (g) of the clause in (a) above or paragraph (h) of the clause in (b) above.

(g) or (h) Prior to approval of the first article(s), the Contractor may, upon written authorization by the Contracting Officer, acquire specific materials or components or commence production to the extent essential to meet production quantity delivery requirements. Until first article approval is granted, only costs for the first article and costs incurred in accordance with such authorization shall be allocable to this contract (i) for the purpose of progress payments if this contract contains a clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government. In the event first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes in, or replace all items manufactured under this contract, at no change in contract price. (1974 APR)

7–104.56 *Reserved.*

7–104.57 *Reserved.*

7–104.58 *Identification of Expenditures in the United States.*

(a) In accordance with 6–804, insert the following clause.

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (1966 OCT)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the

(e) When the delivery schedule is in terms of specific calendar dates ((d)(1) or (d)(3) above), invitations for bids shall include one of the following paragraphs in lieu of (b) of the clauses in (b) and (c) above:

(1)(b) The foregoing delivery requirements are based on the assumption that the Government will make award by (*purchasing activity, insert calendar date*). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (1974 APR)

(2)(b) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (*purchasing activity, insert calendar date*). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges such receipt. (1974 APR)

(f) When the delivery schedule is based on the date of receipt of a written notice of award ((d)(ii) above), paragraph (b) of the clauses in (b) and (c) above shall be deleted.

7-104.93 *Preference for Domestic Specialty Metals.*

(a) The following clause shall be included in all contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (1980 OCT)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent, or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder unless he knows that the item being purchased contains no specialty metals.

(End of clause)

(b) The following clause shall be included in all contracts over $10,000, other than those covered by the clause in paragraph (a), calling for the delivery of an article that contains specialty metals.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (1980 OCT)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent, or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(End of clause)

7-104.94 *Capture and Detention.* In accordance with 16-406, insert the following clause.

CAPTURE AND DETENTION (1968 JUN)

(a) As used in this clause:

(1) "captured person" means any employee of the Contractor—

(i) who is assigned to duty outside the United States for the performance of this contract, and

(ii) who is found to be missing from his place of employment under circumstances that make it appear probable that his absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage or otherwise detained by the force of any such power, whether or not such person is actually engaged in his employment at the time of capture; provided that at the time the person was captured and detained that the person was either:

(A) engaged in activity directly arising out of the course of his employment under this contract, or

(B) captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) a "period of detention" begins with the day of capture and continues until the captured person is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until his death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42 U.S. Code (Sections 1701 - 1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or his dependents, on account of his detention, the Government will reimburse the Contractor for such payments up to an amount which

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(a) The Contractor hereby certifies, as of the date of this contract, to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined, after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this contract, then this contract may be terminated in accordance with the provisions of the Termination for Default clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees to accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

(d) The Contractor shall require a Certification - Wage and Price Standards, limited to (a) above, as a condition of award of any first-tier subcontract which exceeds $5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first-tier subcontractors can only be made by the Secretary.

(End of clause)

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

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I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments— for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Reserved.*
7-104.104 *Reserved.*

7-104.105 *Offset Arrangement.* When appropriate in accordance with 6-1310.3(d), insert a clause substantially as follows.

OFFSET ARRANGEMENT (1980 OCT)

(a) The Contractor is responsible under the contract for arranging with representatives of the Government of . . . . . .* under . . . . . .** dated . . . . . for participation by sources in . . . . . .* for a minimum of (*percentage or dollar value*) of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in . . . .* (Commercial business will not be considered for duty-free entry.) All contractual arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

. . . . . .

. . . .

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) subcontract or other solicitations offered to . . . . . .* industry (items, dollar value, date of solicitation, and identification of sources);

(ii) subcontract or orders placed with . . . . . .* sources—

(A) item

(B) value

(C) contracting office

(D) competitive or noncompetitive

(E) date of subcontract

(F) identification of subcontractor

(iii) status of deliveries under subcontracts placed with . . . . . .* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with . . . . . .* sources under . . . .**

*Insert name of foreign country.
**Insert offset agreement number or other description.

(End of clause)

7-104.106 *Qualifying Country Sources as Subcontractors.* Insert the following clause in accordance with 6-104.5 and 6-803.1(e) whenever the Buy American Act and Balance of Payments Program clause at 7-104.3 is used in the solicitation or contract.

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (1980 OCT)

No qualifying country source (6-001), subject to the restrictions set forth in Section VI, Part 14, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

7-104.107 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the following clause.

LIMITATION ON SALES COMMISSIONS AND FEES FOR FOREIGN GOVERNMENTS (1980 OCT)

Unless the sales commission and fee have been identified and payment thereof has been approved in writing by the Government of . . . . . .* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm fixed-price contracts or fixed-price contracts with economic price adjustment:

"The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . .*"

*Name of foreign country.

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . . . .* shall be considered as an unallowable item of cost under this contract."

*Name of foreign country.

(End of clause)

7-105 Additional Clauses. The following clauses shall be inserted in fixed-price supply contracts in accordance with departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-105.1 *Alterations in Contract.*

(a)

ALTERATIONS IN CONTRACT (1949 JUL)

The following alterations have been made in the provisions of this contract.

(End of clause)

7-203.28 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-203.29 *Audit by Department of Defense.* Insert the clause in 7-104.41(a).

7-203.30 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the applicable clause therein.

7-203.31 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-203.32 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-203.33 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-203.34 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-203.35 *Notice of Intent to Disallow or Not Recognize Costs.* In accordance with 15-206, insert the following clause in all cost-reimbursement type and flexibly priced contracts.

NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS (1978 AUG)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "*Disputes*".

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the notification or issue a final decision thereon under the provisions of the clause herein entitled "*Disputes*".

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

(End of clause)

7-204 Clauses To Be Used When Applicable.

7-204.1 *Clauses for Cost Reimbursement Type Supply Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-204.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the schedule language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-204.3 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-204.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-204.5 *Patent Indemnity.* In accordance with 9-103, insert the clause with additional applicable provisions in 7-104.5.

7-204.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-204.7 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-204.8 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-204.9 *Rights in Data.* In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-204.10 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-204.11 *Excess Profit.* In accordance with 7-104.11, insert the appropriate clause therein.

7-204.12 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraphs (c) and (d) and substituting the following:

> (c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or time required for performance of this contract, the estimated cost, fee, delivery schedule, or any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.
>
> (d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause. (1971 APR)

7-204.13 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

7-204.14 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

7-204.15 *Priorities, Allocations, and Allotments.* In accordance with the requirements of 1-307.2, insert the clause in 7-104.18.

7-204.16 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-204.17 *Employment of Ocean-Going Vessels—Ocean Transport of Government-Owned Supplies.*

(a) In accordance with 1-1404(a), insert the clause in 7-104.19(a).

(b) In accordance with 1-1404(b)(1), insert the clause in 7-104.19(b).

(c) In accordance with 1-1404(b)(2), insert the clause in 7-104.19(c).

(d) In accordance with 1-1410, insert the clause in 7-104.19(d).

> craft, or previously approved in writing by the _____* (*See footnote at end of clause.*) As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.
>
> (iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.
>
> (c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.
>
> (End of clause)
>
> *In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "*aircraft*" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

7-204.22 *Duty-Free Entry.*

(a) *Duty-Free Entry for Designated Items.* In accordance with 6-603.3(a), insert the clause in 7-104.31(a).

(b) *Duty-Free Entry for Items Not Identified in the Contract.* In accordance with 6-603.3(b), insert the clause in 7-104.31(b).

7-204.23 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-204.24 *Taxes.*

(a) *Contractor Not a Foreign Government.* In accordance with 11-403.2(c), insert the following clause.

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TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____, or from which the Contractor or any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

(End of clause)

(b) *Foreign Government as Contractor.* In accordance with 11-403.2(d), insert the following clause.

TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ or from which any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

(End of clause)

7-204.25 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-204.26 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-204.27 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-204.28 *General Services Administration Supply Sources.* In accordance with 5-909, insert the following clause.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (1977 AUG)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. All property acquired under such an authorization shall be subject to the provisions of the clause of this contract entitled "*Government Property*", except paragraphs (a) and (b) thereof.

(End of clause)

7-204.29 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-204.30 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-204.31 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-204.32 *Value Engineering.*

(a) *Use of the Incentive and Program Requirement Clauses.* In accordance with 1-1702 and 1-1707, insert the applicable clause or clauses in 7-104.44(a) and (b), as modified in (b) or (c) below.

(b) *Cost-Plus-Incentive-Fee Contracts.* Substitute the following "Sharing" provision for paragraph (c) of the applicable clause in 7-104.44(a) and (b):

(c) *Sharing.* If a VECP submitted by the Contractor pursuant to this clause is accepted, the Contractor shall share in the savings realized by the Government in accordance with the following provisions:

(1) Instant Contract

(i) Definitions:

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7-204.55 *Cost/Schedule Control Systems.* In accordance with 1-331(b) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery.* Insert a clause in accordance with 7-104.92.

7-204.59 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration — FZATR
Chester A. Arthur Building
Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-204.66 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-204.67 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-205.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved.*

7-205.6 *Stop Work Orders.* The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. *(*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to 10-404(b)(2).)*

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided for elsewhere in this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

7-303.8 *Communist Areas.* In accordance with 6-403 and 7-103.15, insert the clause in 7-103.15.

7-303.9 *Notice to the Government of Labor Disputes.* Insert the clause in 7-104.4 in all contracts involving the furnishing of production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Contracting Activity concerned determines to be appropriate for the use of such a clause.

7-303.10 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-303.11 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-303.12 *Subcontracts.* In accordance with 23-201.1, insert the clause in 7-104.23.

7-303.13 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62.

7-303.14 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-303.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-303.16 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-303.17 *Ground and Flight Risk.* In accordance with 10-404, insert the clause in 7-104.10.

7-303.18 *Duty-Free Entry.* In accordance with 6-603.3, insert the clauses in 7-104.31.

7-303.19 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-303.20 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-303.21 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-303.22 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-303.23 *Progress Payments.* In accordance with E-510, insert one of the clauses in 7-104.35.

7-303.24 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-303.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-303.26 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-303.27 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-303.28 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein.

Secretary and approved by the Contracting Officer, for or contracts with the Department of the Navy, *The Department*.) When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall: (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

ON PROVISIONS

7-304.1 *Changes.*

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

n the foregoing clause, the period of "thirty (30) days" within which any claim or adjustment must be asserted, may be varied in accordance with Departmental rocedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any hange order that is expected to exceed $100,000, except where the price is ased on adequate price competition, established catalog or market prices of ommercial items sold in substantial quantities to the general public, or prices set y law or regulation, the contracting officer shall require the contractor to furnish Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the ontract includes or is modified to include a defective pricing data clause (see -104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth herein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth herein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in -105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty may be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth herein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (1959 FEB)

If more than one clause or Schedule provision of this contract authorized the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided* that this limitation shall not apply to:

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholding not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or contracting activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-403.13 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-403.14 *Changes to Make-or-Buy Program.* In accordance with Section III, Part 9, insert the clauses in 7-204.20.

7-403.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-403.16 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-403.17 *Duty-Free Entry.* In accordance with Section VI, Part 6, insert the appropriate clause or clauses in 7-104.31.

7-403.18 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-403.19 *Taxes.* In accordance with 11-403, insert one of the clauses in 7-204.24.

7-403.20 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-403.21 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) de-

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pending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502 (b) and (c) according to the instructions stated in those paragraphs.

7-403.22 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2 , insert the clause in 7-104.37.

7-403.23 *General Services Administration Supply Sources.* In accordance with 5-909, insert the clause in 7-204.28.

7-403.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-403.25 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-403.26 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-403.27 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44, substituting the "Sharing" paragraph (e) in 7-204.32(b) or (c) for paragraph (e) of the clause in 7-104.44, as applicable.

7-403.28 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-403.29 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404, insert the clause in 7-104.19 (d).

7-403.30 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-403.31 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-403.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-403.33 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-403.34 *First Article Approval.* In accordance with Section I, Part 19, insert the appropriate clause in 7-104.55.

7-403.35 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-403.36 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-403.37 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-403.38 *Reserved.*

7-403.39 *Care of Laboratory Animals.* In accordance with 7-303.44, insert the clause therein.

7-403.40 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein

7-403.41 *Material Inspection and Receiving Report* In accordance with 7-104.62, insert the clause therein

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-483.2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-403.64 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications,

(ii) method of shipment or packing, and

(iii) place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made

(i) in the estimated cost or delivery schedule, or both,

(ii) in the amount of any fixed fee to be paid to the Contractor, and

(iii) in such other provisions of the contract as may be affected, contract shall be modified in writing accordingly.

7-504.13 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-504.14 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-504.15 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-504.16 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-504.17 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-504.18 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-504.19 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-504.20 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-505 Additional Clause. The following clause shall be inserted in personal services contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-505.1 *Alterations in Contract.* In accordance with 7-105.1(a), insert the clause therein.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 6—Construction and Architect-Engineer Contracts

7–600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18–100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both.

7–601 General. As used throughout this Part, the term "construction contract" means any contract (other than one entered into on Standard Form 19 or DD Form 1155 (*see 16–401.2, 16–402.2, and 18–302*), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in 18–101.1.

7–602 Required Clauses for Fixed-Price Construction Contracts. The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this Part.

7–602.1 *Definitions.*

DEFINITIONS (1964 JUN)

(a) The term "Head of the Agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency, and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7–602.2 *Specifications and Drawings.*

SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(End of clause)

7–602.3 *Changes.*

CHANGES (1968 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

DISPUTES CONCERNING LABOR STANDARDS (1977 DEC)

Disputes arising out of the labor standards provisions of this contract shall be subject to the *Disputes* clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18–703.3, preface the clauses required by (a) above with the following provision.

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

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7-602.24 *Nondomestic Construction Material.* When a determination has been made that certain construction materials may be used without regard to country of origin, the following clause shall be included in the contract, and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below:
(Insert list here)

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

7-602.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-602.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

(2) *Drawings and Other Data to Become Property of Government.*

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (1979 MAR)

All Designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

(b) In accordance with 18-910.2 and 18-910.3, insert the appropriate clause or clauses in 7-104.9.

7-603.43 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-603.44 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause.

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-606.32 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-606.33 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

in the contract, or he may adjust such estimated construction contract price. When bids or proposals are not solicited or where they are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.

(End of clause)

(b) Whenever the clause set forth in (a) above is included in a contract, the following statement shall be inserted in the description of the work to be performed by the Architect-Engineer.

The estimated construction contract price for the project described herein is $_____

The figure to be inserted in this statement is to be established at the beginning of contract negotiations by agreement between the Architect-Engineer and the Government. Such estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the figure to be inserted, the Contracting Officer should make available to the Architect-Engineer the information upon which the Government has based its initial estimate and any subsequently acquired information which may affect the construction cost.

7-608.4 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-608.5 *Option for Supervision and Inspection Services.* The following clause may be included in any fixed-price architect-engineer contract if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

OPTION FOR SUPERVISION AND INSPECTION SERVICES (1972 APR)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

7-608.6 *Requirements for Registration of Designers.* The following clause shall be inserted in fixed-price architect-engineer contracts, except that it may be omitted from any contract (1) when the design is to be performed outside the United States, its possessions, or Puerto Rico, or (2) when the design is to be performed in a State or possession which does not have registration requirements for the particular field involved:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (1972 APR)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

7-608.7 *Accident Prevention.* Insert the clause in 7-602.42, except in contracts where no field work is involved, substituting "Architect-Engineer" for "Contractor."

7-608.8 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.9 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.10 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.11 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58, substituting "Architect-Engineer" for "Contractor."

7-608.12 *Authorization and Consent.* In accordance with 18-902.1 and 18-902.2, insert the appropriate clause in 7-103.22 or 7-302.21, substituting "Architect-Engineer" for "Contractor."

7-608.13 *Notice and Approval of Restricted Designs.* In accordance with 18-905, insert the following clause.

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (1972 APR)

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

(End of clause)

7-608.14 *Patent Rights.* In accordance with 9-107 and 18-908(a), insert the appropriate clause in 7-302.23, substituting "Architect-Engineer" for "Contractor."

7-608.15 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6 in every classified contract which covers or is likely to cover classified subject matter, substituting "Architect-Engineer" for "Contractor."

7-608.16 *Alterations.* In accordance with 7-604.1, insert the clause therein.

7-608.17 *Rights in Data.* In accordance with 18-910.2 and 18-910.3, insert the appropriate clause, or clauses, in 7-104.9, substituting "Architect-Engineer" for "Contractor."

7-608.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83, substituting "Architect-Engineer" for "Contractor."

7-608.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-608.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-608.21 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-608.22 *Reserved.*

7-608.23 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

(iii) "Apprentices and Trainees," 7-602.23(a)(iii);
(iv) "Payrolls and Basic Records," 7-602.23(a)(iv);
(v) "Compliance With Copeland Regulations," 7-602.23(a)(v);
(vi) "Withholding of Funds" 7-602.23(a)(vi);
(vii) "Subcontracts", 7-602.23(a)(vii);
(viii) "Contract Termination - Debarment", 7-602.23(a)(viii); and
(ix) "Disputes Concerning Labor Standards", 7-602.23(a)(ix).

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates and the clauses referenced in paragraph (a) above shall be incorporated into the contract in their entirety by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination and clauses required in paragraph (b) above unless the Contracting Officer authorizes the start of work because of unusual or emergency situations.

(End of clause)

7-705.6 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-705.7 *Improvements to Buildings or Land Owned by the Government.* When necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDING OR LAND OWNED BY THE GOVERNMENT (1964 SEP)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

(End of clause)

7-705.8 *Patent Rights.* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-705.9 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-705.10 *Changes to Make-or-Buy Program.* In accordance with 3-902.4, insert the clause in 7-204.20(a).

7-705.11 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-705.12 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-705.13 *Advance Payments.* In accordance with Appendix E, Part 4, insert the clause in 7-104.34 but substitute paragraphs (3) and (5) from the clause in 7-204.25 for paragraph (3) and (5) of the clause in 7-104.34.

7-705.14 *General Services Administration Supply Sources.* In accordance with 7-204.28, insert the clause therein, deleting the last sentence.

7-705.15 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-705.16 *Duty-Free Entry.* In accordance with 6-603.2 and 6-603.3, insert either or both of the clauses in 7-104.31.

7-705.17 *United States Products and Services (Balance of Payments Program).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-705.18 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-705.19 *Reserved.*

7-705.20 *Insurance.* In accordance with 10-405 and 10-501, insert the clause in 7-104.65.

7-705.21 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-705.22 *Facilities Equipment Modernization.* Insert the following clause in any bilateral modification of an existing facilities contract, and in any new facilities contract, under which the Government provides modernized or replacement facilities.

FACILITIES EQUIPMENT MODERNIZATION (1976 JUL)

(a) In consideration of the Government providing, as set forth in this contract, for modernization or replacement of Government-owned equipment being used or to be used by the Contractor in the performance of Government firm-fixed-price contracts or subcontracts, or fixed-price contracts or subcontracts with economic price adjustment provisions, the Contractor agrees to return to the Government the net cost savings actually realized from the use of the modernized or replacement equipment on all such contracts or subcontracts entered into prior to the expiration of the three-year period following the date such equipment is placed in production, except (i) formally advertised contracts entered into subsequent to the date such equipment is placed in production, and (ii) contracts or subcontracts which specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for the implementation of this clause. The Contractor shall make such records available at its office for inspection, audit or reproduction by any authorized representative of the Contracting Officer. Within fourteen (14) months after the modernized or replacement equipment has been placed in production, the Contractor shall file with the Administrative Contracting Officer cognizant of the Government production and research property four (4) completed copies of DD Form 1651 (Industrial Equipment Modernization Program—Post Analysis Report).

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, he shall require the subcontractor to maintain records, to make them and additional information available to the Contracting Officer, and to file four (4) copies of DD Form 1651, in the manner prescribed in (1) above.

(c) Records shall generally be acceptable if they are maintained for the equipment under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Administrative Contracting Officer by:

7-902.35 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Part 10—Stevedoring Contracts

7-1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22-401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22-404 shall normally be included in all stevedoring contracts.

7-1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at _____ upon the terms and conditions hereinafter set forth for the term of this contract, beginning _____ and ending _____; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(*a*) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(*b*) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(*c*) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(*d*) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(c) *Area Requirements.* A clause similar to the following may be used when it is not known where the supplies or services will be required.

AREA REQUIREMENTS (1965 AUG)

Each item is divided into two (2) sub-items. Sub-item A is for delivery of the item to destinations East of the Mississippi River within the continental United States. Sub-item B is for delivery of the item to destinations West of the Mississippi River within the continental United States, excluding Alaska. With respect to each item, the Government shall order, except as hereinafter set forth, all the purchase requirements of _____(activity) which are for delivery to any destination East of the Mississippi River, from the Contractor awarded sub-item A, and shall order all of its purchase requirements for delivery to any destination West of the Mississippi River from the Contractor awarded sub-item B.

(End of clause)

7-1102.3 *Indefinite Quantity Contract.*

(a) *Delivery Order Limitations.* Insert the clause in 7-1102.1(a).

(b) *Indefinite Quantity.*

INDEFINITE QUANTITY (1965 AUG)

(a) This is an indefinite quantity contract for the supplies or services specified in the Schedule and for the period set forth therein. Delivery or performance shall be made only as authorized by orders issued in accordance with the "Ordering" clause of this contract. The quantities of supplies or services specified herein are estimates only and are not purchased hereby.

(b) The Contractor shall furnish to the Government, when and if ordered, the supplies or services set forth in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of the contract to the same extent as if completed during the effective period of this contract, *provided* that the Contractor shall not be required to make any deliveries under this contract after _____(*date*).

(d) The Government may issue orders which provide for delivery to or performance at multiple destinations.

(End of clause)

7-1102.4 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence acquisitions and contracts for tanker/barge shipments of bulk petroleum products.

7-1102.5 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Part 12—Mortuary Services Contracts

7-1200 Scope of Part. This Part sets forth uniform contract clauses for mortuary services (care of remains) contracts (see Section XXII, Part 5). These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1201 Required Clauses for Other Than Port of Entry Requirements Contracts. The following clauses shall be inserted in all care of remains contracts except those for port of entry requirements.

7-1201.1 *Requirements.*

REQUIREMENTS (1965 OCT)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices". The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

7-1201.2 *Contract Period.*

CONTRACT PERIOD (1965 OCT)

Any contract awarded as a result of bids submitted under this Invitation for Bids shall extend from _____ through _____

(End of clause)

7-1201.3 *Area of Performance.*

AREA OF PERFORMANCE (1974 APR)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor or which or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7-1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7-1703.5 *Subcontracts.* In accordance with the requirements of 23-201, insert an appropriate clause entitled Subcontracts.

7-1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1703.7 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to the work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

7-1903.42 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-203.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (e)(1) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

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7-1910.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1910.5 *Reserved.*

7-1910.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1910.7 *Patent Rights.* When experimental, developmental or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1910.8 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-1910.9 *Reporting of Royalties.* In accordance with 9-110, insert the clause in 7-104.8(a).

7-1910.10 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1910.11 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-1910.12 *Military Security Requirements.* In accordance with 7-104.12(a), insert the clause therein with the modification specified in 7-204.12.

7-1910.13 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1910.14 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1910.15 *Ocean Transport of Government Owned Supplies.* In accordance with 1-1404(a), insert the clause in 7-104.19(a).

7-1910.16 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1910.17 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-1910.18 *Taxes.* In accordance with 11-403.2, insert the appropriate clause in 7-204.24.

7-1910.19 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-1910.20 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-1910.21 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1910.22 *Value Engineering.* In accordance with 1-1702, insert the appropriate clauses in 7-104.44, substituting the clause paragraph (e)(1)(ii) in 7-204.32(b) or (c) for paragraph (e)(1)(ii) of the clause in 7-104.44 and as modified by clause paragraph (k) in 7-1903.51.

7-1910.23 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1910.24 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1910.25 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-1910.26 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3).

7-1910.27 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-1910.28 *United States Products and Services (Balance of Payments).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-1910.29 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-1910.30 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-1910.31 *Service Contract Act of 1965.* In accordance with 7-1903.41, insert the appropriate clause therein.

7-1910.32 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-1910.33 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1910.34 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1910.35 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1910.36 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1910.37 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1910.38 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1910.39 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1910.40 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1910.41 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1911 Additional Clauses for Use in Cost Reimbursement Service Contracts. The following clauses may be included in cost reimbursement service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1911.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1911.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-1911.3 *Options.* Examples of option clauses appear in 7-104.27 and 7-1903.22. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1911.4 *Stop Work Orders.* In accordance with 7-205.6, the clause prescribed therein may be inserted.

7-1911.5 *Clauses for Contracts Involving Furnishing of Supplies.* In cost reimbursement service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed by 7-1909.

Changes clause in 7-203.2;

Inspection of Supplies and Correction of Defects clause in 7-203.5; and

Walsh-Healey Public Contracts Act clause in 7-103.17.

In addition, applicable clauses in 7-1910 shall be included. Any clause applicable only to supplies or only to services shall be so labeled.

(b) If the contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

7-2003.44 *Inconsistency Between English Version and Translation of Contract.* In accordance with 3-608.2(b)(2)(ii)(B), insert the following provision.

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (1966 APR)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of provision)

7-2003.45 *Invoices.* In accordance with 3-608.2(d)(ix), insert the following provision.

INVOICES (1974 APR)

Contractor's invoices must be submitted before payment can be made. Contractor will be paid on the basis of his invoice which must state (1) the starting and ending dates and (2) that orders have been placed in effect for the addressees required, or (3) that the orders will be placed in effect upon receipt of payment.

(End of provision)

7-2003.46 *Notice To Supplier.* In accordance with 3-608.3(c), insert the following provision.

NOTICE TO SUPPLIER (1971 NOV)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Procuring Contracting Officer. If you cannot perform in exact accordance with this order WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.

(End of provision)

7-2003.47 *Buy American - Balance of Payments Program Certificate.* Insert the following in all solicitations and resultant contracts in which the Buy American Act and Balance of Payments Program clause at 7-104.3 is used.

BUY AMERICAN - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Excluded End Products

Line Item No.	Country of Origin

(List as necessary)

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or they will be deemed nonqualifying country end products. Offers must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program." [_____]
(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers. [_____]
(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program." [_____]
(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of certificate)

7-2003.48 *Domestic Wool Preference.* In accordance with 6-304.2, complete and insert the following clause.

DOMESTIC WOOL PREFERENCE (1958 MAR)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is 100 percent domestic wool, *provided* that such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is 100 percent foreign wool an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in Armed Services Procurement Regulation 6-304.2(f) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in ASPR 6-304.2(f) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuing manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

7-2003.49 *Supplies to be Accorded Duty-Free Entry.* When the *Duty Free Entry for Certain Specified Items* clause in 7-104.31(a) is used, the following clause shall be inserted in the Schedule.

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (1965 DEC)

In accordance with paragraph (a) of the clause hereof entitled "Duty-Free Entry for Certain Specified Items," the following supplies are hereby identified as supplies to be accorded duty-free entry: _____

(End of clause)

7-2003.50 *United States End Product Certification for Purchases in Implementation of a Military Assistance Program.* In accordance with 6-703.3, insert the following provision.

UNITED STATES PRODUCTS CERTIFICATE (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled United States Products); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

7-2003.51 *United States End Products Requirement for Purchases in Implementation of a Military Assistance Program.* The following clause shall be inserted in all contracts for end products for the Military Assistance Program other than those excepted pursuant to 6-702.

UNITED STATES PRODUCTS (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in end products;

(ii) "end products" means those articles, materials, and supplies, which are acquired under this contract for public use; and

(iii) a "United States end product" means

(A) an unmanufactured end product which has been mined or produced in the United States; and

(B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

7-2003.52 *Reserved.*

7-2003.53 *Reserved.*

7-2003.54 *Reserved.*

7-2003.55 *Reserved.*

7-2003.56 *Reserved.*

7-2003.57 *Applicability of Complete Wage Rate Decision.* In accordance with 18-704.2(f), insert the following provision.

APPLICABILITY OF COMPLETE WAGE RATE DECISION (1974 APR)

In addition to the wage rates in this solicitation, the complete decision of the Secretary of Labor contains wage rates for other classes of laborers and mechanics. Because it does not appear

7-2003.75 *Reserved.*

7-2003.76 *Identification of Restricted Rights Computer Software.* In accordance with 9-603(b), insert the following provision.

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (1977 APR)

The offeror's attention is called to the requirement in the "*Rights in Technical Data and Computer Software*" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of clause)

7-2003.77 *Licenses and Permits.* In accordance with 22-600.3, insert the following clause.

LICENSES AND PERMITS (1977 APR)

Offerors without necessary operating authority may submit offers, but the offerors shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits prior to award of a resultant contract and for complying with all laws, ordinances, statutes and regulations in connection with the furnishing of the services herein.

(End of clause)

7-2003.78 *Notice of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following notice.

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this Solicitation. Failure to comply with such provisions may constitute sufficient cause to justify non-selection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653.

(End of notice)

7-2003.79 *Evaluation of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following provision.

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

(a) Total compensation (salary and fringe benefits) of professional employees under service contracts may, in some cases be lowered by recompetition of such contracts. Such lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is, therefore, in the best interest of the Government that professional employees, as defined in 29 CFR 541, be properly and fairly compensated in such contracts. As a part of their proposals, offerors will submit a "Total Compensation Plan" (salaries and fringe benefits) for such professional employees for evaluation purposes. The Government will assess the "Total Compensation Plan" to assure that such compensation reflects a sound management approach and an understanding of the requirements to be performed. It will include an assessment of the offeror's ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment and retention of personnel and its realism and consistency with a total plan for compensation (both salaries and fringe benefits).

(b) In establishing compensation levels for professional employees, the total compensation (both salaries and fringe benefits) proposed, shall reflect a clear understanding of the requirement of the work to be accomplished and the suitability of the proposed compensation structure to obtain and retain qualified personnel to meet mission objectives. The salary rates or ranges must recognize the distinct differences in professional skills and the complexity of varied disciplines as well as job difficulty. Proposals offering total compensation levels less than currently being paid by the predecessor contractor, if any, for the same work will be evaluated, in addition to the above, on the basis of maintaining program continuity, uninterrupted work of high quality, and availability of required competent professional employees. Offerors are cautioned that instances of lowered compensation for essentially the same professional work may be considered a lack of sound management judgment in addition to indicating a lack of understanding of the requirement.

(c) Proposals which are unrealistically low or do not reflect a reasonable relationship of compensation to the professional job categories such as to impair the contractor's ability to recruit and retain competent professional employees, may be viewed as reflecting a failure to comprehend the complexity of the contract requirements. The Government is concerned with the quality and stability of the work force to be employed on this contract. The compensation data required will be used in evaluation of the offeror's understanding of the contract requirements.

(d) An assessment of the potential for adverse effect upon performance and maintenance of the required numbers of employees with requisite skills resulting from an unrealistically low compensation structure will also be made.

(End of provision)

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

Payment in the amount of $_____approved.

8-213.2 *Final Payment.*

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

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

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

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7-104.82.

8-214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8-301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15-103(iii)).

8-215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

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

TERMINATION OF CONTRACTS

8-216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6-1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8-802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8-210 and 8-805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6-504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24-205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASMA, New York) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8-217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7-108.1.

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7-108.1 and paragraph (k) of the clause in 7-108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

BONDS, INSURANCE, AND INDEMNIFICATION

Part 2—Sureties

10-200 General. Every bond required or used in connection with a contract for supplies, services, or construction shall be supported by good and sufficient surety (corporate or individual) except as provided in 10-202.

10-201 Requirements of Sureties.

10-201.1 *Corporate Sureties and Cosureties.*

(a) *Corporate Sureties.* In connection with contracts for supplies, services, or construction to be delivered or performed in the United States, its possessions, or Puerto Rico:

(i) solicitations shall not require that only corporate sureties may be furnished or that a particular corporate surety be furnished, except as may be otherwise specifically provided (*e.g.*, position schedule bonds may be obtained only from corporate sureties); and

(ii) any corporate surety offered for a bond furnished the Government, or furnished pursuant to a Government contractual requirement, where the contracting officer has authority to approve the sufficiency of the surety, must appear on the Treasury Department List (TD Circular 570) and the amount of the bond must not be in excess of the underwriting limits stated in that list.

In connection with contracts to be performed in Panama, corporate Panamanian surety companies which are acceptable on bonds required by the Panama Canal Commission may be accepted in addition to the corporate sureties appearing on the Treasury List. The acceptability of Panamanian sureties shall be subject to the conditions and restrictions (including any requirement for security deposits) similar to those imposed by the Panama Canal Commission and to a determination by the contracting officer that the amount of the bond is commensurate with the underwriting capacity of the surety. For contracts to be performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if it is determined by the contracting officer that it is impracticable for the contractor to use Treasury-listed sureties.

(b) *Corporate Cosureties.* More than one corporate surety may be accepted as cosurety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for supplies, services, or construction. In no case, however, shall the liability of any such cosurety exceed the maximum penal sum which it is qualified to underwrite on any one obligation. It is not necessary that each corporate surety obligate itself for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves jointly and separately for the purpose of allowing a joint action or actions against any or all of them. Where the bond is to be executed by two or more corporate sureties, Standard Form 25 shall be used in the case of a performance bond and Standard Form 25-A in the case of a payment bond. On bonds covering supply or service contracts where the amount of the bond exceeds the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required reinsurance underwriting capacity. Reinsurance may also protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 270a - 270d) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds when the amount of the bond exceeds the underwriting limitation of the corporate surety.

Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company.

(c) *Termination of Authority To Qualify as Surety.* The Treasury Department issues supplements to the Treasury Department Circular 570, notifying all Federal agencies of the termination of the authority of a specified corporate surety company to qualify as a surety on Federal bonds. Contracting activities will be notified of these supplements in accordance with the procedures of their Departments. Upon receipt of notification of termination of a company's authority to qualify as surety on Federal bonds, each contracting officer concerned shall secure new bonds with acceptable sureties in lieu of any outstanding bonds with the named company.

10-201.2 *Individual Sureties.*

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. An individual surety shall be a citizen of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or any other territory or possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.

(b) *Number.* If individual sureties are used, there shall be at least two responsible individuals on each bond.

(c) *Extent of Liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(d) *Justification.* The contracting officer, in evaluating bonds and consents of surety underwritten by individual sureties, must first ascertain that all documents, including the Affidavits of Individual Surety required by Instruction No. 4b on the reverse of Standard Form 24, "Bid Bond," and Instruction No. 3b on the reverse of Standard Form 25, "Performance Bond," and Standard Form 25-A, "Payment Bond," have been completely filled out and are properly executed. The contracting officer must next ascertain that each individual surety, underwriting a bond or consent of surety which increases the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 4 on the reverse of Standard Form 28, "Affidavit of Individual Surety." Since individual sureties are jointly and severally liable in the event of default by the principal, each individual surety must list on Standard Form 28 a net worth at least equal to the total penal amount of the bond or consent of surety. Example: If performance and payment bonds on a construction contract have penal amounts of $40,000 and $20,000, respectively, each individual surety must show a net worth of at least $60,000 to have the contracting officer accept his underwriting of such bonds. Normally net worth will be the amount indicated by the individual surety on line g, block 7, of Standard Form 28. However, the contracting officer is expected to consider all relevant information furnished by the individual surety on Standard Form 28 and make an independent determination of the individual surety's net worth based on the contracting officer's own best judgment. Example: Normally the "fair value" of real estate is a more realistic figure than the "assessed value" for taxation purposes. However, there may be situations where the reverse is true, for the purpose of determining net worth, in which case the contracting officer may determine net worth is a figure other than that entered on line g, block 7 of Standard Form 28. The contracting officer also should scrutinize closely the information entered in block 10

(i) the worker is paid or is in an approved work training program on a voluntary basis;

(ii) representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(iv) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

(d) With regard to the certification by the Attorney General to employ Non-Federal prisoners as cited in subparagraph 12-203(c)(3) above, Executive Order 11755 also provides that after notice and opportunity for hearing, the Attorney General shall revoke any such certification if he finds that the work-release program of the jurisdiction involved is not being conducted in conformity with the requirements of the order or with its intent or purpose.

12-204 Contract Clause. In accordance with this Part 2 of Section XII, insert the clause in 7-104.17.

Part 3—Contract Work Hours and Safety Standards Act

12-300 Scope of Part. This Part deals with the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applicable to contracts other than construction contracts as defined and covered in Section XVIII, Part 7.

12-301 Statutory Requirement. In accordance with the requirement of the Contract Work Hours and Safety Standards Act (40 U.S.C. Code 327-333), certain contracts entered into by any Department shall contain a clause to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any workweek unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any workweek at not less than one and one half times the basic rate of pay.

12-302 Applicability. The requirement set forth in 12-301 applies, except as stated below, to all contracts (including, for this purpose, basic ordering agreements and blanket purchase agreements (see 3-410.2 and 3-605)) which may require or involve the employment of laborers or mechanics, including guards and watchmen, either by a contractor or by any subcontractor. The requirement does not apply to the following kinds of contracts:

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

(ii) contracts (or portions thereof) for supplies in connection with which any required services are merely incidental to the sale and do not require substantial employment of laborers or mechanics;

(iii) contracts (or portions thereof) for materials or articles (other than armor or armor plate) usually bought in the open market (although the requirement does apply, and the contract must so provide, with respect to any contract involving the performance of any class work which is ordinarily, and not merely occasionally or to a limited extent, performed by the Government);

(iv) contracts (or portions thereof) subject to the provisions of the Walsh-Healey Public Contracts Act (see Part 6 of this Section); and

(v) contracts of $2,500 or less in aggregate amount. In arriving at the aggregate amount involved, there must be included all property and services which would normally be grouped together in a single transaction. In the case of a basic ordering agreement or blanket purchase agreement, such amount shall be the aggregate amount of all orders estimated to be placed thereunder for one year after the

construction contract as determined by regulations of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(e) "*Construction work*" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

(f) "*Contract*" means any Government contract or any Federally assisted construction contract.

(g) "*Contracting Agency*" means any Department, Agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly-owned Government corporation which enters into contracts.

(h) "*Contractor*" means, unless otherwise indicated, a prime contractor or subcontractor.

(i) "*Director, OFCCP*" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

(j) "*Equal Opportunity Clause*" means the contract provisions as set forth in 7-103.18(a) or (b), as appropriate.

(k) "*Federally assisted construction contract*" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(l) "*Government contract*" means any agreement or modification thereof between any contracting officer of the Department of Defense and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "*services*," as used in this paragraph includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository. The term "*Government contract*" does not include (i) agreements in which the parties stand in the relationship of employer and employee, and (ii) Federally assisted construction contracts, and (iii) contracts for the sale of personal property by the Government, and for the sale or purchase of real property by the Government.

(m) "*Order*" means Parts II, III, and IV of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), and any Executive Order amending such Order, and any other Executive Order superseding such Order.

(n) "*Prime contractor*" means any person holding a contract and any person who has held a contract subject to the Order.

(o) "*Recruiting and training agency*" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(p) "*Site of construction*" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor or other participating party meets a demand or performs a function relating to the contract or subcontract.

(q) "*Subcontract*" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (i) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (ii) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(r) "*Subcontractor*" means any person holding a subcontract and any person who has held a subcontract subject to the Order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(s) "*United States*" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

12-804 Program Responsibilities.

(a) The Secretary of Labor is responsible for the administration of Parts II and III of Executive Order No. 11246, as amended, and for the adoption of such rules and regulations and the issuance of such orders as the Secretary deems necessary and appropriate to achieve the purposes thereof. The Secretary of Labor has established within the Department of Labor an Office of Federal Contract Compliance Programs (OFCCP) under a Director who has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Order, except the power to issue rules and regulations of a general nature.

(b) Heads of Departments or Agencies which award or administer contracts are responsible for assuring that the provisions of this Regulation are carried out within their respective components and for cooperating with and assisting the OFCCP in fulfilling its responsibilities. As used in this Part, "*Head of Department or Agency*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department, the Director of the National Security Agency, the Director and Deputy Director of the Defense Logistics Agency, the Director of the Defense Communications Agency, the Director of the Defense Civil Preparedness Agency, or the Director of the Defense Mapping Agency.

Part 13—Employment of the Handicapped

12-1300 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, Public Laws 93-112 and 93-516, (hereinafter referred to as the "Act"), Executive Order 11758 of 15 January 1974, and the regulations of the Secretary of Labor (41 CFR Part 60-741 effective 17 May 1976, formerly 20 CFR Part 741)

12-1301 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $2,500 or more. Under the Act, Government contractors and subcontractors are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination as to their physical or mental handicap.

12-1302 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $2,500 or more or expected to exceed $2,500, shall include the clause in 7-103.28. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.28 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "*United States*" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.28 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.28 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will

substantially contribute to convenience in administration of section 503 of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the ASD (MRA&L) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-741.3(c)), an exemption granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawals shall not apply unless the withdrawal is made more than ten calendar days before the date set for the opening of the bid.

12-1303 Reserved.

12-1304 Department of Labor Notices. In accordance with the clause in 7-103.28, the ACO shall furnish to the contractor official, Department of Labor notices which state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. Such notices may be obtained from the appropriate addressee listed in 12-607.

12-1305 Collective Bargaining Agreements. Whenever performance in accordance with the clause in 7-103.28 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1306 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the ASD (MRA&L).

12-1307 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.28, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

Part 14—Affirmative Action for Disabled and Vietnam Veterans

12-1400 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, Public Law 92-540 and 93-508 (38 U.S.C. 2012), hereinafter referred to as the "Act"; Executive Order 11701 of January 24, 1973 (38 FR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250, effective June 18, 1976, formerly 41 CFR Part 50-250).

12-1401 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $10,000 or more. Under the Act, Government contractors and subcontractors are required to list all suitable employment openings and to take affirmative action to employ disabled veterans and veterans of the Vietnam era without discrimination based on their disability.

12-1402 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $10,000 or more or expected to exceed $10,000, shall include the clause in 7-103.27. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.27 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "United States" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.27 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.27 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will substantially contribute to convenience in administration of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the OUSD(RE)(CPA) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-250.3(c)) a waiver granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal is made more than ten calendar days before the date set for the opening of the bids.

12-1403 Reserved.

12-1404 Department of Labor Notices. In accordance with the clause in 7-103.27, the ACO shall furnish to the contractor appropriate notices for posting when these notices are prescribed by the Director, Office of Federal Contract Compliance Programs.

12-1405 Complaint Procedures. Whenever performance in accordance with the clause in 7-103.27 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1406 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L) (PA). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the OUSD(RE)(CPA).

12-1407 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.27, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

327-333), certain contracts entered into by any Department must contain a clause (see 7-602.23(a)(ii)) to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any work week unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any work week whichever is the greater number of overtime hours at not less than one and one-half times his basic rate of pay.

18-702.2 *Department of Labor Regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (5 U.S.C. 133z-15), the Secretary of Labor has issued regulations (Subtitle A, title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts. Each Department shall comply with the regulations, rulings, interpretations, and decisions the Department of Labor issued pursuant to the above provisions. If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor. In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, to the Chief of Naval Material, ATTN: Labor Relations Advisor; for the Air Force, to the Director of Contracting and Acquisition Policy, HQ USAF, ATTN: RDC, Labor Relations; for the Defense Logistics Agency, to Headquarters, Defense Logistics Agency, DLA-AP; and for the National Security Agency, to the Director of Procurement. Any such questions which are not resolved by the foregoing procedure shall be referred to DUSDRE(AP) for further action.

18-703 Contract Clauses.

18-703.1 *Clauses for General Use.* Every construction contract in excess of $2,000 for work within the United States shall include the clauses listed below. (These clauses are set forth in 7-602.23(a).)

Davis-Bacon Act (40 U.S.C. 276a to a-7)
Contract Work Hours and Safety Standards Act—Overtime Compensation.
Apprentices and Trainees.
Payrolls and Basic Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.
Disputes Concerning Labor Standards.

18-703.2 *Overseas Contracts.* Every construction contract (a) in excess of $2,000 for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, or Johnston Island shall include (i) the clause entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, in 7-602.23(a)(ii); (ii) the Subcontracts clause in 7-602.23(a)(vii), except that the first sentence thereof shall be modified to refer only to the clause entitled Contract Work Hours and Safety Standards Act — Overtime Compensation, Subcontracts, and Contract Termination — Debarment, and (iii) the clause entitled Contract Termination — Debarment in 7-602.23(a)(viii) except that the clause shall be modified to refer only to the

clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation and Subcontracts; (b) in excess of $10,000 requiring payment of minimum wages determined in accordance with the Davis-Bacon Act for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll or Johnston Island shall also include the clause entitled "Apprentices and Trainees" in 7-602.23(a)(iii).

18-703.3 *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses in 7-602.23(a) shall be inserted therein but shall be prefaced by the provision in 7-602.23(b).

18-704 Administration and Enforcement.

18-704.1 *Policy.*

(a) *General.* To comply with the Department of Defense policy of assuring full and impartial enforcement of the labor standards laws in the administration of construction contracts, each Department shall maintain a continuing effective enforcement program which shall include:

(i) training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities;

(ii) assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards provisions of their contracts;

(iii) adequate payroll and on-the-site inspections and employee interviews to determine compliance, and prompt initiation of corrective action when required;

(iv) prompt investigation and disposition of complaints;

(v) prompt submission of all reports required by this Part; and

(vi) periodic review of field enforcement activities to assure compliance with applicable regulations and instructions.

(b) *Responsibility.* The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his and any subcontractor's responsibilities thereunder. In order to assure that the contractors and subcontractors fully understand the labor standards provisions in their contracts and the attendant administrative requirements, the following procedures shall be followed.

(1) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to (i) employment of foremen, laborers, mechanics and others, (ii) wages and fringe benefits payments, payrolls and statements, (iii) differentiation between subcontractors and suppliers, (iv) additional classifications, (v) benefits to be realized by contractors and subcontractors in keeping complete work records, (vi) penalties and sanctions for violations of labor standards provisions, and (vii) the provisions of 18-701(a) which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act; Contract Work

Part 5—Contract Administration Services for non-DoD Organizations

20-501 General. Contract administration services similar in nature to those being performed for Department of Defense organizations may be performed also for other organizations pursuant to the procedures in this part. These services include quality assurance, engineering support, production progressing, pre-award surveys, price/cost analysis, termination, property administration, plant clearance, industrial security, small business industrial labor relations, transportation, contractor payment, and equal employment opportunity contract compliance review. A more detailed listing of tasks involving most of the above services is contained in 1-406.

20-502 Procedures for Performance. Department of Defense procedures will be utilized in performing contract administration services for other than Department of Defense organizations except when otherwise agreed between such organizations and the Department of Defense. To keep the number of such agreements to a minimum, nondefense organizations should be encouraged to accept Department of Defense contract administration procedures.

20-503 United States Government Departments, Agencies and Corporations. Department of Defense contract administration services components shall, upon direct request, provide contract administration services to:

(i) the National Aeronautics and Space Administration in accordance with the DoD-NASA Agreement (DoDI 5030.42); and

(ii) other United States Government Departments and Agencies, including such Government corporations as the Civil Air Patrol, National Shipping Authority, Tennessee Valley Authority, St. Lawrence Seaway Company and the Panama Canal Commission.

20-504 Department of National Defence Production (Canada). In accordance with Section VI, Part 5, Department of Defense components shall upon direct request, provide contract administration services to the Department of National Defence Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 20-505.

20-505 Foreign Governments and International Agencies.

20-505.1 *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

20-505.2 *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Control Administration Services Region (DCASR), New York, N.Y., which is the designated CCP. The CCP will:

(i) determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) determine that the services requested are consistent with Department of Defense mutual security program policies (Questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) assure that the reimbursement arrangements are consistent with 20-506;

(iv) determine that the requested services can be provided, and acknowledge receipt of the request;

(v) distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

20-505.3 *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

20-506 Reimbursement. Reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller). Although services will be performed for the Department of National Defence Production (Canada) on a non-reimbursable basis, normal charges shall be required for work performed for all other agencies of the Canadian Government. Services performed for contracts awarded by the Small Business Administration in accordance with 1-705.5 will be on a non-reimbursable basis. Requests for other exceptions to the above reimbursement policy shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

F-200.1501-1 *DD Form 1501-1: Abstract of Bids – Construction*



DEPARTMENT OF DEFENSE FORMS

F-200.1507 *DD Form 1507: Department of Defense Work Stoppage Report*

DEPARTMENT OF DEFENSE
WORK STOPPAGE REPORT

DATE

TO: | FROM:

☐ INITIAL REPORT
☐ FOLLOW-UP REPORT
☐ FINAL REPORT

DATE OF PREVIOUS REPORT

(List additional addressees on reverse)

To serve as a source document for reporting work stoppages as required by ASPR 12-101.3. Detailed instructions as to dispositions of this form are set forth in ASPR 12-101.3 (b), (c) and (d).

1A. NAME OF CONTRACTOR AND/OR SUBCONTRACTOR INVOLVED, ADDRESS AND TELEPHONE NUMBER

GIVE LOCATION OF DISPUTE IF DIFFERENT FROM ABOVE

1B. NAME OF COMPANY INDUSTRIAL RELATIONS REPRESENTATIVE

2A. ITEM PRODUCED ON PROJECT UNDER CONSTRUCTION

3. PERCENTAGE OF COMPLETION | 4. END ITEM INVOLVED | 5. PROGRAM INVOLVED

6. ☐ A. POTENTIAL STRIKE ☐ B. ACTUAL STRIKE | 7. DATE AND TIME OF WORK STOPPAGE

8. IF STRIKE IS POTENTIAL, HAS STRIKE VOTE BEEN TAKEN? ☐ YES ☐ NO

9A. NAME AND LOCAL NUMBER OF UNION | B. NAME AND TITLE OF KEY UNION REPRESENTATIVE CONTACTED

C. ADDRESS AND TELEPHONE NUMBER

10. A. AFFILIATION ☐ AFL-CIO ☐ OTHER (Specify)

11A. NATURE OF DISPUTE AND ISSUES INVOLVED | C. WHERE APPROPRIATE, EXPIRATION DATE OF COLLECTIVE BARGAINING AGREEMENT

12. TYPE OF STOPPAGE ☐ AUTHORIZED STRIKE ☐ UNAUTHORIZED STRIKE ☐ LOCKOUT

13A. ESTIMATED NO. OF EMPLOYEES ON STRIKE | B. CLASSIFICATIONS (Or Unit) INVOLVED | C. ESTIMATED NO. OF EMPLOYEES AT LOCATION

14. ESTIMATED NO. OF EMPLOYEES AFFECTED | B. CLASSIFICATIONS (Or Unit) INVOLVED, WHERE APPROPRIATE

15A. HAVE PICKET LINES BEEN ESTABLISHED? ☐ YES ☐ NO | B. EFFECT ON INCOMING AND EXPORT OF MATERIAL | PERSONNEL

16. STATUS OF NEGOTIATIONS | 17. PARTICIPATION BY FEDERAL MEDIATION ☐ YES ☐ NO STATE MEDIATION ☐ YES ☐ NO

18. PERCENT OF DURATION OF STOPPAGE | 19. ACTION TAKEN BY CONTRACTOR TO MINIMIZE EFFECT OF DISPUTE ON GOVERNMENT CONTRACTS

20A. CONTRACT NUMBERS | B. FIXED PRICE | C. COST TYPE

21A. DESCRIPTION OF ITEMS READY OR NEARLY READY FOR SHIPMENT | B. POSSIBILITY OF SHIPMENT WITHOUT INCIDENT ☐ YES ☐ NO

22. FINAL REPORT ONLY

A. STRIKE SETTLEMENT DATE | B. IMPORTANT TERMS OF AGREEMENT | C. MANDAYS LOST (Applicable only to Army Corps of Engineers' construction and personnel involving disputes and Time Bars)

B. DATE OF RESUMPTION OF WORK

TYPED NAME AND SIGNATURE OF REPORTING OFFICIAL

DD FORM 1507

F-200.1507

ARMED SERVICES PROCUREMENT REGULATION

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance*

UNITED STATES DEPARTMENT OF DEFENSE
OFFER AND ACCEPTANCE

(1) PURCHASER (Name and Address (Zip Code))

(2) PURCHASER'S REFERENCE | (3) CASE IDENTIFIER

OFFER

Pursuant to the Arms Export Control Act, the Government of the United States (US) hereby offers to sell to the above purchaser the defense articles and defense services listed below (hereinafter referred to collectively as "items" and individually as "defense articles" or "defense services"), subject to the terms contained herein and contained on both of Annex A, and to such other special terms and conditions which may be a part of, and appended to, this Offer and Acceptance.

(4A) Signature (Of Duly Authorized Representative)

(4B) Typed Name and Title

(4C) ADDRESS

(5) DATE

(6) THIS OFFER EXPIRES

(6A) Countersignature Letter of the Commander, DSAA (If any)

(6B) Typed Name and Title

(7) DSAA ACCOUNTING ACTIVITY

NOTE: This offer must be countersigned not later than the date shown at Block 6. Within five (5) days of the countersignature, unless noted, the Director of the Comptroller, DSAA, Washington, this Offer is cancelled and revocation of offer is effected. In offers providing transportation, shipment date must be developed a letter of offer acceptance. Because accepted quotations if less offer is returned.

ITEM NO.	ITEM DESCRIPTION (Including Item Number, Commodity, Etc.)	QUANTITY	UNIT OF ISSUE	ESTIMATED UNIT PRICE	ESTIMATED TOTAL PRICE	ESTIMATED PACKING, CRATING AND HANDLING	ESTIMATED TRANSPORTATION

(21) ESTIMATED COST $

(22) ESTIMATED PACKING, CRATING, AND HANDLING COST $

(23) ESTIMATED GENERAL ADMINISTRATIVE COSTS $

(24) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT $

(25) OTHER ESTIMATED COSTS (Specify) $

(26) ESTIMATED TOTAL COSTS $

(27) TERMS | (28) AMOUNT OF INITIAL DEPOSIT $

ACCEPTANCE

(29) I am duly authorized representative of the Government of _____ and with respect of _____ and Government, accept this offer under the terms and conditions contained herein (30) this _____ day of _____ 19__.

(31) SIGNATURE

(32) TYPED NAME AND TITLE

(33) MARK FOR CODE

(34) FREIGHT FORWARDER CODE

(35) PROCURING AGENCY

(36) DESIGNATED PAYING OFFICE

(37) ADDRESS OF DESIGNATED PAYING OFFICE

DD FORM 1513 PREVIOUS EDITIONS MAY BE USED UNTIL EXHAUSTED PAGE 1 OF PAGES

F-200.1513

ARMED SERVICES PROCUREMENT REGULATION

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance (Annex A)*

GENERAL CONDITIONS Annex A

A. THE GOVERNMENT OF THE UNITED STATES

1. Agrees to furnish such items from its Department of Defense (hereinafter referred to as "DOD") stocks and resources, or to procure them under terms and conditions consistent with DOD regulations and procedures. When procuring for the Purchaser, the DOD shall, in general (unless the same contract clauses, the same contract administration and the same inspection procedures as would be used in procuring for itself, except as otherwise requested by the Purchaser and so agreed to by the DOD. Unless the purchaser has requested that a sole source contractor be designated, and the Letter of Offer and Acceptance reflects acceptance of such designation by the DOD, the Purchaser understands that selection of the contractor source is for the sole responsibility of the Government of the United States (hereinafter referred to as "USG"). Further, the Purchaser agrees that the United States DoD is also responsible for negotiating the terms and conditions of all contracts necessary to fulfill the requirements of the Letter of Offer.

2. Advises that when the DOD procures for itself its contracts include warranty clauses only on an exceptional basis. However the USG shall, with respect to items being procured and upon request, pursue actively and to the extent possible to obtain any particular or special warranties provided and customarily found in the trade. The USG further agrees to exercise, upon the Purchaser's request, any rights (including those arising under any warranties) the USG may have under any contract connected with the procurement of any items. Any additional cost resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, or any other rights that the USG may have under any contract connected with the procurement of items, shall be charged to the Purchaser.

3.a. Shall, unless the condition is otherwise specified herein (e.g., "As Is"), repair or replace at no extra cost defense articles supplied from DOD stocks which are damaged or found to be defective in respect of material or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective or foreign to such a degree that the items cannot be used at all for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser, upon mutual agreement pursuant to paragraph B.6. below, shall agree on the liability of the USG hereunder and the corrective steps to be taken.

b. With respect to items being procured for sale to the Purchaser, the USG agrees to exercise warranties on behalf of the Purchaser pursuant to A.2. above to obtain, to the extent provided by the contractor, repair, replacement or correction of such items found to be defective.

In addition, the USG warrants the title of all items sold to the Purchaser hereunder. The USG, however makes no warranties other than those specifically set forth herein, in particular the USG disclaims any liability resulting from patent infringement occasioned by the use or manufacture by or for Purchaser outside the United States of items supplied hereunder.

4. Agrees to deliver and pass title to the items to the Purchaser at the initial point of shipment unless otherwise specified in this Offer and Acceptance. With respect to delivery, articles procured for sale to the Purchaser from DOD stocks shall normally be delivered to the Purchaser with respect to defense articles furnished from stocks, this will normally be at the U.S. depot. Articles will be packed, crated or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified otherwise than the initial point of shipment, the supporting Military Department or Defense Agency will arrange movement of the items to the authorized delivery point as reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage to the items after passage of title irrespective of whether transportation is for common carrier or for the U.S. Defense Transportation System.

5. Advises that, a. Unless otherwise specified, USG standard items will be furnished without regard to make or model.

b. The price of items to be procured shall be at their total cost to the USG. Unless otherwise specified, the cost estimates of items to be procured, availability determinations, payment schedule, and delivery projections quoted are estimates based on current available data. The USG will use its best efforts to advise the Purchaser as to authorized nonacceptance by DD Form 1513.

(1) of any significant cost increase that might result in an overage in the "Estimated Total Costs" in excess of 10 percent.

(2) of any changes in the payment schedule(s); and

(3) of any delays which might significantly affect the estimated delivery dates.

but its failure to so advise of the above shall not affect the Purchaser's obligations under paragraphs B.1. and B.2. below.

c. The USG will, however, use its best efforts to deliver items or render services for the amounts and at the times quoted.

d. Under unusual and compelling circumstances when the national interest of the United States so requires, the USG reserves the right to cancel or suspend all or part of this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). The USG shall be responsible for all nonrecurring costs of its suppliers resulting from cancellations or suspensions under this paragraph.

7. Shall refund to the Purchaser any payments received hereunder which prove to be in excess of the final total cost of delivery and performance of this Offer and Acceptance, and any such overpayment can either be credited to current account of the Purchaser.

8. Advises that personnel performing defense services provided under this Offer and Acceptance will not perform any duties of a combatant nature, including any duties relating to training and advising, or otherwise providing assistance regarding combat activities, outside the United States in connection with the performance of these defense services.

9. Advises that in the assignment of contractor-staff of United States personnel for the performance of the sales and maintenance the USG will not take into account race, religion, national origin or sex.

10. Agrees that notwithstanding Purchaser's agreement to any interest or any part thereof to which Purchaser may be or accrue or payments (as provided for in paragraph B.5.a. below), USG funds will not be used for participation by DOD or its contractors in the award of any such interest or payments, including, without limitation, by the Purchaser to make timely payments or the proceeds due may result in delays in contract performance by DOD contractors, claims for modification for increased costs resulting, the above mentioned interest payments, claims for termination for convenience for breach of contract or termination of contracts by the USG, under this or other open Offers and Acceptances of the Purchaser at Purchaser's expense.

B. THE PURCHASER:

1. Shall pay to the USG the total cost to the USG of the items, even if the final total cost exceeds the amounts estimated in this Offer and Acceptance.

2. Shall make payment(s) for the items in, dollars, or in a currency acceptable to United States dollars to the Treasurer of the United States.

2.a. Shall, if "Terms" specify "cash with acceptance", forward with this Offer and Acceptance a check or wire transfer in the full amount shown as the estimated total cost, and agrees to make such additional payment(s) as may be specified upon notification of cost increases and requested by USG to cover such increases.

3. Agrees, if "Terms" specifies payment to be "cash prior to delivery," to pay to the USG each amounts at such times as may be specified from time to time by the USG (including any initial deposit set forth under "Terms") in order to assure payments required by contractors under which items will be procured, and any damages and claims that may accrue, or have accrued, upon termination of contracts by the USG because of Purchaser's cancellation of this Offer and Acceptance, under paragraph B.7. hereof. The USG shall notify the Purchaser of the amounts required for advances and progress payments to contractors, estimated termination liabilities, delivery schedules or evidences of satisfactory delivery, as the case may be. It is USG policy to refund such funds 40 days in advance of the time USG makes payments on behalf of the Purchaser.

4. Agrees, if "Terms" specify "pre-delivery delivery" that title may be shared as of the date(s) of delivery of the defense articles or services as of the delivery services, or upon receipt of the item(s) thereof.

5. Agrees, if "Terms" specify payment under a Credit Agreement between the Purchaser and DOD, to pay to the USG on a "Mutually-agreeable" basis, in accordance with B.1.a. above, such sums as may be or exceed, of the amounts funded in the Credit Agreement.

6. Agrees, that accounts for funds or billings under paragraphs B.1.a. through e. above are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill (or the payment date so specified even if such payment date is not in accord with the customary payment schedule in the Offer and Acceptance, Purchaser agrees that delaying Purchaser's payment to make such payments when due disadvantages purchasing efforts and projects an excess, estimated administrative liability in evidence of compensation delivery or shipment or request for funds or bill will be made available to the Purchaser by DOD upon request. When appropriate, Purchaser will request advance payment of any estimated billed items for subsequent submission of an equivalent documentary support in accordance with paragraph B.6. below.

7. Agrees to pay interest on any sum payable by which is or is arrears on payments, determined by considering collectively all of the Purchaser's open Offer and Acceptances with the DOD. Interest shall be calculated on a cash basis. The prescribed percent of the percentage shall be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after expressly taking into account due dates. The rate of interest paid shall be a rate not less than a rate established by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the new accruals and shall be computed from the date of net accruals.

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance (Annex A)*—Continued

Annex A

5. Shall designate the Procuring Agency and responsible Paying Office and address thereof to which the USG shall submit requests for funds and bills under this Offer and Acceptance.

6. Shall furnish shipping instructions for the items with the acceptance of this Offer and Acceptance. Such instructions shall include (a) Offer/Release Code, (b) Freight Forwarder Code, and (c) the Mark for Code, as applicable.

7. Shall be responsible for obtaining the appropriate insurance coverage and customs clearances and, except for items acquired by the USG, appropriate export licenses.

8. Shall accept title to the defense articles at the initial point of shipment (see A.4. above). Purchaser shall be responsible for subsequent accounting and settlement of claims against common carriers. Title to defense articles transported by parcel post shall pass to the Purchaser on date of parcel post shipment. Standard Form 364 shall be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification or improper documentation and shall be submitted by Purchaser promptly. Claims of $100,000 or less will not be accepted for overages, shortages, or damages. Claims received after one year from date of passage of title or billing, whichever is later, will be disallowed by the USG, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim.

9. May cancel this Offer and Acceptance with respect to any or all of the items listed in this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). It shall be responsible for all costs resulting from cancellation under this paragraph.

a. Shall, except as may otherwise be mutually agreed in writing, use the items and facilities with

b. For the purposes specified in the Mutual Defense Assistance Agreement, if any, between the USG and the Purchaser.

c. For the purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if subparagraph a. of this paragraph is inapplicable; or

d. For internal security, individual self-defense, and/or joint action, if subparagraphs a. and b. of this paragraph are inapplicable.

e. Shall not transfer title to, or possession of the defense articles, components and associated services, except related training or other defense services (including any plans, specifications, or information) furnished under this Offer and Acceptance to any person not an officer, employee or agent of the Purchaser (including transportation agencies), and shall not use or permit them use for purposes other than those authorized by B.6. above, unless the written consent of the USG has first been obtained. To the extent that any items, plans, specifications, or information furnished in connection with this Offer and Acceptance may be classified by the USG for security purposes, the Purchaser shall maintain a similar classification and employ all necessary security to preserve such security equivalent to those employed by the USG, throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed. The Purchaser will assure to all means available to it, respect for proprietary rights in any defense article and any plans, specifications, or information furnished, whether personal or not.

C. INDEMNIFICATION AND ASSUMPTION OF RISKS

1. It is understood by the Purchaser that the USG, in procuring and furnishing the items specified in this Offer and Acceptance does so as a mutually basis for the benefit of the Purchaser. The Purchaser therefore undertakes, subject to 6.2 above, to indemnify and hold the USG, its agents, officers, and employees harmless from any and all claims or losses which might arise in connection with this Offer and Acceptance because of: (a) death to or of people of personnel of Purchaser or third parties; (b) damage to or destruction of (1) property of the DOD furnished to Purchaser or equivalent specifically to implement this Offer and Acceptance, (2) property of Purchaser including the items ordered by Purchaser pursuant to this Offer and Acceptance, before or after passage of title to Purchaser's or (3) property of third parties, or (c) patent infringement.

2. Subject to any express, special contractual warranties obtained for the Purchaser in accordance with A.2. above, the Purchaser agrees to release the contractors and sub-contractors of the USG, their agents, and will assume the risk of, loss or damage to (a) Purchaser's property (including the items procured pursuant to this Offer and Acceptance) before or after passage of title to Purchaser, and (b) property of the DOD furnished or equipment specifically to implement this Offer and Acceptance to the same extent that USG would assume for its property, if it were procuring for itself the item or items procured pursuant to this Offer and Acceptance.

D. ACCEPTANCE

1. To accept this Offer and Acceptance the Purchaser will not later than the expiration date of the Offer and Acceptance, as set forth herein, return three copies personally signed to the appropriate Military Department or Defense Agency procuring activity designated herein, accompanied by such initial deposit or other payment as may be required by the Terms herein. In addition, Purchaser will concurrently return three copies, signed, to the U.S. Military Department or Defense Agency making the offer. When mutually accepted and executed as specified herein, the documents of this Offer and Acceptance shall be binding upon the USG and the Purchaser.

2. It is understood that implementation of this Offer and Acceptance cannot proceed with-out a letter as advance. Failure to comply with Terms and Conditions required for acceptance as, for example, delay in submission of any requested initial deposit or payment of full estimated cost as the case may be, may require changes or release of the Offer and Acceptance.

3. Unless a written request for extension is made by the Purchaser and granted in writing by an authorized representative of the acceptance U.S. Military Department or Defense Agency, this Offer and Acceptance shall automatic on the expiration date set forth herein.

E. ENCLOSURES

Enclosures attached hereto are by this reference incorporated herein and are made a part hereof as though set forth in full.

F. PUBLIC INSPECTION

This Offer and Acceptance will be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

EXPLANATORY NOTES

1. The item or reference numbers appearing in the "ITEM OR REF. NO." column may not correspond with reference used in Purchasers' original request. However, this number, together with the case identifier shown should always be used as a reference in future correspondence.

2. Acceptance lead-time outlined is the estimated number of months required to complete delivery of the item(s) in accordance with the terms of delivery after receipt of acceptance by Purchaser of the Offer and Acceptance, and the conclusion of interchange financial arrangements. Phased deliveries are shown for planning and guidance but such schedules have been specified. Where no lead-delivery deadline is now shown are noted in column headed "Item Description" as items to be supplied on the spare-time and such year or segments.

3. The planned source of supply for each item is expressed in the following codes:

D	(*) Defense Stocks
P	(*) Procurement
M	(*) Both Defense Stocks and procurement
S	(*) Spare and procurement, e.g., either/either type
I	(*) "Others" - export items or long supply in stocks

*Availability as stated in months.

4. Conditions of the defense articles stated as the "AS-SIZE CONDITION" shown is expressed as the following codes:

AU	Items to be provided in existing condition without repair, renovation or rehabilitation which has to repaired. Condition indicated in item description.
N	Articles of unused condition (new, un-used, and refurbished) but no commercial value issued. Example: actual parts, assembly item, not assemblies, kits, used sets and other sets.
S	Serviceable defense articles
U	Obsolete or unserviceable item or in "AS IS" condition for which repair parts without cost are to available from USG
S	Serviceable "Surplus" refurbishable items for disposal for acceptable defense articles unless otherwise advised by the Purchaser
T	Renovated or refurbished defense articles (commonly termed operation similar or identical, including all Modification Work Orders and Engineering Change Orders, in order to such defense articles which comply the defense articles should not be considered as having had total replacement or a new state and/or assembly, kits, sets and components not meeting US normal standards of serviceability.

5. Training notes:

AT	Annual Training Pro, etc
SP	Special Training designed to support purchase of U.S. equipment.
TO	This Offer does not constitute a commitment to provide U.S. training.
W	U.S. Training concurrently items, proposed in accordance Offer and Acceptance.
***	"No-U.S. training is required in support of the purchase."

6. Item meaning of defense, grant, see Defense Assistance Program, Address Telegram Telegraph.

7. The use of Offer Release Codes "X" and "J" will incur a charge for of .125% per month for shipments delay in excess of 10 days.

F-200.1524 *DD Form 1524: Pre-Award Survey of Offeror — General*

PRE-AWARD SURVEY OF OFFEROR GENERAL	1. SERIAL NO. (For CAO Use Only)	FORM APPROVED OMB NO. 22-R0353
SECTION I - REQUEST (By Purchasing Office)		
2. NAME AND ADDRESS OF SURVEYING ACTIVITY	3A. SOLICITATION NO.	3B. TOTAL OFFERED PRICE
	3C. TYPE OF CONTRACT	
4. NAME AND ADDRESS OF OFFEROR (Offeror represents that he ☐ is ☐ is not a small business concern.)		
5. PLANT AND LOCATION (If different than Item 4)	6. NAME, TITLE AND PHONE (Area code and number) OF PLANT CONTACT FOR SURVEY	
WALSH-HEALEY PUBLIC CONTRACTS ACT (See ASPR Section XII, Part 6) ☐ IS NOT APPLICABLE OR ☐ IS APPLICABLE AND OFFEROR REPRESENTS HIS CLASSIFICATION AS: (Check one) ☐ MANUFACTURER ☐ REGULAR DEALER ☐ OTHER (Specify)	7. REQUESTING ACTIVITY, BUYER'S NAME AND PHONE NUMBER (Include autovon, WATS (FTS), if available)	
8. DATE OF REQUEST	9. DATE REPORT TO BE RETURNED	10. SURVEY SHALL BE ☐ COMPLETE ☐ PARTIAL

SECTION II - DATA (By Purchasing Office)

ITEM NO. A	FEDERAL STOCK NO. AND NOMENCLATURE B	C	TOTAL QUANTITY D	UNIT PRICE E	DELIVERY SCHEDULE F	G	H	I
		SOLICITED						
		OFFERED						
		SOLICITED						
		OFFERED						
		SOLICITED						
		OFFERED						

SECTION III - FACTORS TO BE INVESTIGATED AND INVESTIGATION RESULTS (Complete a row purchasing office asks, completes G and H for contract administration use)

FACTORS	CHK A	SAT B	UNSAT C	FACTORS	CHK A	SAT B	UNSAT C
1. TECHNICAL CAPABILITY				8. TRANSPORTATION			
2. PRODUCTION CAPABILITY				9. PLANT SAFETY			
3. PLANT FACILITIES AND EQUIPMENT				10. SECURITY CLEARANCE			
4. FINANCIAL CAPABILITY				11. LABOR RESOURCE			
5. PURCHASING AND SUBCONTRACTING				12. PERFORMANCE RECORD			
6. ACCOUNTING SYSTEM				13. ABILITY TO MEET REQUIRED SCHEDULE			
7. QUALITY ASSURANCE CAPABILITY				14. OTHER (Explain in Remarks)			

PROVIDE A NARRATIVE EXPLANATION SUBSTANTIATING EACH ENTRY IN SECTION III, COLUMNS B AND C ABOVE.

REMARKS

OFFEROR ☐ HAS ☐ HAS NOT REQUESTED FINANCIAL ASSISTANCE FROM THE GOVERNMENT.

SECTION IV - CONTRACT ADMINISTRATION OFFICE RECOMMENDATION

1. RECOMMEND: ☐ COMPLETE AWARD ☐ PARTIAL AWARD (Quantity _____) ☐ NO AWARD

2. APPROVAL

(Chairman, Pre-Award Survey Board) DATE PHONE NO.

DD FORM 1524 1 APR 73 PREVIOUS EDITION IS OBSOLETE.

F-200.1524

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DLA8SY XX	DCASPRO, GTE Sylvania 189 B Street Needham, MA 02194
DLA8TE XZ	DCASPRO, Texas Instruments PO Box 6016, MS 256 Dallas, TX 75222
DLA8TO U3	DCASPRO, Douglas/Rockwell 2000 North Memorial Drive Tulsa, OK 74115
DLA8VC YC	DCASMA, Van Nuys 6230 Van Nuys Blvd. Van Nuys, CA 91408
DLA8WK YD	DCASMA, Wichita Wichita Mid-Continent Airport Terminal Bldg. Wichita, KS 67209
DLA8WS YE	DCASPRO, Westinghouse Hendy Avenue Sunnyvale, CA 94088
DLA8WT Z8	DCASPRO, Grumman Aerospace Corp. Stuart, FL 33494

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DEFENSE CIVIL PREPAREDNESS AGENCY

DCPA01 Procurement Services Division
Defense Civil Preparedness Agency
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ARMED SERVICES PROCUREMENT REGULATION

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32 CFR Parts 1 through 39

[DAC 76-26]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-26. Some of the changes include: options; use of recovered material; value engineering; equal employment compliance; price reasonableness; field pricing reports on contract price proposals; procurement management reporting system; advance payments; and uniform contract format.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION: .

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-26.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-26, issued December 15, 1980. The following is a summary of the amendments:

Options. DAR 1-1502 is revised to provide coverage concerning contracts for services which include prepriced options or renewal options for outyears. This coverage is designed to guard against "buy-in" pricing; to help insure needed continuity of operation; to allow for the possibility for contractor amortization of costs when the contractor is required to provide equipment or facilities; and to reduce turbulence in the contractor's work force.

Use of Recovered Material. DAR 1-2500.5 is revised to eliminate the requirement for a specified minimum percentage of recovered material to be used in the production of the item offered for sale to the Government.

Value Engineering. As a result of review of the coverage on Value Engineering in an effort to simplify and clarify the coverage, extensive revisions to Section I, Part 17, and related clauses in Section VII are included in this DAC.

Equal Employment Compliance. DAR 7-2003.14(b)(3) is deleted as a result of a decision by the United States Circuit Court of Appeals, Seventh Circuit, which found the provision in that paragraph to be invalid. Related changes to 2-201, 3-501 and 12-805, resulting from the deletion, are included in this DAC.

Price Reasonableness. The material in 3-604.1 with respect to considering the reasonableness of price on small purchase awards under $500 has been rearranged to more accurately state the DAR requirements on this point. Specifically, although no formal determination or documentation of reasonableness is required in such awards, the contracting officer must conclude in some manner that the price is reasonable.

Field Pricing Reports on Contract Price Proposals. The dollar threshold limitation for field pricing support in DAR 3-801.5 is increased from $250,000 to $500,000 for cost-reimbursement, cost-sharing, cost-plus-award-fee, and cost-plus-fixed-fee type contracts. In addition, other types of contract proposals are specifically cited along with their respective dollar thresholds. A revision to the waiver concept is also included in this section. Also, DAR 3-811 is revised to clarify the transmission of the price negotiation memorandum in situations where field pricing support was furnished.

DD Form 254. Changes to DAR Sections VII, XVI and Appendix F have been made to incorporate the January 1, 1978 revision of the DD Form 254.

Deliveries of Excess Quantities of Supplies. Delivery of material by Department of Defense contractors exceeding the contract requirements has resulted in unnecessary administrative costs to the Government in determining the disposition of such material. This is particularly applicable in the case of small dollar value over-shipments. To reduce the administrative costs in such instances, the clause entitled "Delivery of Excess Quantities of $100 or Less" is added to the DAR in 7-104.103. This clause will allow the Government to retain excess quantities of material up to $100 without compensating the contractor.

Accounting for Termination Costs. In response to a recommendation from the Cost Accounting Standards Board, DAR 15-205.42 is revised to require the establishment of separate cost accounts to accommodate and identify significant expenses. Reference to the revised cost principle is added to 8-203 and 8-205.

Cost Accounting Standard 416, Accounting for Insurance Costs. DAR Section X, Parts 3 and 5, and 15-205.16 are revised to incorporate the provisions of Cost Accounting Standard 416.

Common Carrier Freight Rates. DAR Section XIX is revised to incorporate the appropriate references to the Revised Interstate Commerce Act. In addition, changes are made to Section XIX to incorporate shipment requirements related to Foreign Military Sales.

Procurement Management Reporting System. DAR Section XXI, Parts 1 and 2 are extensively revised to incorporate new or revised Department of Defense requirements and the provisions of the Federal Procurement Data System. Among the more notable changes are (i) the requirement for use of the Data Universal Numbering System (DUNS) in DAR 21-112.1; and (ii) a clarification of the reporting of the extent of competition in negotiated acquisitions, in 21-126. Revised coverage also includes a solicitation provision requesting the offeror to supply his DUNS number with his offer. Related changes to Sections II and III with respect to this provision are included in this DAC. Copies of revised Forms 350 and 1057 are included in Appendix F.

Advance Payments. The changes to DAR Appendix E, Part 6, and 7-104.32 affect the interest rate to be charged on advance payments and incorporate language into Appendix E to formalize the "no bank account" advance payment procedures.

Excluded Advance Payments. Due to the rising costs caused by worldwide inflation, the dollar thresholds for exclusions in Appendix E-419 are raised from $2,500 to $10,000 and from $300 to $500, respectively.

Uniform Contract Format. Copies of revised Standard Forms 18 and 26, containing the revised Table of Contents, are included in Appendix F.

Editorial Changes. Editorial changes are included in this DAC to correct typographical and printing errors, and inconsistencies in previously published material.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on December 15, 1980.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–26. The number at the top of each page (for example, 1:25) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1–39, Volumes I, II and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
Volume I	
1-304.3	1:25.
1-339	1:77-A.
1-1502	1:196, 1:197.
1-1700	1:201.
1-1701	1:201, 1:202, 1:203.
1-1702	1:203.
1-1703	1:203, 1:204.
1-1704	1:204.
1-1704.1	1:204.
1-1704.2	1:204.
1-1704.3	1:204.
1-1704.4	1:205.
1-1704.5	1:205.
1-1704.6	1:205.
1-1705	1:205.
1-1706	1:205.
1-1706.1	1:205, 1:206, 1:206-A.
1-1706.2	1:206-B
1-1707	1:206-B.
1-2500.5	1:233.
2-201	2:6, 2:11, 2:17, 2:17-A.
3-501	3:61, 3:65, 3:66, 3:66-B, 3:69, 3:70.
3-604.1	3:79.
3-608.2	3:92, 3:93.
3-801.5	3:112 through 3:114-A.
3-811	3:157.
Volume II	
7-104.2	7:30, 7:31.
7-104.12	7:52.
7-104.34	7:76-A, 7:77, 7:78-A, 7:78-B, 7:80, 7:80-A, 7:81.
7-104.44	7:94 through 7:103, 7:105.
7-104.64	7:116.
7-104.103	7:140-D.
7-108.1	7:157.
7-602.50	7:297 through 7:297-B, 7:298.
7-2003.12	7:500.
7-2003.13	7:500.
7-2003.14	7:502.
7-2003.15	7:502-B.
7-2003.16	7:503.
7-2003.17	7:503.
7-2003.18	7:503.
7-2003.19	7:504.
7-2003.20	7:505.
7-2003.21	7:506.
7-2003.23	7:507, 7:508.
7-2003.24	7:508, 7:509.
7-2003.29	7:510.
7-2003.39	7:513.
7-2003.40	7:513.
7-2003.41	7:513.
7-2003.66	7:522.
7-2003.68	7:524-B.
7-2003.69	7:524-B.
7-2003.80	7:526-C.
7-2003.81	7:526-C.
7-2003.90	7:526-E.
8-203	8:6.
8-205	8:8.
8-309	8:28.
10-301	10:17.
10-301.1	10:17.
10-301.2	10:17.
10-301.3	10:17.
10-302	10:17, 10:17-A.
10-303	10:17-A, 10:17-B, 10:17-C.
10-304	10:17-C.
10-305	10:17-C.
10-306	10:17-C.
10-403	10:19.
10-501.1	10:22, 10:23.
10-502	10:24.
10-503	10:24.
10-504	10:24.
10-505	10:24.
12-805	12:29.
15-205.16	15:26 through 15:27-A.
15-205.42	15:46.
Volume III	
16-811	16:45, 16:46.
19-217	19:14.
19-217.1	19:14.
19-402	19:17, 19:18.
21-000	21:1.
21-100	21:2.
21-101	21:2.
21-102	21:2 through 21:4, 21:5.
21-103	21:5, 21:6.
21-105	21:6.
21-111	21:8.
21-111.1	21:8.
21-112.1	21:8-A, 21:8-B.
21-113	21:8-B.
21-113.3	21:9.
21-114	21:9.
21-115	21:9, 21:10.
21-115.1	21:10.
21-115.2	21:10.
21-115.3	21:10.
21-116	21:10, 21:12.
21-118	21:12.
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21-121	21:14.
21-122	21:14, 21:15.
21-123	21:15 through 21:27.
21-126	21:19 through 21:21.
21-130	21:22.
21-132	21:22-A.
21-133	21:22-A.
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21-201	21:24.
21-202	21:25.
21-204	21:25-A.
21-204.2	21:25-A.
21-206	21:25-B
21-208	21:25-B, 21:25-C.
21-209	21:25-C.
21-210	21:25-C
21-211	21:25-C
E-403	E:30, E:31.
E-404	E:31.
E-407	E:32-A
E-410	E:33, E:34.
E-411	E:35.
E-413	E:36, E:36-A.
E-413.1	E:36-A, E:37.
E-414.1	E:38.
E-416	E:40.
E-419	E:41.
F-100.18	F2, F3.
F-100.26	F26
F-100.149	F57.
F-200.254	F83, F84.
F-200.254c (deleted)	F85, F86 (removed)
F-200.350	F91
F-200.1057	F196.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

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tory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see Section IV, Part 7).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (*i.e.*, reverse engineering) and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Procuring Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Logistics Centers.

1-304.3 *Purchase of Patented Items When Government is a Licensee.* Award of a contract shall not be refused to a bidder/offeror merely because he is not the owner of or a licensee under any patent involved in the procurement. If, at the time a solicitation is issued, the Government is obligated to pay royalties applicable to the proposed procurement because of a pre-existing license agreement between the Government and a patent owner, the solicitation shall so state and shall: (i) identify the patents and specify the royalty rate; and (ii) advise that an amount equal to the royalty which the Government will be required to pay under the license agreement will be added as an evaluation factor to each bid/offer unless the bidder/offeror includes in his bid/offer a statement that he is the owner of or a licensee under the patents. (See 2-201(a)Sec.K(ix) and Sec.M(i); 2-201(b)(xvi) and (xxviii); 3-501(b)Sec.K(xvii) and Sec.M(x); and 3-501(c)(xliv).)

1-305 Time of Delivery or Performance.

1-305.1 *Scope.* This paragraph prescribes policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

1-305.2 *General.*

(a) The time of delivery or performance is an essential element for inclusion in a contract and must be clearly set forth in invitations for bids and requests for proposals. Delivery and performance schedules shall be designed to meet the requirements of the particular procurement, with due regard to all relevant factors, and must be realistic. Delivery and performance schedules which are unreasonably tight or difficult of attainment are inimical to full competition, inconsistent with small business policies (see 1-702(b)(vi)), and may result in higher contract prices. Therefore, prior to issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery requirement which appears unrealistic, and, if necessary, initiate action to make appropriate adjustments, with due attention to relevant factors such as applicable transportation factors (see Section XIX) and those listed below:

(i) urgency of need for the supplies or services;
(ii) production time (quantity, complexity of design, etc.);
(iii) market conditions;
(iv) transportation time;
(v) industry practices;
(vi) capabilities of small business concerns;
(vii) time for obtaining and evaluating bids or offers, and awarding contracts;

(viii) time for contractors to comply with any conditions precedent to contract performance; and
(ix) time for the Government to perform its obligations under the contract (*e.g.*, furnishing Government property to the contractor, approval of preproduction samples, and inspection).

(b) When timely delivery or performance is unusually important to the Government, liquidated damages provisions may be used as provided in 1-310.

(c) Invitations for bids and requests for proposals shall, except where clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

1-305.3 *Terms.*

(a) Delivery schedules may be expressed in terms of—
(i) specific calendar dates (*e.g.*, on or before 68 Jul 01);
(ii) specified periods from date of contract (*i.e.*, date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or
(iii) specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. The clauses in 7-104.92 provide for extending the delivery schedule when notice of award is delayed.

(b) When the delivery schedule is based on the date of the contract (see (a)(ii) above and 7-104.92(b) and (c)), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the day it is dated.

(c) When the delivery schedule is based on date of receipt by the contractor of notice of award (see (a)(iii) above), or when it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see 7-104.92(d)(ii)), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied with a date of receipt acknowledgment card in accordance with Departmental procedures.

(d) When the *required* delivery schedule in the invitation for bids is based on date of the contract (see (a)(ii) above), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see (a)(iii) above)—
(i) shall be evaluated by adding five days normally required for delivery of the award through the ordinary mails; and
(ii) if the delivery date offered by the bid (computed in accordance with (i) above) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but
(iii) if award is made under (i) above, under the terms of the contract the delivery date will be the number of days, after *actual* receipt by the contractor of the notice of award, which were specified in the bid.

1-305.4 *Time of Delivery Clauses.*

Examples of time of delivery clauses for invitations for bids are set forth in 7-104.92.

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perty. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should

be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistem with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Geographic Distribution of Department of Defense Subcontract Dollars. Section 836 of the 1978 DoD Appropriation Act requires DoD to render an annual report to Congress on the geographical distribution of DoD subcontract dollars. To implement this requirement, the clause in 7-104.78 shall be inserted in any contract to be awarded which is expected to exceed $500,000, or when any modification increases the aggregate amount of a contract to $500,000 or more. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification.

1-341 Prohibition Against Inflationary Acquisition Practices.

(a) *Authority.* Executive Order 12092, November 1, 1978 (43 F.R. 51375, November 3, 1978), requires that acquisition of personal property and services by executive agencies and military departments be accomplished at prices and wage rates which are noninflationary.

(b) *Acquisition Policy.* The Government will purchase goods and services, to the extent provided in (d) below, only from companies, as companies are defined by the published standards of the Council on Wage and Price Stability (CWPS), in compliance with wage and price standards reflected in Executive Order 12092 of November 1, 1978, and the Wage and

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projects, or to similar projects under the auspices of the Department of Defense where the recipient nation pays for or furnishes at least fifty percent of the transportation, in which event foreign-flag vessels may be used for not to exceed fifty percent of the gross tonnage for the project. The contracting officer shall comply with 1-1402(ii) relative to any Government-owned construction materials requiring ocean transportation.

1-1410 Reserved.

Part 15—Options

1-1500 Scope of Part. This Part applies to contracts for supplies and services other than for (i) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property and (ii) research and development. It does not preclude the inclusion of appropriate options in such construction and research and development contracts.

1-1501 Definition. As used in this Part, an option is a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

1-1502 Applicability.

(a) Option clauses may be included in contracts if increased requirements within the period of contract performance are foreseeable, or if continuing performance beyond the original period of contract performance may be in the best interest of the Government. Because options require offerors to guarantee prices for definite periods of time with no assurance that the options will be exercised, their improper inclusion could result in prices which are unfair to either the Government or the contractor. Therefore, an option clause normally should not be included if it can reasonably be foreseen that (i) minimum economic production quantities will be required at some future date, and (ii) startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option clauses shall not be included in contracts, and option provisions shall not be included in solicitations, if:

(i) the supplies being purchased are readily available on the open market;

(ii) the contractor would be required to incur undue risks (*e.g.*, the price or availability of necessary materials or labor is not reasonably foreseeable);

(iii) an indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts;

(iv) market prices for the supplies involved are likely to change substantially; or

(v) the option quantities represent known firm requirements for which funds are available unless (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, and (B) realistic competition for the option quantity is impracticable once the initial contract is awarded.

(c) In recognition of (i) the Government's need in certain service contracts for continuity of operation and (ii) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period, but see 1-322.

(d) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award pursuant to 1-1504.

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In unusual circumstances, solicitations may require that option quantities be offered at prices no higher than those for the initial quantities. Such circumstances may exist, for example, when (i) the option cannot be evaluated pursuant to 1-1504(c) or (d) because additional requirements are foreseeable but not known, and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded. However, because such limitations as to option prices tend to cause a "frontloading" of costs on the basic quantity which are transferred from the option quantity to equalize the prices offered, their improper inclusion could result in prices which are unfair to the Government should the options not be exercised. Therefore, the procedures in 1-1503(d) shall be followed.

(e) The total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for five years in the case of supplies. This five year limitation shall not apply to Automatic Data Processing Equipment acquisitions; however, the basic and option periods shall not exceed the approved systems life as defined in the Federal Property Management Regulations.

1-1503 Procedures.

(a) If a contract is to contain an option clause, the solicitation must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (i) necessary lead time in order to assure continuous production and (ii) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option.

(b) If exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (i) percentage of specific contract line items, (ii) a number of additional units of specific contract line items, or (iii) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. If exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. If exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the

solicitation contains an *Evaluation of Options* provision pursuant to 1-1504, it shall also specify the price at which the options will be evaluated (*e.g.*, highest option price offered or option price for specified quantities or dates).

(d) If a solicitation is to require the offering of option quantities at prices no higher than those for the initial quantities pursuant to 1-1502(c), then:

(i) the inclusion of such limitation as to option price shall be justified and documented by the contracting officer in the contract file;

(ii) the solicitation shall also include a conspicuous notice adjacent to such limitation as to option price cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; and

(iii) if the option is for additional quantities of supplies, an option quantity shall not exceed 50% of the initial quantity of the same contract line item or of the line item with the same nomenclature; *provided*, however, that in unusual circumstances a greater percentage of quantity may be approved in writing by the Chief of the Purchasing Office.

(e) When it is anticipated that the Government may exercise an option to fulfill Foreign Military Sales requirements, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the Foreign Military Sales requirements. The contract shall contain an additional paragraph in the option provision substantially as set forth in 7-104.27(d) which provides for the Government's right to exercise the option for Foreign Military Sales purposes (see 6-1309).

1-1504 Evaluation.

(a) Except as otherwise provided in this paragraph, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(b) If it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an *Evaluation of Options* provision substantially as set forth in 7-2003.11(a).

(c) The option quantity may be considered in the evaluation for award of a firm fixed-price contract, a fixed-price contract with economic price adjustment provisions, or such other types of contracts as may be approved by Departmental procedures, if, before issuance of the solicitation, it has been determined by the Chief of the Purchasing Office that:

(i) there is a known requirement which exceeds the basic quantity to be awarded, but either (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (B) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity; *provided* that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(ii) realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possi-

Part 17—Value Engineering

1-1700 Value Engineering (VE).

1-1701 Definitions.

(a) Acquisition savings means savings resulting from the application of value engineering change proposals (VECPs) to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

(i) Instant contract savings which are the net cost reductions on the contract under which the VECP was submitted and accepted and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the contractor's allowable development and implementation costs are subtracted from the total);

(ii) Concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) Future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(b) Collateral costs means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(c) Collateral savings means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(d) Contractor's development and implementation costs means those costs which the contractor incurred specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of a VECP.

(e) Government costs means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(f) Instant contract means the contract under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

(g) Negative instant contract savings means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;

(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and

(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(h) Net acquisition savings means acquisition savings less Government costs.

(i) Sharing period means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(j) Unit means the item or task to which the parties agree the VECP shall apply.

(k) Unit cost reduction means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

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(l) Value engineering change proposal (VECP) means a proposal that:

(i) requires a change to the instant contract to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

(A) in deliverable quantities only;

(B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

(C) to the contract type only.

1-1702 General.

(a) Value engineering is the formal method by which contractors may (i) suggest contract changes which would reduce the overall cost to the Government and share in any resulting savings, or (ii) be required to establish a program to identify and submit to the Government methods of reducing costs to the Government through contract changes. Value engineering is concerned with eliminating nonessential functions or components of end items or tasks which contribute to the cost of their being acquired, operated, or logistically supported.

(b) There are two basic value engineering (VE) approaches: (i) an incentive program in which contractor participation is voluntary, and (ii) a mandatory program in which the Government requires and pays for a specific VE program effort. In the first, contractors are responsible for developing and submitting VECPs using their own resources. The contract provides payment for these costs if a VECP is accepted. Use of the voluntary approach should not in itself increase costs to the Government. Under the second approach, the contractor must perform a VE effort of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract schedule. The objective of this VE program requirement is to ensure that the contractor's VE effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

1-1703 Policy.

(a) The Government shall provide contractors with a substantive financial incentive to develop and submit VECPs.

(b) The Government shall provide contractors with (i) objective and expeditious processing of VECPs submitted and (ii) a fair share of the savings on accepted VECPs.

(c) Subcontractors shall be encouraged to submit VECPs through incorporation of VE clauses in appropriate subcontracts.

(d) Value engineering incentive payments do not constitute profit or fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d). (See 3-405.6(c)(2).)

1-1704 Clauses.

1-1704.1 *Value Engineering Clause.* The contracting officer shall include the Value Engineering Clause in 7-104.44 in every supply or service contract of $100,000 or more. The clause may be included in supply or service contracts of lesser value if the contracting officer sees a potential for significant savings. If the contracting officer chooses to use a VE clause in a contract under $100,000, the appropriate clause referred to in 1-1704.1 through 1-1704.6 shall be used. Unless authorized by the chief of the contracting office, the contracting officer shall not include the clause in the following contracts:

(i) research and development other than full-scale engineering development;

(ii) engineering services from not-for-profit organizations, architect-engineer services, and personal services;

(iii) product or component improvement unless the VE clause application is restricted to areas not covered by provisions for product or component improvement; or

(iv) standard commercial items that do not involve any special requirements and specifications (such as packaging specifications).

1-1704.2 *Value Engineering, Alternate I.* The contracting officer may require a mandatory VE effort by using the clause in 7-104.44, as changed by Alternate I, in any supply or service contract when the contracting officer considers that substantial savings to the Government may result. The VE program requirements may be specified by the Government in the solicitation or, in the case of negotiated contracting, proposed by the contractor as part of the proposal and included as a subject for negotiation.

1-1704.3 *Value Engineering, Alternate II.* If the contracting officer determines that both a VE incentive and mandatory program requirement are appropriate, the contracting officer shall include in the supply or service contract the clause in 7-104.44, as changed by Alternate II. The contracting officer shall restrict the VE program requirement in the contract schedule to well-defined areas of performance. The clause applies a VE program to the specified areas and a VE incentive to the remaining areas of the contract.

1-1704.4 *Value Engineering, Alternate III.* When the head of the contracting activity determines the cost of computing and tracking collateral savings will exceed the benefits to be derived, the contracting officer shall include in the contract the clause in 7-104.44, as changed by Alternate III.

1-1704.5 *Value Engineering, Alternate IV.* The contracting officer may include a mandatory VE program requirement in an architect-engineer contract. However, no VE sharing provisions shall be included. The contracting officer shall use the clause in 7-104.44, as changed by Alternate IV.

1-1704.6 *Value Engineering Incentive--Construction Clause.* The contracting officer shall include the clause in 7-602.50, Value Engineering Incentive--Construction, in all fixed-price and cost-reimbursement construction contracts of $100,000 or more, other than incentive contracts. The clause may be included in fixed-price or cost-reimbursement construction contracts under $100,000 if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts.

1-1705 Processing VECPs.

(a) The contracting officer shall provide the contractor prompt written notification if (i) the VECP evaluation period will exceed 45 days after receipt of the VECP by the Government (the notification shall include the estimated decision date and the reasons for the additional time required), or (ii) the VECP is not accepted (the notification shall explain the reasons for nonacceptance).

(b) The contracting officer shall cite the Value Engineering clause (see 1-1704) when modifying the contract to incorporate a VECP or when making any VE-related change.

(c) The Government's decision to accept or reject a VECP; the Government's decision as to which of the sharing rates apply when the clause in 7-104.44, as changed by Alternate II, is used; and the Government's computation of collateral costs or collateral savings are not subject to the Disputes clause.

1-1706 Sharing Arrangements. The two types of savings shared by the Government and the contractor as a result of accepted VECPs are acquisition savings and collateral savings.

1-1706.1 *Sharing of Acquisition Savings.*

(a) The sharing base for acquisition savings is the number of affected end items on contracts of the contracting office approving the VECP. The Head of the Contracting Activity (HCA) may extend the sharing base from the contracting office throughout the activity if the HCA determines in writing that it would

be more equitable or would significantly increase the contractor's incentive. The sharing base may be further expanded by the Secretary concerned. The sharing rates (Government/contractor) for acquisition savings for supplies and services are based on the type of contract, the Value Engineering clause, and the type of savings as follows:

	Incentive (Voluntary)		Program Requirement (Mandatory)	
TYPE OF CONTRACT	Instant	Concurrent and Future	Instant	Concurrent and Future
Fixed-Price (Other than Incentive)	50/50	50/50	75/25	75/25
Incentive (Fixed-Price or Cost)	*	50/50	*	75/25
Cost-Reimbursement** (Other than Incentive)	75/25	75/25	85/15	85/15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(b) Sharing on construction contracts applies only to savings on the instant contract. The sharing rates (Government/contractor) are as follows:

Fixed-Price*	45/55
Cost-Reimbursement*	75/25

* Other than incentive

(c) The contractor shall share in the savings on all affected units until the originally scheduled delivery date of the last affected unit under the instant contract or for 3 years after acceptance of the first unit incorporating the VECP, whichever is longer. For engineering development and low rate initial production contracts, the future sharing

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period shall encompass scheduled deliveries, equal in number to the quantity required over the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted. Savings are paid through the contract under which the VECP was accepted. Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings. On incentive contracts, the contractor's share of concurrent, future, and collateral savings shall be paid as a separate firm fixed-price contract line item on the instant contract. The contractor shall be responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequately identifying the first delivered unit incorporating the applicable VECP.

(d) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after their award, modify the instant contract to provide the contractor's share of savings. Use of the lump-sum method must be agreed to by the contractor. For future acquisition savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items which will be purchased by the contracting office during the sharing period. In deciding to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider:

(i) the accuracy with which the number of items to be purchased during the sharing period can be estimated and the probability of actual production of the projected quantity;
(ii) the availability of funds for a lump-sum payment; and
(iii) the administrative expense of otherwise amending the instant contract as future contracts are awarded.

(e) The contractor's profit or fee shall be excluded when calculating the net savings on instant and future contracts.

(f) Departments shall establish procedures for funding and payment of the contractor's share of future savings.

1-1706.2 *Sharing of Collateral Savings.* The contractor's share of collateral savings is 20% of the estimated savings to be realized during an average year of use but shall not exceed (i) the contract's firm fixed-price, target price, target cost, or estimated cost at the time the VECP is accepted; or (ii) $100,000, whichever is greater.

1-1707 Relationship to Other Incentives. The Government shall offer the fullest possible range of motivation to contractors while precluding duplication of incentives. Those benefits of an approved VECP not rewardable under performance, design-to-cost, or similar incentives of the contract shall be rewarded under a Value Engineering clause. The targets of such incentives affected by the VECP shall not be adjusted because of the acceptance of the VECP.

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GENERAL PROVISIONS

Part 25 - Recovered Material

1-2500 Recovered Material.

1-2500.1 Scope. This part prescribes policies and procedures regarding the use of recovered materials.

1-2500.2 Policy. The policy of the Government is to obtain items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

1-2500.3 General. Basic policy is provided in the Solid Waste Disposal Act (Public Law 89-272, October 20, 1965; 42 U.S.C. 3251 et. seq.) as amended by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, October 21, 1976; 42 U.S.C. 6901 et. seq.), and the Office of Federal Procurement Policy Letter Number 77-1. The legislation requires Executive Agencies responsible for drafting or reviewing specifications to assure that Government specifications and standards (i) do not exclude the use of recovered materials, (ii) do not require the item to be manufactured from virgin materials, and (iii) require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item. It also requires the Administrator, Environmental Protection Agency (EPA), to prepare guidelines setting forth information on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services and recovered materials to be used as fuel.

1-2500.4 Definition. "Recovered material" means material which has been collected or recovered from solid waste.

1-2500.5 Procedures.

(a) These procedures are applicable to all acquisitions using Government specifications which require incorporation of recovered materials.

(b) Solicitations which incorporate Government specifications requiring utilization of recovered materials shall include the certification in 7-2003.82.

(c) Requirements in Government specifications for use of recovered materials may be waived by the contracting officer only after a determination that the items (i) are not available within a reasonable period of time, (ii) fail to meet performance standards set forth in specifications, or (iii) are available only at unreasonable prices.

(xviii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).

(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as required by law and by this Regulation;

(ii) such additional general provisions as may be applicable to the acquisition; and

(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.

(i) Standard Form 33, Part 2 (Representations and Certifications);

(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be

included in invitations for bids that do not involve set-asides for labor surplus area concerns;

(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;

(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;

(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;

(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.14(b)(1) and (2);

(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section 1, Part 11);

(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);

(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);

(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));

(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;

(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;

(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);

(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;

(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.

(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxviii) Reserved;

(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation.

(The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);

(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);

(iv) discount provision (see 2-407.3);

(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);

(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);

(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);

(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);

(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);

(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);

(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(lvii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*");

(lviii) insert the Woman-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxii) Reserved;

(lxiii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(c) Master Solicitation. A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DOD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. As a general rule, bidding time shall be no less than 30 calendar days. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) This rule need not be observed in special circumstances; for example, where the contracting officer has valid reason to determine that bidders in the second step of two-step formal advertising can prepare and submit their bids in less than 30 calendar days, or where the urgency for the supplies or services does not permit such delay. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1; for construction contracts, see 18-202(b), and for brand name or equal items, see 1-1206.2.

2-202.2 *Telegraphic Bids.* As a general rule, telegraphic bids will not be authorized. However, when, in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples.*

(a) *Definition.* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product. It may be appropriate to require bid samples, for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

SECTION F - Deliveries or Performance.
(i) the time of delivery or performance (see 1-305);
(ii) place and method of delivery (see Section XIX);
(iii) when MILSTAMP procedures apply to shipments of supplies, a provision setting forth the obligations of the contractor under such procedures (see 19-101).

SECTION G - Contract Administration Data.
(i) accounting and appropriation data (Note: where SF 33 is used, include only data not set forth on that form);
(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

SECTION H - Special Provisions.
(i) if the contract is to include option provisions, a clear statement of the provisions (see 1-1506);
(ii) if the contract is to include design-to-cost requirements, provisions in accordance with 1-338;
(iii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror (this may be placed elsewhere as long as the notice is adjacent to the limitation as to option price);
(iv) if the price negotiated is not predicated on allowability of the cost of money for facilities capital employed, the contract shall include a statement that: the cost of money for facilities capital (15-205.50) is unallowable.
(v) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;
(vi) if the contract is multiyear, the provisions required by 1-322.2(a), (b), or (f);
(vii) any progress payments provisions (see Appendix E);
(viii) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);
(ix) any special provisions relating to the Government's providing Government production and research property (see Section XIII, Part 3);
(x) when the clause in 7-104.62 is included in the contract and Appendix I, Table 2, does not list

addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall reference the line item as necessary, the addresses of the status control activity/inventory manager, and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR);
(xi) in accordance with 1-1208, the clause in 7-104.48 and the clause in 7-104.49;
(xii) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in 7-104.79, a specific list of any of the mandatory requirements of DoD Manual 4145.26-M that are being waived;
(xiii) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;
(xiv) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.
(xv) if the contract is for supplies acquired for resale, include the clause in 7-104.88;
(xvi) if international air transportation of personnel and cargo is possible during performance of the contract, include the clause in 7-104.95;
(xvii) in accordance with 9-603(b), insert the Identification of Restricted Rights Computer Software provision in 7-2003.76;
(xviii) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2;
(xix) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202; and
(xx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).

Part II—General Provisions

SECTION I - General Provisions.
(i) such general contract provisions (contract clauses) as are required by law or by this Regulation;

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(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;

(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administration Services Regional Office);

(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1) and (2);

(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;

(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;

(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;

(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;

(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production

and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));

(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;

(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);

(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204.1(a)(vii)(A), insert the provision in 7-2003.67(b);

(C) in accordance with 3-1204.1(b), insert the provision in 7-2003.67(c);

(D) in accordance with 3-1213(a), insert the provision in 7-2003.67(d);

(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-110(a));

(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;

(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;

(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;

(xix) the Clean Air and Water certification in 7-2003.71;

(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xxi) insert the Woman-Owned Business representation in 7-2003.80;

(xxii) insert the Percent Foreign Content representation in 7-2003.81;

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.

(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;

(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;
(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);
(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;
(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;
(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;
(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);
(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);
(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);
(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;
(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;
(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;
(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;
(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);
(xix) the applicable size standard and product classification (see 1-701 and 1-703);
(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);
(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;
(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;
(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);
(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;
(xxvi) statutory cost limitation, if any;
(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;
(xxviii) a statement covering special technical capabilities that the offeror must possess;
(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);
(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;
(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(b)), the provision in 7-2003.43 shall be included;
(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;
(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;
(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxxvii) Reserved;
(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*").

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) Reserved;

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

tive cost of verifying the reasonableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing. therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e.g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3-604.2 *Purchases in Excess of $500.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16-813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the con-

in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services:

(A) the following clauses shall be inserted in the Schedule—

(I) the Specification clause in 7-1201.4;
(II) the Delivery and Performance clause in 7-1201.7;
(III) the Subcontracting clause in 7-1201.8;
(IV) the Inspection clause in 7-1902.4;
(V) the Professional Requirements clause in 7-1201.11;
(VI) the Facility Requirements clause in 7-1201.12; and
(VII) the Preparation History clause in 7-1201.13;

(B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause:

(a) This clause supplements the "Termination for Default" clause of this contract.
(b) This contract may be terminated for default by written notice if during the performance of this contract

(C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(1)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(xxxvi) The clause in 7-104.103 may be used in accordance with instructions therein.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided*:

(i) the procurement is unclassified;

(ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—

(A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.

(B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44.

(D) A commercial warranty clause may be used in accordance with 1-324.4.

(E) When required by Section VI, Part 3, one of the clauses in 7-104.13 or 7-104.93(a) or (b) shall be added, and in purchases in excess of $2,500, the *Communist Areas* clause in 7-103.15 shall be inserted in the Schedule.

(F) The clause in 7-104.103 may be used in accordance with instructions therein.

The contracting officer may delete the Taxes clause from the DD Form 1155r-1 in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided*, that such clause shall be included in all contracts in support of NATO infrastructure programs involving the expenditures of funds under Section 503(b) of the Foreign Military Sales Act of 1968 (see 11-403.1(a)).

(c) *Solicitation and Evaluation of Quotations.*

(1) *General.* In using the purchase order method, competition shall be solicited in accordance with 3-604, and every effort shall be made to obtain prompt payment discounts. Written quotations may be solicited by Standard Form 18 (Request for Quotation), DD Form 1155 (Order for Supplies or Services/Request for Quotations), approved automated format, or teletype. When using the DD Form 1155 as a request for quotation, see 3-608.8 for guidance on specific entries required in certain blocks. When using a teletype as a request for quotation, general provisions applicable to the solicitation shall be incorporated by reference.

(2) *Evaluation of Quotations.* Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination. For orders exceeding $500, oral quotations shall be recorded directly on the purchase request, on an abstract sheet, or other appropriate work sheet. Except as provided under the unpriced purchase order method, quotations that are indefinite as to price or based on economic price adjustment or redetermination shall not be considered for award by the purchase order method.

(d) *Preparation and Issuance of Priced Purchase Orders.* All applicable blocks and spaces shall be completed with the required data pursuant to 3-608.8, including the following policy guidance:

(i) Supplies to be purchased will be identified in accordance with Section I, Part 12.

(ii) The quantity of supplies or services shall be specified. For bulk quantity items and those subject to shrinkage, evaporation, miscount, weight or footage variance, etc., a maximum allowable variation (normally not in excess of 10%) shall be specified in the order so that shipments in excess of the order quantity may be accepted if the reason for such excess comes within the Variation in Quantity clause of the order and the aggregate amount of the order does not exceed authorized limitations. The clause set forth in 1-325 will be used to express the permissible variation in quantity.

(iii) Purchase orders shall be issued on a fixed-price basis, except as otherwise provided under 3-608.3 and shall include any trade discounts and offered prompt payment discounts.

(iv) Inspection of small purchase shall be in accordance with 14–308. Orders generally will provide that inspection and acceptance will be at destination and source inspection should be specified only when required by 14–305.2(c). When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material to assure expeditious payment of orders and to obtain prompt payment discounts, except where the fast payment procedure is authorized.

(v) F.O.B. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(vi) The block "Deliver to F.O.B. Point BY" shall contain a definite calendar date by which delivery of supplies or performance of services is required.

(vii) The contracting officer's signature on purchase orders shall be in accordance with 20–101. Facsimile signatures may be used in the production of purchase orders by automated methods.

(viii) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

(ix) Purchase orders for subscriptions or other charges for newspapers, magazines or other periodicals, or for other publications, for which advance payment is authorized shall contain the provision in 7–2003.45.

3–608.3 *Unpriced Purchase Order.*

(a) An unpriced purchase order is an order for supplies or services the price of which is not established at the time of issuance of the order. Contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) An unpriced purchase order may be used only when all of the following conditions are present:

(i) the transaction will not exceed $10,000;

(ii) it is impractical to obtain pricing in advance of issuance of the purchase order; and

(iii) the procurement is for:

(A) repairs to equipment requiring disassembly to determine the nature and extent of such repairs;

(B) sole source material for which cost cannot be readily established; or

(C) supplies or services where prices are known to be competitive but exact prices are not known.

(c) Unpriced purchase orders may be issued by using DD Form 1155 or written telecommunications media (see 3–608.10). A realistic monetary limitation, either for each line item or for the total order, shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm

(ii) the preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. When the contracting officer does not adopt audit or other specialist recommendations that have particular significance on the contract price, comments should be included in the record of the negotiation.

(e) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance by audit or other representatives at the negotiation meeting.

3–801.3 *Responsibility of Requirements and Other Logistics Personnel in Purchasing Offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow:

(i) a reasonable period for preparation of requests for proposals;

(ii) preparation of quotations by offerors;

(iii) contract negotiation and preparation; or

(iv) adequate manufacturing lead time,

causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.

3–801.4 *Responsibility of Pricing Personnel in Purchasing Office.*

(a) The contract pricing team available to support the PCO in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and liaison auditor at the purchasing office.

(b) The price analyst or negotiator supporting the contracting officer may be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of contract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

3-801.5 *Responsibility of Field Pricing Support Personnel.*

(a) *Field Pricing Support.* Field pricing support involves analysis of the contractor's price proposal by any or all of the field technical and professional specialists including, but not limited to, the Plant Rep/ACO; contract auditor; price analyst; quality assurance personnel, engineers; and legal and small business specialists. The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DSA). However, there shall be no constraints on the lines of communication with the PCO/ACO and contract auditor interface.

(b) *Field Pricing Reports on Contract Price Proposals.*

(1) Prior to negotiation of a contract or modification resulting from a proposal in excess of $100,000 for firm fixed price and fixed price with provision for economic price adjustment, fixed price redeterminable (prospective), time and materials, or labor hour type of contract, interim and final price redetermination and settlement of incentive types; $250,000 for fixed price incentive, cost plus incentive fee or fixed price redeterminable (retroactive) type of contract; or $500,000 for cost reimbursement, cost sharing, cost plus award fee, or cost plus a fixed fee type of contract, when the price is based on cost or pricing data (3-807.3) submitted by the contractor, the contracting officer (PCO or ACO) or authorized representative shall request a field pricing report (which usually includes an audit review by the contract audit activity), unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) Ordinarily, field pricing reports should not be requested for pre-award pricing actions below the threshold specified in 3-801.5(b)(1), except in instances such as a lack of knowledge of the particular contractor, sensitive conditions, or an inability to perform an acceptable degree of price or cost analysis, and thereby establish a reasonable pricing result. Before requesting field pricing support for lower dollar offers, the contracting officer should consider utilizing price or cost analysis techniques (3-807.2) or the information cited in paragraph (1)(i) through (vi) above to establish the reasonableness of the proposed price.

(3) The PCO shall forward the request to the Plant Rep/ACO (copy to the cognizant contract audit activity) clearly stipulating specific areas for which input is required and assigning a realistic deadline for receipt of the field pricing report. The request shall be accompanied by any information, including applicable portion of the RFP and the offeror's proposal, which would be useful in the evaluation of the proposal. In sole source procurements, when the contracting officer knows in advance that field pricing support will be required, he shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, he may require the contractor to provide copies of his proposal direct to the Plant Rep/ACO and auditor. In this event the PCO shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(4) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the PCO. To accomplish this end the Plant Rep/ACO must:

(i) in concert with the auditor and in consideration of his workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the PCO and the contract auditor);

(ii) identify areas for special consideration (these are areas in addition to those specified by the PCO);

(iii) arrange for exchanges of technical and audit information and coordination between the CAS and audit activities; and

(iv) be fully responsive to a request for technical information from the auditor.

(5) The contract auditor shall treat the copy of the PCO request as a signal to arrange for and begin the audit work. He must be fully responsive to the request of the Plant Rep/ACO and he must communicate to the Plant Rep/ACO any change in audit schedule which may be required. The scope and depth of the audit, subject to time constraints, is the responsibility of the contract auditor. In addition, specific requirements in the PCO request shall be accommodated. The dollar effect of technical input vital to the audit shall be computed by the contract auditor and included in his report. The auditor's completed report shall be sent to the Plant Rep/ACO for inclusion, without change, in the field pricing report to the PCO.

(6) When providing pricing support to the PCO, the Plant Rep/ACO has primary responsibility for consolidating and evaluating the findings of the pricing team members at the contract administration and contract audit offices and for the analysis of proposed prices in consideration of, but not limited to, such factors as the need for quantities and kinds of materials included in the proposal; the need for the number and kinds of man-hours; the need for special tooling and facilities; and the reasonableness of scrap and spoilage factors. These analyses by the Plant Rep/ACO and his team shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make or buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

(7) The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs. The auditor shall report any denial by the contractor of access to records or cost or pricing data which the auditor considers essential to the preparation of a satisfactory report. If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, this shall be stated in the audit report and concurrently made known to the contractor so that he may have the opportunity of presenting his views to the PCO and Plant Rep/ACO. When the PCO determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved. Only the auditor shall have general access to the books and financial records for this purpose. This does not preclude the PCO, the Plant Rep/ACO, or their technical representative from requesting any data from, or reviewing records of, the contractor (such as lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities.

(8) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the PCO's final pricing decision. Therefore it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(iii) a contractor's or subcontractor's failure to comply with applicable Cost Accounting Standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(iv) a contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

3-810 Exchange of Information. In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Departments, bureaus, technical services, and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

3-811 Record of Price Negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, including the current status of the contractor's procurement system. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see 3-807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (3-807.6), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or non-current; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the total price objective, the memorandum shall explain this difference. When field pricing support is furnished, the contracting officer shall forward copies of the memorandum to the cognizant ACO and auditor. When appropriate, information on how the advisory services can be made more effective in future negotiations with the contractor should be provided separately.

(b) As part of the requirement in (a) above, determination of the profit or fee objective, in accordance with 3-808, shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of the total

estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(c) When the weighted guidelines method is not used because of unusual pricing situations (see 3-808.2(b)(2)), the contract file shall be documented to support the exceptions.

3-812 Disposition of Post Award Audits. An auditor's advisory report of post award reviews of cost and pricing data may result either from a specific request of a contracting officer (see 3-807.10) or from audit action initiated independent of a contracting officer's request. The contracting officer shall prepare a memorandum on each audit report indicating (1) whether defective data were submitted and relied upon and (2) the results of any contract action taken. A copy of the memorandum shall be forwarded to the auditor issuing the audit report and to the cognizant administrative contracting officer.

3-813 Preproduction and Startup and Other Nonrecurring Costs.

(a) Estimates of preproduction and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of propsals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(i) an estimate of the total of such costs;

(ii) the extent to which these costs are included in the proposed price; and

(iii) the intent to absorb, or plan for recovery, of any remaining costs.

firmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

(End of clause)

7-103.29 *Clean Air and Water.* In accordance with 1-2302.2, insert the following clause.

CLEAN AIR AND WATER (1975 OCT)

(Applicable only if the contract exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

(i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;

(ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

(iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

(b) The terms used in this clause have the following meanings:

(1) The term "*Air Act*" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "*Water Act*" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "*clean air standards*" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section

111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "*clean water standards*" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "*compliance*" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "*facility*" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

(7) The term "*nonexempt contract or subcontract*" means a contract or subcontract of more than $100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding the contract.

(End of clause)

7-104 Clauses to be used when applicable.

7-104.1 *Clauses for Fixed Price Supply Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses set forth therein in addition to the clause in 7-104.3.

7-104.2 *Workmen's Compensation and War Hazard Insurance Overseas.*

(a) In accordance with 10-403(a), insert the following clause.

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (1960 JAN)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(End of clause)

(b) If a contract would otherwise be subject to 10-403(a) but 10-403(d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10-501.1(b) and (c) apply; and the following clause shall be included in the contract (see also 10-403(e)).

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1968 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10-403(d)(2) (see also 10-501.1(c)).

REIMBURSEMENT FOR WAR HAZARD LOSSES (1968 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-103.4, 6-103.7, and 6-803.2(a)(i) - (xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

sated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the _____,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Excess Profit.*

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000, known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFIT (1957 JUN)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; *provided* however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(End of clause)

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U.S.C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U.S.C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U.S.C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (1957 JUN)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation, or fire control, the provisions of 10 U.S.C. 2382 and 7300 are not applicable to this contract.

(End of clause)

7-104.12 *Military Security Requirements.* Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities.* The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1980 DEC)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (2):]

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (2) above.]

(2) The Contractor shall determine the estimated amount of advance payment necessary to meet the requirements of paragraph (3) hereof entitled "Use of Funds" to cover performance of the contract. This determination shall be pursuant to written instructions provided by the Administering Office (see paragraph (14)(d) hereof) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the contract exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a Statement of Contractor's Request for Advance Payment to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval and disbursement of the required advance payment by the time the funds are actually needed by the Contractor.

(a) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if he or she concurs therein, the statement will be approved and forwarded to the Disbursing Office designated in the contract for payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for contract performance during the specified period of time, he or she will approve an amount based on such determination and forward the statement to the Disbursing Office for payment of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(b) Upon receipt of the approved statement, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Armed Services Procurement Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (3) above.]

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article ..... of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (3) above.]

(3) *Use of Funds.* Advance payments hereunder are to be used by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Defense Acquisition Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(4) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in paragraph 14(a). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, the last sentence of paragraph (4) above should be omitted.]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (—percent) of the stated contract price of $....., or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or economic price adjustment), in the above stated contract price not exceeding, in the aggregate $..... *(Insert here not more than ten percent (10%) of stated contract price above)*, and (ii) all increases in contract price resulting from any provision for price redetermination or economic price adjustment, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (5), with appropriate percentage specified.]

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of .....percent from any and all payments made by the Government under the contracts involved.

[In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (5) above.]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $..... for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $..... *(Insert not more than ten percent (10%) of estimated costs stated above)*, (including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[In case the alternate procedure for advance payment without a bank account is to be used in accordance with E-413.1, insert the following paragraph (5) instead of one of the above.]

(5) *Liquidation.* The Contractor should submit cost reimbursement vouchers on a regular and frequent basis in accordance with the payment provision of this contract. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated upon completion or termination of the contract, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(6) *Interest Charge.* If required in paragraph (14)(c) below and at the daily rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the daily rate specified in paragraph (14)(c) shall be computed at the end of each calendar month in the manner herein specified on the daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365- or 366-day year as the case may be. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [*For cost-reimbursement contracts, use, instead of (2) above.* (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [*For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence:* As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (11) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(7) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank with the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended, 12 U.S.C. 264).

(8) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(9) *Lien on Property Under Contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made by a lien in favor of the Government, paramount to all other liens, upon th the supplies or other things covered by this contract 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. The Contractor shall identify by marking or segregation 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 to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt sh shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(10) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (i) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality, (ii) adequate insurance against liability on account of damage to persons or property, and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance, (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder, and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(11) *Default Provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (a) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (b) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (c) has allocated inventory to this contract substantially exceeding reasonable requirements, or (d) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business, (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor, (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, or (v) the commission of an act of bankruptcy, the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances, (a)

withdraw all or any part of the balance in the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (b) charge interest on advance payments outstanding during the period of any such default at either (i) the published prime rate of the banking institution in which the special bank account is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit references to the published prime rate of the financial institution and a special bank account in paragraph (11) above.]

(12) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(13) *Information—Access to Records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit the words "together with a monthly report on the operation of the special bank account in prescribed form" beginning in the 3rd line of paragraph (13) above.]

(14) *Designations and Determinations.*

(a) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $_____ *[or alternatively:]*

(a) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (4)) shall not exceed $_____

(b) *Depository.* The bank designated for the deposit of payments made hereunder shall be _____ *[This paragraph should be omitted if the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1.]*

(c) *Interest Charge.* Interest shall be charged in the manner provided herein at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. *[In the case of advance payments made without interest insert the following:]* No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (11)(b). The Contractor shall charge interest at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater, on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experiment, research or development work.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit "either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above or (ii)" and "whichever is greater" in (14)(c) above.]

(d) *Administering Office.* The office administering advance payments is designated as

(15) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(16) *Representations and Warranties.* To induce the making of the advance payments, the Contractor represents and warrants that—

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments. (MAY 1959)

(17) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed _____ percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit paragraph (17) above.]

(18) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office:

(a) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder,

(b) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due,

(c) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of his capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions,

(d) Sell, convey or lease all or a substantial part of his assets,

(e) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States,

(f) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(g) Permit a writ of attachment or any similar process to be issued against his property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process,

(h) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to his directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $_____ per annum,

(i) Make any substantial change in management, ownership, or control of the corporation;

(j) Merge or consolidate with any other firm or corporation, change the type of his business or engage in any transaction outside the ordinary course of his business as presently conducted;

(k) Deposit any of his funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(l) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(m) Make or covenant himself to make capital expenditures exceeding in the aggregate $_____;

(n) Permit his net current assets, calculated in accordance with generally accepted accounting principles, to become less than $_____; or

(o) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

(End of clause)

7-104.35 *Progress Payments.* In accordance with E-510, insert one of the following clauses:

(a) Progress Payment Clause for Other Than Small Business Concerns.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENT FOR OTHER THAN SMALL BUSINESS CONCERNS (1978 JUL)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be (i) eighty percent (80%)**(See footnote at end of clause) of the amount of the Contractor's total costs which, except as provided in (a)(2) below, shall include only those recorded costs which result, at the time of the request, from payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, all as shown by records maintained by the Contractor for purposes of obtaining payment under Government contracts plus (ii) the amount of progress payments which have been paid to Contractor's subcontractors and other divisions as provided in (j) below; all less the sum of previous progress payments.

knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds $100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000 when entered into.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which exceed $100,000 other than those described in (a) above:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS (1970 JAN)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $100,000.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

7-104.43 *Reserved.*

7-104.44 *Value Engineering (VE).*

(a) In accordance with 1-1704, insert the following clause:

VALUE ENGINEERING (1980 DEC)

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor.

(b) *Definitions.*

(1) "Acquisition savings" means savings resulting from the application of VECPs to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

(i) instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the Contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the Contractor's allowable development and implementation costs are subtracted from the total);

(ii) concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by

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the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(2) "Collateral costs" means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(3) "Collateral savings" means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(4) "Contractor's development and implementation costs" means costs which the Contractor incurs specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of the VECP.

(5) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(6) "Instant contract" means this contract, under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established. These additional quantities shall be treated as future contracts.

(7) "Negative instant contract savings" means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;

(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and

(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(8) "Net acquisition savings" means acquisition savings less Government costs.

(9) "Sharing period" means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(10) "Unit" means the item or task to which the parties agree the VECP shall apply.

(11) "Unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

(12) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

(A) in deliverable quantities only;

(B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

(C) to the contract type only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (7) below in each VECP. If the proposed change affects contractually required configuration management or similar

procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement; the comparative advantages and disadvantages of each; a justification when an item's function or characteristics are being altered; the effect of the change on the end item's performance; and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (i) of this clause. The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation, and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(7) Identification of the unit to which the VECP applies.

(d) *Submission.*

(1) The Contractor shall submit VECPs to the Principal Contracting Officer (PCO), unless otherwise designated in the contract. When the contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the PCO and to the Administrative Contracting Officer (ACO). The PCO shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional

time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor with written notification, explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance.* Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after the contract performance is completed. If a VECP is accepted, the Contractor shall share in the net acquisition savings realized by the Government in accordance with paragraph (f) below. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP, and the decision as to which of the sharing rates in (f)(1) below are applicable shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978.

(f) *Sharing.*

(1) Rates. The Contractor shall share in net acquisition savings at a percentage rate determined by (i) the type of contract; (ii) the Value Engineering clause or alternate clause used; and (iii) if applicable, the schedule in this contract, as follows:

TYPE OF CONTRACT	Incentive (Voluntary) Instant	Incentive (Voluntary) Concurrent and Future	Program Requirement (Mandatory) Instant	Program Requirement (Mandatory) Concurrent and Future
Fixed-Price (Other than Incentive)	50	50	25	25
Incentive (Fixed-Price or Cost)	*	50	*	25
Cost-Reimbursement** (Other than Incentive)	25	25	15	15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(2) Computation of Net Acquisition Savings.

a. Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset. Except in incentive contracts, Government costs, and any price or cost increases resulting from negative instant contract saving (see (f)(3)(i)), shall be offset against acquisition savings as such savings are realized on the instant contract, reductions negotiated in concurrent contracts, awards of future contracts, or agreement on a lump-sum payment for future savings (see (f)(4)). The Contractor's share of savings is computed by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see (f)(1)). Additional payments of the Contractor's share of net acquisition savings shall be paid to the Contractor at the time realized.

b. If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share in savings on the instant contract items affected through the contract incentive structure. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future savings.

(3) Contract Adjustment and Payment. The modification accepting the VECP shall:

(i) reduce the contract price or estimated cost by the value of instant contract savings, unless this is an incentive contract for which a fixed price has not been established (regardless of contract type, when instant contract savings are negative, the contract price, target price or cost, estimated cost, or ceiling price will be increased);

(ii) specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(iii) specify the amount of any Government costs or negative instant contract savings to be offset against net acquisition savings realized from concurrent or future contract savings; and

(iv) provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(A) Fixed-price contracts--add to contract price.

(B) Cost-reimbursement contracts--add to contract fee.

(4) Concurrent and Future Contract Savings.

a. Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with (f)(3)(iv). For incentive contracts, add shares as a separate firm-fixed-price line item on the instant contract. When sharing on future contracts is expected, the Contractor shall maintain records to identify the first delivered unit for 3 years after final payment under the instant contract. If the instant contract is for low rate initial production or an earlier life-cycle phase, the future sharing period shall encompass scheduled deliveries, equal in number to the quantity required by the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted.

b. When the Government wishes and the Contractor agrees, payment of the Contractor's share of future contract savings may be made in a single lump-sum payment rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in the modification incorporating the VECP into the instant contract and shall not be subject to subsequent adjustment.

c. The Contractor's share on concurrent savings shall be determined by taking the reduction in price of the concurrent contract, subtracting any Government costs or increase in instant contract price or target not yet offset, and multiplying the result by the Contractor's sharing percentages.

d. The Contractor's share on future contracts shall be determined by multiplying the number of units scheduled for delivery prior to the expiration of the sharing period times the unit cost reduction appropriate to the contract times the Contractor's sharing rate.

e. If the Government properly rejects or does not receive units on which the share is paid, the Contractor shall reimburse the Government the proportionate share of these payments.

(g) *Collateral Savings.* If a VECP is accepted, the instant contract amount shall be increased, as specified in (f)(3)(iv), by 20 percent of the projected net reduction in collateral costs determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (i) the contract's firm fixed price, target price, target cost, or estimated cost at the time the VECP is accepted, or (ii) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause. In all cases, degradation of performance, service life, or capability shall be considered in determining savings.

(h) *Relationship to Other Incentives.* Those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. The targets of such incentives affected by

the VECP shall not be adjusted because of VECP acceptance. If this contract does not provide such incentives to surpass specified targets, the VE sharing shall apply only to the amount of achievement better than target.

(i) *Subcontracts.* The Contractor shall include appropriate VE clauses in any subcontract of $100,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f) above, the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs and any VE incentive payments to subcontractors that clearly result from the VECP. No such payment or accrual to a subcontractor will be permitted to reduce the Government's share of concurrent, future, or collateral savings.

(j) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by making the following legend on the affected parts:

> "These data, furnished under the Value Engineering clause of Contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

(b) Alternate I. In accordance with 1-1704.2, if the Contracting Officer selects a mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

(a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)

(End of clause paragraph)

(c) Alternate II. In accordance with 1-1704.3, if the Contracting Officer selects both a VE incentive and mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor. For those contract line items designated in the schedule as subject to the VE program requirement, the Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the schedule, and (ii) submit to the Contracting Officer any resulting VECPs. The VE incentive provisions shall apply to the remaining areas of the contract. (1980 DEC)

(End of clause paragraph)

(d) Alternate III. In accordance with 1-1704.4, when the head of the contracting activity determines that the cost of computing and tracking collateral savings will exceed the benefits to be derived, use the basic clause in 7-104.44, delete paragraph (g), and renumber the remaining paragraphs.

(e) Alternate IV. If a mandatory VE program requirement is included in an architect-engineer contract, use the clause in 7-104.44, but substitute paragraph (a) below for paragraph (a) of the basic clause, delete paragraphs (f), (g), and (h) of the basic clause, and renumber the remaining paragraphs.

(a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)

(End of clause paragraph)

[The next page is 7:105.]

7-104.45 *Limitation of Liability.*

(a) In accordance with 1-330, insert the following clause.

LIMITATION OF LIABILITY (1974 APR)

(a) Except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government to the extent of such insurance or reserve for self-insurance for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies.

(d) The substance of this clause, including this paragraph (d) suitably altered to reflect the relationship of the contracting parties, shall be included in all subcontracts hereunder.

(End of clause)

(b) In accordance with 1-330, in procurements of major items, insert the following clause.

LIMITATION OF LIABILITY — MAJOR ITEMS (1979 MAR)

(a) Except as provided below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business, or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government

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under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract. If loss or damage has occurred and correction, repair, or replacement is no longer feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer:

(i) pay to the Government the amount which it would have cost the Contractor to make such correction, repair or replacement before the loss or damage occurred, or

(ii) provide other equitable relief.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISKS,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either:

(i) insert, with the advance written consent of the Contracting Officer, the substance of this clause, including this paragraph (f), suitably altered to reflect the relationship of the contracting parties; *or*

(ii) insert the substance of the clause in 7-104.45(a) suitably altered to reflect the relationship of the contracting parties.

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(c) In contracts for the purchase of both major items (see 1-330) for which the clause in (b) above is appropriate, and other contract end items for which the clause in (a) above is appropriate, the clauses in both (a) and (b) above shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

7-104.46 *Required Sources for Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (1971 AUG)

(a) For the purpose of this clause:

technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractual performance. DD Form 1494, "Application for Frequency Allocation," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

7-104.62 *Material Inspection and Receiving Report.* Insert the following clause in all contracts which anticipate delivery of a separate and distinct object or entity whether separately priced or not.

MATERIAL INSPECTION AND RECEIVING REPORT (1969 DEC)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by ASPR Appendix I, "Material Inspection and Receiving Report."

(End of clause)

However, when contract administration is retained by the purchasing office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(i) procurements effected under Section III, Part 6—Small Purchase and Other Simplified Purchase Procedures;
(ii) negotiated subsistence procurements;
(iii) procurements of fresh milk and related fresh dairy products;
(iv) contracts for which the end item is a scientific or technical report;
(v) research and development procurements not requiring the delivery of separately priced end items;
(vi) base, post, camp or station procurements;
(vii) in overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting officer shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and
(viii) procurements for services where hardware is not acquired as an item in the contract, *e.g.*, level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central procurement offices which authorize only base, post, camp or station activities to issue orders, *provided* that such contract and orders are not assigned for administration.

7-104.63 *Protection of Government Buildings, Equipment and Vegetation.* Insert the following clause in all contracts which involve the performance of services on a Government installation.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (1968 FEB)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to do so and damages any such buildings, equipment, or vegetation, he shall replace or repair the damage at no expense to the Government as directed by the Contracting Officer. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof which may be deducted from the contract price.

(End of clause)

7-104.64 *Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology.* In accordance with 1-2403 insert the following clause.

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (1980 FEB)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DOD appropriations/funds.

(2) *Domestic organization* means any U.S. nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or materiel. It may take a tangible form, such as as scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(a) The Contractor hereby certifies, as of the date of this contract, to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined, after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this contract, then this contract may be terminated in accordance with the provisions of the Termination for Default clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees to accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

(d) The Contractor shall require a Certification - Wage and Price Standards, limited to (a) above, as a condition of award of any first-tier subcontract which exceeds $5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first-tier subcontractors can only be made by the Secretary.

(End of clause)

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Reserved.*

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and materials during all reasonable times until the expiration of three (3) years from the date of final payment under this contract or for the time periods specified in Appendix M of the Armed Services Procurement Regulation, whichever expires earlier.

(End of clause)

7-108 Incentive Price Revision Clauses.

7-108.1 *Firm Targets.* When in accordance with the provisions of Section III, Part 4, the fixed-price incentive contract described in 3-404.4(a) (2) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, target price.

INCENTIVE PRICE REVISION (FIRM TARGET) (1980 FEB)

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

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

(c) *Submission of Data.* Within _____ (_____) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, on DD Form 633 or other form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items, and (iii) a list of all residual inventory and an estimate of the value thereof.

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

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

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

WHEN THE TOTAL FINAL NEGOTIATED COST IS:	THE ADJUSTMENT FOR PROFIT OR LOSS IS:
Equal to the total target cost _____	Total target profit.
Greater than the total target cost ___	Total target profit less ___ percent (___%) of the amount by which the total final negotiated cost exceeds the total target cost.
Less than the total target cost _____	Total target profit plus ___ percent (___%) of the amount by which the total final negotiated cost is less than the total target cost.

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

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

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

(4) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

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

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (d)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract; *provided*, that if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g)(2) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of the total final price under paragraph (d) above. After execution of the contract modification referred to in subparagraph (d)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall not apply after final price revision.

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

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

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

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

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

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invo-

7-602.48 *Reserved.*

7-602.49 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-602.50 *Value Engineering Incentive--Construction.* In accordance with 1-1704.6, insert the following clause in all construction contracts of $100,000 or more except incentive contracts:

VALUE ENGINEERING INCENTIVE--CONSTRUCTION (1980 DEC)

(a) *Applicability.* This clause applies to any Contractor developed, prepared, and submitted Value Engineering Change Proposal (VECP).

(b) *Definitions.*

(1) "Contractor's development and implementation costs" means those costs incurred on a VECP before Government acceptance and those costs the Contractor incurs specifically to make the changes required by Government acceptance of a VECP.

(2) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistic support. They do not include the normal administrative costs of processing the VECP.

(3) "Instant contract savings" means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs (including subcontractors' development and implementation costs). (See paragraph (g).)

(4) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the contract price or estimated cost without impairing essential functions or characteristics, *provided* that it does not involve a change in deliverable end-item quantities only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (6) in each VECP. If the proposed change affects contractually required configuration management procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (g). The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submissions.*

(1) The Contractor shall submit VECPs to the Resident Engineer at the worksite, with a copy to the Contracting Officer. The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor written notification fully explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance.* Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept all or part of any VECP shall be final and not subject to the Disputes clause.

(f) *Sharing.*

(1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by 55 percent for fixed-price contracts and 25 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to:

(i) accept the VECP;

(ii) reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) provide the Contractor's share of savings by adding the amount calculated in (f)(1) to the contract price or fee.

(g) *Subcontracts.* The Contractor shall include appropriate VE clauses in any subcontract of $50,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f), the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs that clearly result from the VECP, but shall exclude any VE incentive payments to subcontractors. The Contractor may choose any

arrangement for subcontractor VE incentive payments, *provided* that these payments are not made from the Government's share of the savings resulting from the VECP.

(h) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

> "These data, furnished under the Value Engineering Incentive--Construction clause of Contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

7-602.51 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-602.52 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-602.53 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-602.54 *Shop Drawings.*

(a) Insert the following clause, with the appropriate additions in (b) and (c) below.

SHOP DRAWINGS (1976 OCT)

(a) The term "*shop drawings*" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

7-2003.11 *Evaluation of Options.*

(a) In accordance with 1-1504(b), insert a provision substantially similar to:

EVALUATION OF OPTIONS

If the Government elects to exercise an option simultaneously with award, bids or proposals will be evaluated for purposes of award on the basis of the total price for the basic quantity and the option quantity exercised with award.

(End of provision)

(b) In accordance with 1-1504(c), insert a provision substantially similar to:

EVALUATION OF OPTIONS

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

(c) In accordance with 1-1504(d), insert the following provision.

EVALUATION OF OPTIONS (1974 APR)

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. The offeror's target cost for the basic and option quantities will be deemed to be the price of the basic and option quantities for purposes of evaluation. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on

prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

7-2003.12 *Affiliated Bidders.* In accordance with 2-201(a)Sec.K(ii) or 2-201(b)(xvii), insert the following clause.

AFFILIATED BIDDERS (1974 APR)

(a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with his bid an affidavit containing information as follows:

(i) whether the bidder has any affiliates;

(ii) the names and addresses of all affiliates of the bidder; and

(iii) the names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of clause)

7-2003.13 *Preference for Labor Surplus Area Concerns.* In accordance with 2-201(a)Sec.K(iii) or 3-501(b)(3)Sec.K(vii), insert the following clause.

PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (1978 JUN)

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must identify below the labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than fifty percent (50%) of the contract price.

_____ _____

_____ _____

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

(End of clause)

7-2003.14 *Equal Opportunity.*

(a) *Pre-Award Compliance Review.* Each solicitation, (excluding construction) written or oral, for non-exempt contracts estimated to be for $1,000,000 or more shall advise bidders or offerors that prior to the award of a contract the

proposed contractor and his known first-tier subcontractors with proposed subcontracts of $1,000,000 or more shall be subject to an EEO compliance review as follows:

PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of $1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of $1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(b) *Representations.* Insert the following provisions as applicable.

(1) When not contained on the solicitation form, the following:

7-2003.14(b)(1)(A)

(A) Certification of Nonsegregated Facilities

CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG)

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

(End of provision)

7-2003.14(b)(1)(B)

(B) Previous Contracts and Compliance Reports.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36539

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (1973 APR)

The offeror represents that he [] has, [] has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he [] has, [] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. *(The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)*

7-2003.14(8)(2)

(2) Except for construction contracts, include the following provision when the contract includes the Equal Opportunity clause, if the provision is not already included on the solicitation form:

AFFIRMATIVE ACTION COMPLIANCE (1979 SEP)

The bidder (or offeror) represents that (1) he ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

(c) *Foreign Employment.* Insert the following clause in all nonexempt (see 12-808) solicitations when a contractor is required to perform in or on behalf of a foreign country.

NOTIFICATION OF VISA DENIAL (1978 SEP)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States on the basis that such individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). Therefore, the Contractor agrees to notify the Department of State, Washington, D. C., Attention: Director, Bureau of Politico-Military Affairs, and the Director, OFCCP, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract and it believes such denial is attributable to race, religion, sex, or national origin of the employee or potential employee.

(End of provision)

(d) *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.* In accordance with 12-807.1 regarding affirmative action compliance requirements, insert the following provisions in all applicable solicitations involving construction in excess of $10,000. Follow this provision's parenthetical instructions by inserting the applicable construction trade(s), percentage goals and geographical description of the covered area as provided in Departmental instructions.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (1978 SEP)

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity" and the "Affirmative Action Compliance Requirements for Construction" clauses set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables —	Goals for minority participation for each trade	Goals for female participation in each trade
	.....	
	(Insert goals for each year)	(Insert goals for each year)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction" and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director, OFCCP within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) As used in this Notice, and in the contract resulting from this Solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

(End of Provision)

7-2003.15 *Patents - Government Licensee.* In accordance with 2-201(a)Sec.K(ix), 2-201(b)(xxvii), 3-501(b)(3)Sec.K(xvii), or 3-501(c)(xliv) as appropriate, insert the following provision.

PATENTS - GOVERNMENT LICENSEE (1974 APR)

The Government is obligated to pay a royalty applicable to the proposed procurement because of a license agreement between the Government and the patent owner. The patent number is _____ and the royalty rate is _____. If the offeror is the owner of, or a licensee under, the patent, he shall indicate below:

( ) Owner
( ) Licensee

If an offeror does not indicate that he is the owner or a licensee of the patent, his offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

7-2003.16 *Guaranteed Maximum Shipping Weights and Dimensions.* In accordance with 2-201(a)Sec.K(x), insert the following provision.

GUARANTEED MAXIMUM SHIPPING WEIGHTS AND DIMENSIONS.

Each bid (or proposal) will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The bidder (or offeror) is requested to state as part of his offer the weights and dimensions. If separate containers are to be banded and/or skidded into a single shipping unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data.

OMITTED from page 7:502

If the bidder (or offeror) fails to state his guaranteed maximum shipping weight and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions below for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows: _____

(End of provision)

7-2003.17 *Freight Classification Description.* In accordance with 2-201(a)Sec.K(xi), insert the following provision.

FREIGHT CLASSIFICATION DESCRIPTION (1968 JUN)

Bidders (or offerors) are requested to indicate, below, the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as bidder (offeror) uses for commercial shipment. This description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.) the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to it to determine the classification description most appropriate and advantageous to the Government. Bidder (offeror) understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, BIDDER (OR OFFEROR) DESCRIBES THIS COMMODITY AS _____

(End of provision)

7-2003.18 *Transportation Transit Privilege Credits.* In accordance with 2-201(a)Sec.K(xii), insert the following provision.

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (1968 JUN)

If the bidder (offeror) has established with regulated common carriers transit privileges which can be applied to the supplies when shipped from the original source, bidder (offeror) is invited to offer to utilize such credits to ship the supplies to the designated Government destinations under commercial bills of lading, paying all remaining transportation charges connected therewith, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the bidder (offeror) below. Such shipments under paid commercial bills of lading will move for the account of and at the risk of the Government, after loading on carrier's equipment and acceptance by the carrier (unless, pursuant to the "Changes" clause, the office administering the contract directs use of Government bills of lading). The amount quoted below by the bidder (offeror) represents the transportation costs, in cents per 100 lb. (freight rate) for full carload/truckload shipments of the supplies from bidder's (offeror's) original source via his transit plant or point to the Government destination(s) listed below by the bidder (offeror), including the carrier's transit privilege, charge, less the applicable transit credit (*i.e.*, the amount (rate) initially paid to the carrier for shipment from original source to bidder's transit plant or point). The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of proposals). To have his bid (offer) evaluated on this basis, bidder (offeror) must insert below the remaining transportation charges which he agrees to pay, including any transit charges, and which are subject to reimbursement by the Government, as explained in this provision, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS _____
TO DESTINATION _____

(End of provision)

7–2003.19 *FOB Origin (With Differentials).* In accordance with 2–201(a)Sec. E(xiii), insert the following provision.

F.O.B. ORIGIN (WITH DIFFERENTIALS)

Notwithstanding the f.o.b. origin delivery terms set forth in the "F.O.B. Origin" clause of the contract, it may be advantageous to the bidder (or offeror) to submit f.o.b. origin prices in the Schedule which include only the lowest cost to the Contractor of loading for shipment at his plant or most favorable shipping point. The cost beyond such plant or point of bringing to the place of delivery and loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the bidder's (offeror's) lowest cost when he ships for his own account. Accordingly, bidders (or offerors) may indicate below a differential which, as explained below, may be added to the offered price, such differential to be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options, under the clause entitled "F.O.B. Origin," which the Government may specify at the time of shipment. Such differential(s), if specified below, will be considered in the evaluation of bids (or proposals) to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the bidder (or offeror) has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading), as a separate reimbursable item on his invoice for the supplies. Under this clause (F.O.B. Origin (With Differentials)), the Government shall have the option of performing or arranging at its own expense any transportation from Contractor's shipping plant or point to carrier's facility at the time of shipment and, whenever this option is exercised, no reimbursement shall be made by the Government based on a quoted differential. Bidder's (or offeror's) differential(s), if any, in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment, and not included in the f.o.b. origin price indicated in the Schedule by the bidder (or offeror), is (are) as follows:

_____ (*carload, truckload, less-load wharf, flatcar, driveway, etc.*)

(End of provision)

7–2003.20 *Evaluation of Export Bids (Or Proposals).* In accordance with 2–201(a)Sec. E(xiv), insert the following provision.

EVALUATION OF EXPORT BIDS (OR PROPOSALS) (1968 JUN)

A. *Port Handling and Ocean Charges.* In evaluating bids (or proposals), port handling and ocean charges on file and published by the Military Traffic Management and Terminal Service as of the date of bid opening (or the closing date specified for receipt of proposals) and effective for the date of the expected initial shipment will be used.

B. *F.O.B. Origin, Transportation Under Government Bill of Lading.*

(1) Bids (or proposals) will be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, will be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and the ocean shipping costs from the United States port of loading to the overseas port of discharge (see D below). The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Bids (or proposals) will be evaluated on the basis of shipment through one of the ports set forth in paragraph D below, to the overseas port of discharge. Evaluation will be made on the basis of shipment through the port that will result in the lowest cost to the Government.

Ports of loading will be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the "F.O.B. Origin" clause of this contract.

C. *F.O.B. Port of Loading With Inspection and Acceptance at Origin.*

(1) Bids (or proposals) will be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see (2) below), will be the port handling charges at the port of loading and the ocean shipping cost from the port of loading to the overseas port of discharge (see D below).

(2) Unless bids (or offers) are applicable only to f.o.b. origin delivery under Government bills of lading (see B above), bidders (or offerors) must designate, below, at least one of the ports of loading listed in paragraph D below, as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the bid (or offer) nonresponsive.

PLACE OF DELIVERY: _____

(*Insert at least one of the ports listed in paragraph D below.*)

D. *Ports of Loading for Bid (or Proposal) Evaluation.* Ports to be used by the Government in evaluating bids (or proposals) are as follows:

_____ (*Ports*)

E. *Ports of Loading Nominated by Bidder (Offeror).* The above named ports of loading listed in D above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, bidders (or offerors) may nominate additional ports of loading which the bidder (offeror) considers to be more favorable to the Government. The Government may disregard such nominated port(s) if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S. Flag vessels, and other pertinent transportation factors, it determines that use of the nominated port(s) is not compatible with the

required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of bids (or offers) only for those items scheduled herein for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between 15 April and 30 November annually). All ports named, including those nominated by bidders (or offerors), and determined to be eligible as provided herein, will be considered in evaluating all bids (or proposals) received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations will be based on availability of ocean services by United States Flag vessels only. Additional U.S. port(s) of loading nominated by bidder (or offeror), if any: _____

Bidder (or offeror) will indicate whether price(s) is (are) based on:

( ) Paragraph B, f.o.b. origin, transportation by GBL to port listed in D;
( ) Paragraph C, f.o.b. destination (*i.e.*, a port listed in D);
( ) Paragraph E, f.o.b. origin, transportation by GBL to port nominated in E; and/or
( ) Paragraph E, f.o.b. destination (*i.e.*, a port nominated in E).

(End of provision)

7-2003.21 *Eligibility for Preference as a Labor Surplus Concern.* In accordance with 2-201(a)Sec.K(xv) or 3-501(b)(3)Sec.K(xvii), insert the following clause.

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (1978 JUN)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price:

Name of Company:
Street Address:
City/County:
State:

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

7-2003.22 *Rated or Authorized Controlled Material Orders.* Solicitations which will result in the placement of rated orders or authorized controlled material orders (see 1-307) shall contain the following provision.

RATED OR AUTHORIZED CONTROLLED MATERIAL ORDERS (1974 APR)

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a [ ] DX — rating; [ ] DO — rating; [ ] DMS allotment number — (*Contracting Officer check appropriate box or boxes*) in accordance with the provisions of DPS Regulation 1 and/or DMS Regulation 1.

(End of provision)

7-2003.23 *Evaluation Factors for Award.*

(a) *Evaluation of Bids Subject to Economic Price Adjustment.* In accordance with 2-201(a)Sec.M(ii), insert the following provision.

EVALUATION OF BIDS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (1974 MAR)

Notwithstanding the provisions of the clause entitled "_____", bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

**Insert the title of the clause providing for economic price adjustment.*

(b) *Evaluation of Multiple Awards.* In accordance with 2-201(a)Sec.M(iii), insert the following provision.

EVALUATION OF BIDS FOR MULTIPLE AWARDS (1975 OCT)

In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(End of provision)

(c) *Transit Arrangements.* In accordance with 2-201(a)Sec.M(v), insert the following provision.

TRANSIT ARRANGEMENTS (1968 JUN)

The lowest appropriate common carrier transportation costs, including through transit rates and charges where applicable, from bidder's (or offeror's) shipping points, via the transit point, to the ultimate destination will be used in evaluating bids (or proposals). Transit point(s) _____ Destination(s) _____

(End of provision)

(d) *Evaluation—F.O.B. Origin.* In accordance with 2-201(a)Sec. M(vi), insert the following provision.

EVALUATION—F.O.B. ORIGIN (1974 APR)

Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considerd in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment.

(End of provision)

7-2003.24 *Evaluation Factors for Award.*

(a) *Destination Unknown.* In accordance with 2-201(a)Sec. M(vii), insert the following provision.

DESTINATION UNKNOWN (1968 JUN)

For the purpose of evaluating bids (or proposals), and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:

_____

(End of provision)

(b) *F.O.B. Origin—Carload and Truckload Shipments.* In accordance with 2-201(a)Sec. M (viii), insert the following provision.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (1968 JUN)

The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer. For bid (or proposal) evaluation purposes, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals. For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published as of date of shipment. If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for bid (or proposal) evaluation, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of provision)

(c) *Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (or Proposals).* In accordance with 2-201(a)Sec. M(ix), insert the following provision.

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B. ORIGIN BIDS (OR PROPOSALS) (1968 JUN)

A. If more than one shipping point or plant is designated by the bidder (or offeror) and he fails to indicate the quantity per shipping point or plant prior to bid opening (or the closing date specified for receipt of proposals), the Government will evaluate the bid (or proposal) on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

B. If the bidder (or offeror), prior to bid opening (or the closing date specified for receipt of proposals), fails to indicate any shipping point or plant, the Government will evaluate the bid (or proposal) on the basis of delivery from the plant at which the contract will be performed, as indicated in the bid or proposal. If no such plant is indicated in the bid (or proposal), then the bid (or proposal) will be evaluated on the basis of delivery from the Contractor's business address indicated on Standard Form 33 or other bid (proposal) form.

C. If the bidder (or offeror) utilizes a shipping point other than that which has been used by the Government as a basis for the evaluation of bids (or proposals), any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

(d) *FOB Origin and/or Destination.* In accordance with 2-201(a)Sec. M(x), insert the following provision.

F.O.B. ORIGIN AND/OR DESTINATION (1968 JUN)

Bids (Offers) are invited on the basis of both, f.o.b. origin and f.o.b. destination, and the Government will award on such basis as the Contracting Officer determines to be most advantageous to the Government. A bid (An offer) on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)

7-2003.25 *Bid Guarantee.* The following provision shall be included in solicitations in accordance with 10-102.4.

BID GUARANTEE (1964 JUN)

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(End of provision)

7-2003.26 *Reserved.*

7-2003.27 *Cost Limitation.* In accordance with 2-201(b)(xxx) or 3-501(c)(xxv), insert the following provision.

COST LIMITATION (1974 APR)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installations and Logistics) prior to award.

(End of provision)

7-2003.28 *Additive or Deductive Items.* In accordance with 2-201(b)(xli), insert a provision substantially as follows.

ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

7-2003.29 *Telegraphic Bids.* In accordance with 2-202.2, and 3-501(b)(3)Sec.L(v), insert the following provision.

TELEGRAPHIC BIDS (1964 MAR)

Telegraphic bids may be submitted in response to this Invitation for Bids. Telegraphic bids must be received in this office prior to the time specified for opening of bids. Such bids must specifically refer to this Invitation for Bid; must include the item or sub-items, quantities and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the Invitation for Bids together with a statement that the bidder agrees to all the terms, conditions and provisions of the invitation. Failure to furnish, in the telegraphic bid, the representations and information required by the Invitation for Bids may necessitate rejection of the bid. Signed copies of the Invitation for Bids must be furnished in confirmation of the telegraphic bids.

(End of provision)

This provision may be modified for negotiated procurements.

7-2003.37 *Step Two of Two-Step Formal Advertising.* In accordance with 2-503.2(ii), insert the following provision.

STEP TWO OF TWO-STEP FORMAL ADVERTISING (1974 APR)

THIS INVITATION FOR BIDS IS ISSUED PURSUANT TO TWO-STEP FORMAL ADVERTISING IN PART 5 OF SECTION II OF THE ARMED SERVICES PROCUREMENT REGULATION.

BIDS WILL BE ACCEPTED AND CONSIDERED ONLY FROM THOSE FIRMS WHO HAVE SUBMITTED ACCEPTABLE TECHNICAL PROPOSALS PURSUANT TO THE FIRST STEP OF SUCH PROCEDURES, AS INITIATED BY ..... (*Identify the Request for Technical Proposals*). ANY BIDDER WHO HAS SUBMITTED MULTIPLE TECHNICAL PROPOSALS IN THE FIRST STEP OF THIS TWO-STEP PROCUREMENT MAY SUBMIT A SEPARATE BID COVERING EACH TECHNICAL PROPOSAL WHICH HAS BEEN DETERMINED ACCEPTABLE BY THE GOVERNMENT.

(End of provision)

7-2003.38 *Notice of Possible Standardization.* In accordance with 3-213.4, insert the following.

NOTICE OF POSSIBLE STANDARDIZATION (1975 OCT)

It is possible that the products procured through this action may be established as standard and, at the option of the (..... *INSERT PROCURING DEPARTMENT*), subsequent procurements may be negotiated under authority of paragraph 3-213 of the Armed Services Procurement Regulation.

(End of provision)

7-2003.39 *Site Visit.* In accordance with 2-201(a)Sec.L(xii) or 3-501(b)(3)Sec.L(xiv), insert the following provision.

SITE VISIT (1969 OCT)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

(End of provision)

7-2003.40 *Unnecessarily Elaborate Contractor's Proposals.* In accordance with 3-501(b)(3)Sec.L(xxii) or 3-501(c)(xxviii), insert the following provision.

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS/QUOTATIONS (1969 OCT)

Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal or quotation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)

7-2003.41 *Order of Precedence.* In accordance with 2-201(a)Sec.L(iii) or 3-501(b)(3)Sec.L(iii), insert the following provision.

ORDER OF PRECEDENCE (1973 APR)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications); (b) Terms and Conditions of the solicitation, if any; (c) General Provisions; (d) other provisions of the contract, when attached or incorporated by reference; and (e) the Specifications.

(End of provision)

7-2003.42 *Royalty Information.* In accordance with 9-110(a)(3), insert the following provision.

ROYALTY INFORMATION (1961 AUG)

When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be furnished with offer, proposal, or quotation on each separate item of royalty or license fee:

(i) name and address of licensor;
(ii) date of license agreement;
(iii) patent numbers, patent application serial numbers or other basis on which the royalty is payable;
(iv) brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
(v) percentage or dollar rate of royalty per unit;
(vi) unit price of contract item;
(vii) number of units; and
(viii) total dollar amount of royalties.

DD Form 783, Royalty Report, is approved for use in furnishing the above information. In addition, if specifically requested by the Contracting Officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

(End of provision)

7-2003.43 *Notice of Cost/Schedule Control Systems.* In accordance with 1-331(h), insert the following provision.

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (1974 APR)

(a) The offeror shall submit a comprehensive plan for compliance with the attached criteria (DODI 7000.2 Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth in ASPR 7-104.87. The offeror shall identify his existing management systems separately from proposed modifications to meet the criteria. The plan shall:

(i) describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;
(ii) describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173-5, DARCOM-P 715-5, NAVMAT P-5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;
(iii) identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria;
(iv) describe the proposed procedure for administration of the criteria as applied to subcontractors.

agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

7-2003.62 *Options to Award and Pay in United States Owned Foreign Currency.* In accordance with 6-1104, insert the following provision.

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (1974 APR)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of clause)

7-2003.63 *Progress Payments Exclusively for Small Business.* In accordance with E-504.3, insert the following provision.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS (1974 APR)

The Progress Payments clause will be available to Small Business concerns only, and will not be included for contractors who are not Small Business concerns.

(End of provision)

7-2003.64 *Progress Payments.* In accordance with E-504.4, insert the following notice.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS* (1974 APR)

The need for progress payments conforming to regulations (Appendix E, Armed Services Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Authorized progress payments will not be a factor for evaluation of bids. The appropriate "Progress Payment" clause attached hereto will be included in the contract awarded in the manner herein provided, however, the clause shall be inoperative during the time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs. For Small Business concerns the clause designated "Progress Payments for Small Business Concerns" (7-104.35(b)) shall be used for such Contractors. For Contractors who are not Small Business concerns, the clause designated "Progress Payments for Other Than Small Business Concerns" (7-104.35(a)) shall be used.

(End of notice)

*Do not use the last sentence of this notice for procurements mentioned in E-504.2 and E-504.3.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2003.65 *Solicitation of Bids and Proposals.* The following provision shall be included in all solicitations for construction in the United States except when Standard Form 19 is used.

NOTICE REGARDING BUY AMERICAN ACT (1970 SEP)

The Buy American Act (41 U.S.C. 10a–10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid.

(End of provision)

7-2003.66 *Requirement for Technical Data Certification.* In accordance with 3-501(b)(3)Sec.K(xii), insert the following provision.

REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (1974 APR)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in his offer; if so, he shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

7-2003.67 *Cost Accounting Standards*

(a) *Disclosure Statement - Cost Accounting Practices and Certification.* In accordance with 3-1203(a) insert the following solicitation provision:

DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION (1978 MAR)

Any contract in excess of $100,000 resulting from this solicitation except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulations; (ii) contracts awarded to small business concerns (as defined in DAR 1-701.1); or (iii) contracts which are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board, must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation (see (I) below) unless (i) the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards exceeding the

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(b) *Cost Accounting Standards - Exemption for Contracts of $500,000 or Less.* In accordance with 3-1204.1(a)(vii)(A), insert the following provision:

COST ACCOUNTING STANDARDS - EXEMPTION FOR CONTRACTS OF $500,000 OR LESS (1978 MAR)

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption to the Cost Accounting Standards clause (7-104.83(a)(1) under the provisions of 4 CFR 331.30(b)(8) is claimed. Failure to check the box below shall mean that the resultant contract is subject to the Cost Accounting Standards clause or that the offeror elects to comply with such clause.

( ) The offer hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all deliverable items on (i) all prime contracts or subcontracts in excess of $500,000 which contain the Cost Accounting Standards clause, and (ii) all prime contracts or subcontracts of $500,000 or less awarded after January 1, 1975 which contain the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the Contracting Officer, in writing, in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards clause subsequent to the date of this certificate but prior to the date of any award resulting from this proposal.

(End of provision)

(c) *Cost Accounting Standards - Exemption for Modified Contract Coverage.* In accordance with 3-1204.1(b), insert the following solicitation provision:

COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE (1978 MAR)

If the offeror is eligible to use the modified provisions of 4 CFR 332 and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) in lieu of the Cost Accounting Standards clause (7-104.83(a)(1)).

( ) The offeror hereby claims an exemption from the Cost Accounting Standards clause (DAR 7-104.83(a)(1)) under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) because (i)

during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the contracting officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of $10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

(End of provision)

(d) In accordance with 3-1213(a), insert the following provision in all solicitations containing the clause in 7-2003.67(a).

ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS (1978 MAR)

The offeror shall indicate below whether award of the contemplated contract would require, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause (7-104.83(a)(1)), a change in his established cost accounting practices affecting existing contracts and subcontracts.

( ) YES ( ) NO

NOTE: If the offeror has checked "yes" above, and is awarded the contemplated contract, he will be required to comply with the *Administration of Cost Accounting Standards* clause (7-104.83(b)).

(End of provision)

7-2003.68 *Industrial Preparedness Production Planning.* In accordance with 3-501(b)(3)Sec.L(xxxii), insert the following provision:

INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING (1974 APR)

This solicitation includes an item for industrial planning in support of the Industrial Preparedness Production Planning program. Offerors are cautioned to carefully review Section E of the Schedule and the attached Industrial Preparedness Program Planning Exhibit. Failure to propose on the Industrial Preparedness Production Planning line item set forth in the Schedule may result in rejection of the proposal.

(End of provision)

7-2003.69 *Industrial Preparedness Production Planning.* In accordance with 2-201(a)Sec.L(xxiv), insert the following provision:

7-2003.80 *Woman-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 Recovered Material. The following certification shall be inserted in solicitations as required by 1-2500.5(b):

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 *Bid/Proposal Certification - Wage and Price Standards.* In accordance with 1-341(f)(1), insert the following provision.

BID/PROPOSAL CERTIFICATION - WAGE AND PRICE STANDARDS (1979 SEP)

(Applicable to contracts in excess of $5 million, and indefinite delivery-type contracts under which cumulative orders are expected to exceed $5 million.)

(a) By submission of this bid or offer, the bidder or offeror certifies to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR Part 705, Appendix, and Part 706).

(b) The clause entitled "Contract Certification - Wage and Price Standards," set forth elsewhere in this solicitation, shall be incorporated in any resulting contract except when waived by the Secretary.

(End of provision)

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services;

(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and

(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1979 SEP)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c, the economic terms of that agreement (or any new CBA negotiated 10 or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.
7-2003.89 Reserved.

7-2003.90 Data Universal Numbering System (DUNS) Number Reporting. In accordance with 2-201 and 3-501, insert the following provision.

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (1980 DEC)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

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Part 2—General Principles

8–200 Scope of Part. This Part deals with:

(i) the authority of contracting officers to terminate contracts in whole or in part (A) for the convenience of the Government; and (B) in the case of cost-reimbursement type contracts for default;

(ii) duties of the contractor and the contracting officer after issuance of the notice of termination;

(iii) general procedures for the settlement of terminated contracts; and

(iv) settlement agreements.

Part 3 sets forth additional principles applicable only to fixed-price type contracts. Part 4 sets forth additional principles applicable only to cost-reimbursement type contracts. Part 6 sets forth the principles applicable to the termination of fixed-price type contracts for default.

8–201 Authority of Contracting Officers.

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

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this Regulation. When the PCO is aware that (i) the contractor will accept a no-cost settlement, (ii) Government property was not furnished, and (iii) there are no outstanding payments, claims, or other contractor obligations, the PCO shall effect a no-cost settlement agreement in lieu of issuing a notice of termination. Otherwise, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than $1,000, a termination for convenience should normally not be effected but the contract be permitted to run to completion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see 8–206 and 8–210.4).

(c) Special consideration will be given to small business over large business concerns when terminating contracts for the convenience of the Government. When the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part, but not all, of the units still to be delivered, the decision as to which contract or contracts to terminate shall be made by the Chief of the Purchasing Office.

8–202 Prior Notification of Significant Contract Terminations.

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

(b) The following information will be submitted to the appropriate Departmental liaison point:

(i) contract number, date, type of contract;

(ii) name of company;

(iii) nature of contract or end item;

(iv) the reasons for the termination;

(v) contract price of items terminated;

(vi) total number of contractor employees involved including the Government's estimate of the number who may be discharged;

(vii) statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantage employment programs;

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

(ix) draft (unclassified) of suggested press release of information.

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

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army — OSA, OCLL (SACLL), ASA (I&L) (copy)

Navy — Chief of Legislative Affairs (OLA-N)

Air Force — Hq. USAF (AFLGP)

Defense Supply Agency — DSAH-PC

Defense Communications Agency — Contract Management Division (Code 260)

Defense Nuclear Agency — Chief, Office of Procurement, OATR

Defense Mapping Agency — DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

(f) This reporting requirement is assigned Report Control Symbol: DD (I&L) (AR) 1412.

8–203 Notice of Termination.

(a) *General.* Contracts shall be terminated for convenience, or for default only by a written notice to the contractor (see 8–801 and 16–701). When such notice is mailed, it shall be sent by certified mail return receipt requested. The written notice shall state:

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

(ii) the effective date of termination;

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

(iv) recommended actions to be taken by the contractor to minimize the impact on his personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph 7 of the notice in 8–801.2); and

(v) any special instructions (e.g., see 15-205.42(f)).

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

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

(i) the correction of mistakes in the notice, of a nonsubstantive nature,

(ii) addition of supplemental data or instructions, and

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

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

(i) circumstances clearly indicate a requirement for the terminated items; and

(ii) reinstatement is advantageous to the Government; *provided that* the written consent of the contractor is obtained to the reinstatement.

8–204 Methods of Settlement. Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (i) negotiated agreement, (ii) determination by the TCO, (iii) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (iv) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

8–205 Duties of Prime Contractor After Receipt of Notice of Termination. The contractor, after receipt of the notice of termination and except as otherwise directed by the TCO, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

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

(ii) terminate all subcontracts related to the terminated portion of the prime contract;

(iii) immediately advise the TCO of any special circumstances precluding the stoppage of work;

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

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

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

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

(viii) promptly submit his own settlement proposal (see 15-205.42), supported by appropriate schedules; and

(ix) dispose of any termination inventory, as directed or authorized by the TCO.

8–206 Duties of Termination Contracting Officer After Issuance of Notice of Termination.

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

(i) direct the action required of the prime contractor including the execution of a no-cost settlement agreement (see 8–210.4) if appropriate;

(ii) examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(iii) promptly negotiate settlement with the contractor and enter into a settlement agreement; and

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

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

(i) assist the TCO in dealings with the contractor;

(ii) render advice on legal and contractual matters;

(iii) conduct accounting reviews and render advice and assistance on accounting matters; and

(iv) perform the following functions with respect to the termination inventory—

(A) verify its existence;

(B) determine qualitative and quantitative allocability;

(C) make recommendations concerning serviceability and unserviceability;

(D) undertake necessary screening and redistribution; and

(E) assist the contractor in accomplishing other disposition.

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

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

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(d) DD Form 831 (see 8-802.3, 16-702.4 and F-200.831) may be used when the total claim is less than $10,000 unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

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

8-307.2 *Bases for Settlement Proposals.*

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

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

(ii) charges such as engineering costs, initial costs, and general administrative costs;

(iii) costs of settlements with subcontractors;

(iv) settlement expenses; and

(v) other proper charges.

An allowance for profit (see 8-303) or adjustment for loss (see 8-304(b)) must be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, must then be deducted.

(b) *Total Cost Basis.*

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

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

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

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

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

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination must be itemized and the costs of settlements with subcontractors and applicable settlement expenses must be added. An allowance for profit (see 8-303) or adjustment for loss (see 8-304(c)) must be made. The contract price for all end items which have been or are to be delivered and accepted must be deducted. All unliquidated

advance and progress payments, disposal and other credits known when the proposal is submitted, must also be deducted.

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

(c) *Other Basis.* Termination claims may not be submitted on any basis other than (a) or (b) above without the prior approval of the Chief of the Purchasing or Contract Administration Office.

8-308 Limitation on Settlements. The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

8-309 Equitable Adjustment in Unit Prices Under Fixed-Price Contracts in Cases of Partial Termination.

(a) A claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion thereof, asserted by the contractor in accordance with the provisions of the Termination clause pertaining to a partial termination, shall be forwarded to the PCO, except when the contractor is notified that negotiation authority has been delegated to the TCO pursuant to this Regulation. The claim shall be submitted on DD Form 633 , Contract Pricing Proposal ,

(b) When the PCO retains responsibility for negotiating an equitable adjustment of the price of the continued portion of the contract and execution of a supplemental agreement, he shall assure himself on the basis of evidence he deems proper (including coordination with the TCO), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

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

Part 3—Insurance—General

10-300 Scope of Part. This Part sets forth the general principles and policy applicable to insurance under contracts of the Department for supplies or services.

10-301 Definitions. As used in this Section X the following terms shall have the meanings set forth below:

10-301.1 *Insurance* means the protection against the risk of financial loss by the purchase of coverage from sources independent of and external to the contractor's business or by a program of self-insurance.

10-301.2 *Purchased insurance* means insurance purchased from insurers independent of and external to the contractor.

10-301.3 *Self-insurance* means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (see 15-205.16(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

10-302 General. Contractors shall be required to carry insurance when:

(a) Insurance, either by purchase or self-coverage, is required for the various perils to which a contractor, subject to CAS 416 (see 15-205.16(a)) is exposed, and except to the extent (i) the Government pursuant to law, agrees in a contract provision to indemnify the contractor under specified circumstances and (ii) a contractor is relieved of liability for loss or damage to Government property pursuant to a contract provision. However, the right to disapprove any insurance coverage is reserved should such insurance not be in the best interest of the Government. Additionally, approval of any contractor insurance program under this Section does not constitute a determination as to the allowability of the program's cost (see 15-205.16).

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law as well as this Regulation to provide insurance for certain types of perils such as workmen's compensation. Coverage is also mandatory when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of coverage required by this Regulation may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one Department is involved, the Department responsible for review and approval of a contractor's insurance program shall coordinate with other interested Departments prior to taking action on significant insurance matters.

10-303 Self-Insurance.

(a) Self-insurance programs must be submitted to the administrative contracting officer for approval when it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment will be allocable to negotiated Government contracts and the self-insurance costs at the segment for the contractor's fiscal year are expected to be $200,000 or more. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include, at a minimum, the following data:

(i) description of self-insurance program including any Board of Director resolution authorizing and adopting coverages as to types of risks included and limits, with safety, loss control and legal service responsibilities clearly assigned;

(ii) if available, the Corporate Insurance Manual and organizational chart detailing insurance fiscal responsibilities;

(iii) terms regarding coverage of insurance for any Government property;

(iv) latest financial statements;

(v) any self-insurance feasibility studies and insurance market surveys reporting comparative alternatives;

(vi) loss history, premiums history and industry ratios;

(vii) formula for establishing reserves including variations on a percentage basis between losses paid and losses reserved;

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(viii) claims administration policy, practices and procedures;
(ix) how the projected average loss will be calculated;
(x) disclosure of all captive insurance company and re-insurance agreements including methods of costing.

Once approved, any major changes to the program must also be submitted for contracting officer approval. The approval of any program may be withdrawn upon a finding by the contracting officer that either (i) the program or any part thereof no longer complies with the requirements of this Section X and 15-205.16 and (ii) conditions or situations in existence at the time of approval which were a part of the basis for original approval of the program have changed to such an extent that a change in the program is determined to be necessary before it can be approved again.

(b) Programs of self-insurance covering any kind of risk may be approved when examinations of such programs indicate that their application is in the best interest of the Government. However, self-insurance for catastrophic type risks will not be recognized. Should performance of Government contracts create the risk of catastrophic losses for the contractor, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both. To qualify for a program of self-insurance, a contractor must demonstrate that he can sustain the potential losses being self-insured. Some of the factors to be considered in this determination are:

(i) soundness of financial condition, including available lines of credit;
(ii) geographic dispersion of assets so that the potential of a single loss depleting all the assets is unlikely;
(iii) history of losses as to the frequency of occurrence and the financial impact of each occurrence;
(iv) type and magnitude of risk being self-insured, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks;
(v) compliance with Federal and state laws and regulations.

(c) A program of self-insurance for workmen's compensation in any jurisdiction where workmen's compensation does not completely cover employers' liability to employees may be approved only if (i) the contractor also maintains an approved program of self-insurance for any employers' liability which is not so covered or (ii) the contractor shows that the combined cost to the Government of self-insurance for workmen's compensation and purchased insurance for employers' liability will not exceed the costs of covering both kinds of risks by commercial insurance.

10-304 Notice of Cancellation or Change. When insurance is required by contract provision or in writing by the contracting officer or other approving authority, the policies evidencing purchase of such insurance shall contain an endorsement to the effect that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the written notice as required by the contracting officer or other approving authority is given. When the coverage is provided by self-insurance, prior approval of the administrative contracting officer is required for any change or decrease in coverage (see 10-303(a)).

10-305 Insurance Against Loss of or Damage to Government Property. Generally, a contractor is relieved of liability for loss of or damage to Government property and insurance coverage is not required. This general rule is limited by certain of the contract clauses in Sections VII and XIII. When insurance is required or approved, the insurance policies for purchased coverage or the Statement of Program Coverage (see 10-303(a)(i) for self-insurance) shall disclose the Government's interest in the property.

10-306 Procedures to be Followed in the Event of Loss of or Damage to Government Property. Upon the happening of loss of or damage to any Government property, concerning which the contractor is relieved of responsibility by contract provision, the procedure to be followed shall be as prescribed in subparagraphs (g)(4) of the clause in 7-104.24(c) and (g)(3) of the clauses in 7-203.21, 7-303.7, 7-402.25(a) and 7-901.5.

Part 4—Insurance Under Fixed-Price Contracts

10–400 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under fixed-price contracts for supplies or services.

10–401 Policy. Generally the Departments are concerned with the insurance program of a fixed price contractor only when special circumstances exist. Examples are:

(i) the contractor is engaged principally in Government works;
(ii) the contractor has a separate operation engaged principally in Government work;
(iii) Government property of substantial value is involved;
(iv) the work is performed within a Government installation;
(v) the Government desires to assume risks for which the contractor ordinarily obtains commercial insurance;
(vi) a substantial amount of work is being performed under a fixed-price incentive contract; and
(vii) adequate coverage is not available in the commercial market at a reasonable cost.

10–402 Government Property. The contractors' responsibilities for loss of or damage to Government property under fixed price contracts are set forth in the clauses in 7–104.24.

10–403 Workmen's Compensation and War Hazard Insurance Overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in work outside the United States, including any employee engaged (i) in the performance of a public work contract or (ii) in the performance of any contract approved or financed pursuant to the Foreign Assistance Act of 1961 other than (A) contracts approved or financed by the Development Loan Fund, or (B) contracts exclusively for the furnishing of materials or supplies. As used in this paragraph, a "*public work*" contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. When the Defense Base Act applies, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq.), to afford protection to employees against the hazards of war risks (injury, death, capture, or detention). Under this plan, once a contract employer has provided the Workmen's Compensation coverage required by the Defense Base Act (by insurance policy or self-insurance program), his employees automatically receive War Hazard Risk protection. An employer need not insure against War Hazard Risk, however, since such war risk benefits are provided at no cost to the employer by the Bureau of Employee's Compensation, Department of Labor. The clause in 7–104.2(a) shall be included in all public work contracts to be performed outside the United States.

(b) Upon the recommendation of the Secretary concerned, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees.

(c) Requests for waivers shall be submitted through channels (i) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (I&L); (ii) for the Navy, to the Chief of Naval Material; (iii) for the Air Force, to the Directorate of Procurement Policy, Headquarters USAF; (iv) for the Defense Supply Agency, to the Deputy Director, Contract Administration Services, Attn: DCAS-AF; (v) for the Defense Communications Agency, to the Chief, Contract Management Division; (vi) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (vii) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) name of contractor;
(ii) business mailing address of contractor;
(iii) contract number;
(iv) date of award;
(v) geographic location where contract will be performed;
(vi) name of insurance company providing the Defense Base Act coverage;
(vii) nationality of employees to whom waiver is to apply; and
(viii) reason for waiver.

(d) (1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees in accordance with procedures set forth in (b) and (c) above, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workmen's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of Section XV, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Chief of the ContractingOffice, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. If it is decided that the contractor shall not purchase insurance against this liability, the clause in 7–104.2(c) shall be included in the contract.

(e) If a contract would otherwise be subject to (a) above, but (d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10–501.1(b) and (c) apply, and the clause in 7–104.2(b) shall be included in the contract.

10–404 Aircraft—Ground and Flight Risk.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (b) below, include the clause in 7–104.10.

(b) (1) In paragraph (b) of the clause in 7-104.10, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(i) Since the standard definition of "*aircraft*" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "*in the open*" may be modified to include "hush houses," test hangers, and comparable structures, and other designated areas;

(iii) "*Contractor's premises*" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "*Contractor's premises*" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 7-204.21, suitably adapted for use in a fixed-price type contract, shall be used.

(3) Subparagraph (d) (iii) of the clause in 7-104.10 may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

10-405 Work on a Government Installation.

(a) Insert the clause in 7-603.10 in all construction and architect-engineer contracts requiring work on a Government installation, and the clause in

7-104.65 in all other contracts requiring work on a Government installation. Neither clause is required, however, for contracts (i) of $10,000 or less, (ii) when only a small amount of work is required on a Government installation (*e.g.*, a few brief visits per month), and (iii) when all work on a Government installation is to be performed outside the United States, its possessions, and Puerto Rico. The coverage specified in 10-501 is the minimum insurance required and shall be included in the clause in 7-603.10 or in the contract schedule. Additional coverage and higher limits may be required by the contracting officer.

(b) The clause in 7-104.65 or the clause in 7-603.10 may also be included in contracts described in (a) (i), (ii), and (iii) above when the contracting officer considers this to be in the interest of the Government. In such contracts, if appropriate, any of the kinds of insurance listed in 10-501 may be omitted or the limits may be lowered.

10-406 Capture and Detention of Contractor Employees. The clause in 7-104.94 is authorized for use when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

Part 5—Insurance Under Cost-Reimbursement Type Contracts

10-500 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under cost-reimbursement type contracts for supplies or services.

10-501 Policy. The types of insurance listed below, with the minimum amounts of liability indicated, ordinarily shall be required in cost-reimbursement contracts and subcontracts thereunder when the provisions of the prime contract are extended to the subcontract. (Insurance written on a single limit basis must be equal to or greater than the combined required minimums indicated.) An approved program of self-insurance, as provided in 10-303, may be substituted for any of the types of insurance ordinarily required.

10-501.1 *Workmen's Compensation and Employers' Liability Insurance.*

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employers' liability section of the insurance policy; however, such additional insurance shall not be required when contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. Employers' liability coverage in the minimum amount of $100,000 shall be required except in states with exclusive or monopolistic funds which do not permit the writing of workmen's compensation by private insurance carriers (Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming). The clause in 7-104.2(a) shall be included in all public work contracts as described therein to be performed outside the United States.

(b) When the clause in 7-104.2(b) is required for contractor programs of self-insurance, and the Chief of the Contracting Office determines that the contractor shall not purchase insurance against the liability described in 10-403(d)(2), the clause in 7-104.2(c) shall be inserted in the contract.

(c) Each contract containing the clause in 7-104.2(c) shall contain:

(i) the estimated cost for war hazard losses;

(ii) the clause at 7-203.4(a) appropriately limited to cover allowable war hazard cost;

(iii) the Examination of Records clause (7-104.15); and

(iv) a provision similar to the following:

> The portion of this contract providing for the Contractor to afford protection to his employees and by subcontractors to their employees against war hazard risks (see the clauses entitled Reimbursement for War Hazard Losses and Workmen's Compensation and War Hazard Insurance Overseas) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of payment for the remainder of the contract.

(d) The estimated cost for war hazard losses will be based upon estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war hazard risks, the level of benefits applicable to such employees, location, and nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept small as reasonably feasible. As reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisions applicable to war hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements pursuant to 15-107 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time he is able to work out, in a proper case, lump sum settlement of his obligation.

10-501.2 *General Liability Insurance.* Bodily injury liability insurance, in the minimum limits of $300,000 per occurrence shall be required on the comprehensive form of policy; however, property damage liability insurance ordinarily shall not be required.

10-501.3 *Automobile Liability Insurance.* This insurance shall be required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the contract. At least the minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury and $10,000 per occurrence for property damage shall be required.

10-501.4 *Aircraft Public and Passenger Liability Insurance.* When aircraft are used in connection with the performance of the contract, such insurance ordinarily will be considered required coverage. The minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury, other than passenger liability, and a limit of $100,000 per occurrence for property damage shall be required. Passenger liability bodily injury limits of $100,000 per passenger with an aggregate equal to the total number of seats or number of passengers whichever is greater, shall be required.

10–501.5 *Vessel Collision Liability and Protection and Indemnity Liability Insurance.* Where vessels are used in connection with the performance of the contract, such insurance shall be required whenever deemed necessary by the Department concerned.

10–502 Government Property. The contractor's responsibilities for loss of or damage to Government property under cost-reimbursement-type contracts are set forth in the clause in 7–203.21.

10–503 Aircraft-Flight Risk.

(a) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (b) below, include the clause in 7–204.21.

(b) In the clause, the definition of "*aircraft*" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

10–504 Group Insurance Plans Under Cost-Reimbursement Type Contracts.

(a) Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Procuring Activities for the Department of the Army; The Chief of Naval Material for the Department of the navy. Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN-C), DCASR Chicago (DCRI-C), or DCASR Los Angeles (DCRL-C), as appropriate. Changes in the benefits provided under an approved plan that can reasonably be expected to increase significantly the costs being charged to the Government shall be submitted as provided above for approval. Provision shall also be made for the Government to participate in all premium refunds or credits paid or otherwise allowed to the contractor, as required by 15–201.5. In determining the extent of the Government's participation in such premium refunds or credits, consideration shall be given to any special reserves and other refunds that may subsequently be paid to the contractor.

(b) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Procuring Activities, for the Department of the Army; the Chief of Naval Material, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

10–505 Capture and Detention of Contractor Employees. See 10–406.

12–805 Contract Clauses and Solicitation Provisions. Clause and solicitation provisions implementing the EEO program are contained at:

(i) 7–103.18(a) - Equal Opportunity clause, used with other than Federally assisted construction;
(ii) 7–103.18(b) - Equal Opportunity (Federally Assisted Construction);
(iii) 7–104.22 - Equal Opportunity Preaward Clearance of Subcontracts;
(iv) 7–603.60 - Affirmative Action Compliance Requirements for Construction;
(v) 7–607.13 - Equal Opportunity clause, used with architect - engineer services;
(vi) 7–2003.14(a) - Preaward On-Site Equal Opportunity Compliance Review;
(vii) 7–2003.14(b)(1)(A) - Certification of Nonsegregated Facilities;
(viii) 7–2003.14(b)(1)(B) - Previous Contracts and Compliance Reports;
(ix) 7–2003.14(b)(2) - Affirmative Action Compliance. used with nonconstruction affirmative action compliance programs;
(x) 7–2003.14(d) - Notice of Requirement for Affirmative Action to Ensure Equal Opportunity; and
(xi) 7–2003.14(c) - Notification of Visa Denial.

12–806 Affirmative Action Compliance Programs (AACPs).

12–806.1 *Nonconstruction.* Except as provided in 12–808, each prime contractor and each subcontractor with 50 or more employees and (i) a contract or subcontract of $50,000 or more; or (ii) Government bills of lading which, in any 12–month period, total or can reasonably be expected to total $50,000 or more is required to develop a written AACP for each of its establishments within 120 days from the commencement of its first such Government contract or subcontract.

12–806.2 *Construction.*

(a) Construction contractors are required to meet (i) the contract provision citing affirmative action requirements covering specified geographical areas or projects and (ii) applicable requirements of 41 CFR Part 60–1.

(b) Departments shall maintain a listing of specific geographical areas that are subject to affirmative action requirements which specify goals for minorities and women in covered construction trades. Information concerning this lising and additions thereto will be provided to the principally affected contracting offices in accordance with departmental procedures. Any contracting office contemplating a construction project in excess of $10,000 within a geographical area not known to be covered by specific affirmative action goals shall request instructions prior to issuance of a solicitation. Such a request shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Acquisition Policy, Headquarters USAF, for the Air Force; Executive Director for Procurement, for the Defense Logistics Agency; Director of Procurement,

for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency.

(c) Contracting officers shall give written notice to the appropriate Assistant Regional Administrator, OFCCP, within 10 working days of award of the contract subject to these affirmative action requirements. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed. When requested by the appropriate compliance office, the contracting office shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities (see 18-704.1(b)(2).

12-807 Contracting Officer Responsibilities.

12-807.1 *Contract Provisions.* In all solicitations and contracts, except those exempted by 12-808(b) - (f), the contracting officer shall include the applicable clause(s) and solicitation provisions referenced in 12-805. (Note: By operation of the Executive Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and this Part to include such a clause whether or not it is physically incorporated in such contracts.)

12-807.2 *Determinations (Excluding Construction).*

(a) *Preaward Clearances for Contracts and Subcontracts of $1 Million or More.* Except as provided in (2)c. below, the contracting officer shall request the appropriate OFCCP regional office (see (1)a. below) to determine whether a prospective contractor is awardable prior to award of any contract, modification of an existing contract for new effort that would constitute a contract award, issuance of any basic ordering agreement, award of any indefinite delivery contract or letter contract, the estimated amount of which is or is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more.

(1) *Procedure for Requesting Clearances.*

a. Preaward clearance for each proposed prime contract and for each known proposed first tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP Regional Office(s), as will be listed from time to time in Defense Acquisition Circulars. Verbal requests shall be confirmed in writing.

rentals, transportation, and gratuities, are unallowable. (But see 15-205.10 and 15-205.43).

15-205.12 *Cost of Idle Facilities and Idle Capacity.* (CWAS)

(a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) *Facilities* means plant or any portion thereof (inclusive of land integral to the operation); equipment individually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

(2) *Idle Facilities* means completely unused facilities that are excess to the contractor's current needs.

(3) *Idle Capacity* means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis* less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period.

*A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) *Costs of Idle Facilities or Idle Capacity* are costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) they are necessary to meet fluctuations in workload; or

(ii) although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see 15-205.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, *provided* the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

15-205.13 *Fines and Penalties.* (CWAS-NA) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

15-205.14 *Reserved.*

15-205.15 *Fringe Benefits.* See 15-205.6(g).

15-205.16 *Insurance and Indemnification (Purchased Insurance CWAS) (Self-Insurance CWAS-NA)*

(a) Insurance by purchase or by self-insuring includes (i) coverage which the contractor is required to carry, or which is approved, under the terms of the contract, and (ii) any other coverage which the contractor maintains in connection with the general conduct of his business. Any contractor desiring to establish a program of self-insurance applicable to contracts not subject to Cost Accounting Standard (CAS) 416 must comply with the self-insurance provisions of the Standard as well as Section X of this Regulation. Approval of a contractor's insurance program in accordance with Section X does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions set forth in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) the cost of casualty insurance premiums for insurance coverage in excess of acquisition cost of the insured assets is allowable *provided* the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the contractor's business, or (B) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (C) a separate and complete industrial operation in connection with the performance of the contract; and

(v) costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation. (See 15-205.6.)

(3) Actual losses are unallowable unless expressly provided for in the contract, except:

(i) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable; and

(ii) losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practices, are allowable for contracts not subject to CAS 416 when the contractor elected not to establish a self-insurance program. Such contracts are not subject to the self-insurance provisions of CAS 416 (see 10-301.3). Also, for contracts subject to CAS 416, and those made subject to the self-insurance provisions of the Standard as a result of the contractor's having established a self-insurance program (see 15-205.16(a)), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 4 CFR 416.50(a)(2)(ii)).

(4) Contracts operating under a program of self-insurance must obtain approval of the program when required by 10-303(a).

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance and charge therfor must comply with

the self-insurance provisions of CAS 416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor, but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had he insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 10-303(b)).

(f) Late premium payment charges related to employee deferred compensation plan insurance, incurred pursuant to Section 4007 or Section 4023 of the Employee Retirement Income Security Act of 1974, are unallowable.

(g) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent authorized by law, which authorization is implemented in a provision of the contract, except as provided in subparagraphs (i) and (ii) of (a)(3) above.

15-205.17 *Interest and Other Financial Costs.* (CWAS-NA) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in 15-205.41. (But see 15-205.24.)

15-205.18 *Labor Relations Costs.* (CWAS) Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

15-205.19 *Losses on Other Contracts.* (CWAS-NA) An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research, and development, or other nature, is unallowable.

15-205.20 *Maintenance and Repair Costs.*

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 15-205.9):

(i) normal maintenance and repair costs are allowable;

(ii) extraordinary maintenance and repair costs are allowable, *provided* such are allocated to the periods to which applicable for purposes of determining contract costs. (But see 15-107.)

(b) (CWAS-NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

15-205.21 *Manufacturing and Production Engineering Costs.* (CWAS) Costs of manufacturing and production engineering including engineering activities in connection with the following, are allowable:

(i) current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(ii) current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

15-205.22 *Material Costs.* (CWAS)

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any provision of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of (b) through (e) below.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, *provided* such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the contractor under a common control shall be on the basis of cost incurred in accordance with this Part 2, except that when it is the established practice of the transferring organization to price interorganization transfers of materials, supplies and services at other than

Such costs may include the cost of labor and material, and related overhead attributable to such factors as—

(i) excessive spoilage resulting from inexperienced labor,

(ii) idle time and subnormal production occasioned by testing and changing methods of processing,

(iii) employee training, and

(iv) unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts.

(d) *Loss of useful value of special tooling, special machinery and equipment* is generally allowable, *provided*—

(i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the contractor;

(ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery and equipment was acquired.

(e) *Rental cost under unexpired leases* are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(ii) the contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, *provided*, such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) (1) Settlement expenses including the following are generally allowable:

(i) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and for the termination and settlement of subcontracts;

(ii) reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract; and

(iii) indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision.

(2) When settlement expenses of a termination are significant, a separate cost account(s) or work order(s) shall be established to accumulate and identify these expenses separately.

(g) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors, *provided*, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 15-201.4 and 15-203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

15-205.43 *Trade, Business, Technical and Professional Activity Costs.* (CWAS)

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and Conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

15-205.44 *Training and Educational Costs.*

(a) (CWAS) Costs of preparation and maintenance of a program of instruction at non-college level, including but not limited to on-the-job, classroom and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and

(i) salaries of the director of training and staff when the training program is conducted by the contractor; or

(ii) tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) (CWAS) Costs of part-time education, at an under-graduate or post-graduate college level, including that provided at the contractor's own facilities, are allowable only when the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to—

(i) training materials;

(ii) textbooks;

(iii) fees charged by the educational institution;

16-806 Royalty Report (Foreign and Domestic) (DD Form 783). DD Form 783 is approved for use by contractors and prospective contractors in making reports of royalty information as required by 9-110. While it is preferred that contractors use DD Form 783 (and contractor reproduction of the form is authorized), the contractor may submit the royalty information in such other form as is considered desirable by the contractor, *provided* such other form contains all of the information required by 9-110.

16-807 Report Documentation Page (DD Form 1473). This form shall be used in connection with scientific and technical reports under research and development contracts pursuant to 4-113.

16-808 Reserved.

16-809 Report of Inventions and Subcontracts (DD Form 882). DD Form 882 is approved for optional use by contractors in reporting information required by paragraph (c) of the Patent Rights clauses set forth in 7-302.23(a) and (b).

16-810 Bidders Mailing List Application (Standard Form 129) and Bidders Mailing List Application Supplement (DD Form 558-1).

16-810.1 *General.* Standard Form 129 shall be used in connection with the establishment and maintenance of bidders lists as prescribed in 2-205 and for research and development in ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists." Supplemental Information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

16-810.2 *Conditions for Use.*

(a) The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

(b) Pending the publication of a new edition of the form, the representation prescribed by 7-2003.74 shall be added as a fourth entry after the entry entitled "*Commerce Business Daily*" on Page 2.

16-810.3 *Item Listings for Information of Bidders.* In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids or proposals, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, procured by the purchasing activity maintaining the list, which are considered applicable to the supplier's type of business.

16-811 Contract Security Classification Specification (DD Form 254).

Contracting officers shall inform contractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract by using Contract Security Classification Specification, DD Form 254. Instructions for preparation of this form are contained in Section VII, DoD 5220.22-R. The contracting officer is the approving official for the Contract Security Classification Specification and shall insure that it is distributed in accordance with Section VII, DoD 5220.22-R.

16-812 Release and Assignment Forms.

(a) The forms set forth below are approved for use in complying with the assignment and release provisions of paragraph (f) of the compensation clauses for cost-plus-fixed-fee and cost-plus-incentive-fee contracts set forth in 7-203.4 (a) and (b). Forms differing from the approved forms may be used if the contracting officer determines that such forms meet the applicable requirements of the clause. Checks received by Department contracting officers pursuant to paragraph 2 of the assignments in (d) and (e) below shall be forwarded to the finance officer designated in the contract.

(b) Set forth herein is an approved form for the contractor's release required by paragraph (L) of the clauses in 7-203.4 (a) and (b).

CONTRACTOR'S RELEASE (JUL. 1956)

Contract No. _____

Pursuant to the terms of Contract No. _____ and in consideration of the sum of _____ Dollars ($_____) which has been or is to be paid under the said contract to _____ (*Contractor's name and address*), (hereinafter called the Contractor) or its assignees, if any, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract.

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all of the provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been 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.

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Proposals)" provision in 7-2003.20 shall be included in the solicitation. When a solicitation provides for bids or offers on the basis of f.o.b. origin only, as described in paragraph B of this provision, paragraph C and the last sentence of paragraph E shall be deleted. When a solicitation provides for bids or offers on the basis of f.o.b. destination only, as described in paragraph C of the same provision, the following shall be deleted: paragraph B, the opening phrase in paragraph C(2) "Unless bids . . . (see B above)" and the first and third blocks pertaining to origin at the end of paragraph E.

(e) The award shall specify the United States port(s) of loading which afford the lowest overall cost to the overseas destination.

19-213.2 *Military Standard Transportation Movement Procedures (MILSTAMP) Documentation and Export Releases.* A transportation Control Movement Document (TCMD) must be dispatched to the appropriate air or water clearance authority in accordance with MILSTAMP procedures, for all shipments consigned to either air or water terminal transshipment points. Additionally, an Export Release must be obtained for certain categories of supplies to be transshipped via a water port of loading to overseas destination (see 19-213.1 and 16-823). MILSTAMP procedures are designed to be compatible with Export Release procedures for controlling the movement of cargo via water and air terminals. To assure control of export traffic, the clause in 7-104.74 shall be included in contracts calling for shipments consigned to either air or water terminal transshipment points.

19-214 Place of Delivery for Shipments Originating Outside the United States. It is the policy of the Department of Defense, in furtherance of the Cargo Preference Act (46 U.S.C. 1241), to encourage and foster the American Merchant Marine. When transportation of supplies by ocean vessel will be required (see Section I, Part 14) and in the absence of specific instructions from the requiring activity, the place of delivery for shipments originating outside the United States shall be based on the known availability of United States flag vessels between the points involved.

19-215 Diversions Affecting FOB Destination Transportation Costs. To provide the measure for adjustment of shipping costs if the contracting officer directs a change in the place of delivery on f.o.b. destination contracts, the contract shall include the clause in 7-104.75.

19-216 Scheduling of Deliveries To Permit Consolidation of Shipments. The accumulation of small shipments into carload or truckload lots will result in lower transportation costs. Also, the accumulation of small shipments into less than load shipments may result in lower transportation costs. Upon review of the purchase request and in conjunction with the requiring or requisitioning activity, consideration shall be given to revising delivery schedules to provide for deliveries in larger quantities. When feasible, delivery schedules for supplies to be delivered to multiple destinations should be consolidated and the stopoff (in transit) privilege permitted under carrier's tariffs used for partial unloading at one or more points directly en route between the point of origin and the last destination.

19-217 Special Freight Rates for Transportation of Supplies. Part I of the Interstate Commerce Act makes unlawful all unjust discrimination and also prohibits the direct or indirect charging, demanding or receiving, for any service,

greater or less compensation from any person than any other for a like and contemporaneous service. However, Section 10721 of the Revised Interstate Commerce Act permits common carriers subject to the Act to provide for the carriage, storage, or handling of property free or at reduced rates when the services are provided for the United States, State or municipal Governments, and other specified organizations. Accordingly, Section 10721 allows a surface carrier to offer preferential rates to the United States for the movement of property. These rates are popularly known as Section 10721 rates.

19-217.1 *Applicability of Section 10721 Rates.* Section 10721 rates are not applicable to shipments under a fixed-price f.o.b. destination contract. Such rates are published in Government rate tenders and apply on shipments moving on Government bills of lading or on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for or converted to Government bills of lading at destination after delivery to the consignee; however, for such benefits to accrue to the Government on shipments moving on other commercial bills of lading, it becomes necessary to establish that the Government pays the total transportation charges or directly and completely reimburses the party which initially bears the freight charges.

(a) In fixed-price f.o.b. origin contracts, the Government may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor would be reimbursed for the direct and actual transportation cost as a separate item in the invoice (see 19-403.2). To insure that the Government, in this type of arrangement, obtains the benefit of Section 10721 rates, when they exist, the clause in 7-103.25 shall be included in the contract.

(b) The Section 10721 preferential rates are applicable to shipments moving on commercial bills of lading under cost-type contracts, when the transportation costs are direct and allowable costs under the cost principles of Section XV. To insure that the Government receives the benefit of lower Section 10721 rates, when they exist, the clause in 7-203.14 shall be included in cost-type contracts.

(c) Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, Section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and Section 10721 rates will not apply.

Part 4—Contract Administration

19–401 Traffic Management for Contract Administration. The transportation office of the contract administration office shall have access to or be furnished a copy of the contract, including modifications thereto. When the transportation data regarding f.o.b. origin contracts are insufficient for Government transportation purposes (see 19–202), the contract administration office shall obtain the data used in the evaluation of the bid or proposal from the purchasing office. This will assure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. Transportation personnel are responsible for:

(i) furnishing timely routings and releases for port shipments;
(ii) monitoring shipments to provide for carload or truckload quantities when practicable;
(iii) controlling and issuing Government bills of lading and determining proper freight classification descriptions;
(iv) reviewing documentation to assure the proper distribution and validation of shipping documents;
(v) advising as to the effect proposed changes will have on transportation costs;
(vi) determining, for the contract requirements, the size and capabilities of carrier's equipment to be ordered, based on the need for special shipping arrangements for oversize and overweight or dangerous supplies;
(vii) developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 19–402);
(viii) exercising control of irregularities in packing, loading, loss and damage causes, sealing of vehicles, and documentation of weights;
(ix) providing information on use of transit arrangements;
(x) recommending prepayment, when appropriate, by contractor for f.o.b. origin shipments or parcel post (see 19–403.2 and 19–403.3);
(xi) diverting, reconsigning, tracing, and expediting shipments;
(xii) functioning to control new shipping situations or meet emergency requirements which arise during contract administration; and
(xiii) considering the capabilities of the contractors for performing the foregoing and utilizing these capabilities when appropriate; and
(xiv) utilizing routings through established consolidation stations when it is in the best interest of the Government.

19–402 Volume Movements Within the Continental United States.

(a) Volume movement means the aggregate of one or more freight shipments to move during the contract period, amounting to or exceeding 25 carloads, 25 truckloads, or 500 000 pounds, from one point of origin for delivery to one destination point or area. On FMS shipments, the aggregate will be 200,000 pounds or more.

(b) As soon as production schedules and planned destinations have been established after award, the transportation office serving the purchasing office shall review contracts and report planned volume movement in accordance with

the Military Traffic Management Regulation (AR 55–355, NAVSUP Pub 444, AFM 75–2, MCO 4600.14, DSAR 4500.3). A copy of the volume movement report shall be forwarded to the contract administration office. On FMS shipments, include destination country, foreign freight forwarder and port of embarkation (if known).

(c) The transportation office serving the contract administration office will submit required volume movement reports (see 19–401 (vii)) when:

(i) upon review of contract it is determined that no volume movement report has been submitted by the purchasing office; or
(ii) movement requirements are refined or changed to such a degree that a revised volume movement report should be submitted.

(d) Reporting of volume movements will permit a determination of the reasonableness of applicable current rates, and when appropriate, negotiation of adjusted or modified rates, in accordance with the above regulation.

19–403 Shipping Documents Covering FOB Origin Shipments.

19–403.1 *Government Bills of Lading.* Except as provided in 19–403.2, when a contract provides that supplies be delivered f.o.b. origin, with transportation costs to be paid by the Government, shipments shall be made on Government bills of lading furnished to the contractor by the contract administration office. The contracting officer shall not authorize the contractor to ship on a commercial bill of lading for conversion to a Government bill of lading unless delivery is extremely urgent and Government bills of lading are not readily available (see 16–822 and 16–823).

19–403.2 *Use of Prepaid Commercial Bills of Lading.*

(a) When economical or otherwise justified, the contracting officer or his representative may authorize the contractor to make the following f.o.b. origin freight or express shipments (if they have no security classification) at Government expense on prepaid commercial bills of lading to domestic destinations, including United States military air terminals and water terminals:

(i) shipments not exceeding 150 pounds by any form of commercial air transportation (because of restrictions imposed by air carriers, a package weighing more than 100 pounds or measuring more than 44 x 24 x 30 inches should not be tendered to a commercial air carrier unless it is known that it will be accepted;
(ii) shipments not exceeding 250 pounds by railway express or bus express (because of restrictions imposed by bus express carriers, a package weighing more than 100 pounds or measuring more than 45 x 24 x 24 inches should not be tendered to the bus express carrier unless it is known that it will be accepted;
(iii) shipments not exceeding 1,000 pounds by other common carriers; or
(iv) shipments by common carriers, other than specified in (i) and (ii) above, which can be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations; *provided* that, all appropriate f.o.b. origin shipments, under one or more Government

SECTION XXI

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21-000 Scope of Section. This Section prescribes uniform reports which are required to be prepared by contracting and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

Part 1—Individual Procurement Action Report (DD Form 350)

21-100 Scope of Part. This Part prescribes the reporting on DD Form 350 (set forth in F-200.350) of individual actions taken in connection with the contracting for supplies and services (including construction).

This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1014.

21-101 Purpose. DD Form 350 provides essential procurement statistics on a uniform basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. It provides figures for measuring the extent to which goals are achieved in the Department of Defense Socio-Economic Program and Management Improvement Program, and also provides significant data for other acquisition policy and management control purposes.

21-102 Applicability and Coverage.

(a) DD Form 350 shall be prepared (*typewritten*) for each debit or credit contracting action in excess of $10,000 which is executed by a component of the Department of Defense except as indicated in (b) below. At the option of the Headquarters of the Military Departments or Defense Logistics Agency, contracting offices may submit an automated record in lieu of a DD Form 350, *provided* that the contract file reflects such information on a separate worksheet or print-out for each individual contracting action in excess of $10,000. Multiple reports may be required for a single action if:

(i) more than one type of contract is involved (see 21-129);

(ii) both the Foreign Military Sales Program and other programs are involved (see 21-123(g));

(iii) the set-aside portion of a contract is awarded by supplemental agreement to a labor surplus area or small business concern which has obtained the non-set-aside portion (see 21-115(c) and 21-125(a));

(iv) the total quantity of an item is set-aside for small business firms and a portion of the total is further set-aside for small business concerns which are also labor surplus area firms (see 1-706.7); or

(v) a prospective price redetermination contract is awarded on the basis of price competition (see 21-126(c)(5)(iii)).

(b) DD Form 350 shall not be prepared for the following contracting actions in excess of $10,000:

(1) Reserved.

(2) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each contract shall be reported on a separate DD Form 350 and in the appropriate fiscal year by the Defense Fuel Supply Center and Military Sealift Command for their respective contracts. If an indefinite delivery type contract is awarded by the above organizations in one fiscal year but is not effective until a subsequent fiscal year, the DD Form 350 shall be submitted on 1 October of the fiscal year in which the contract is effective.

(3) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange and Motion Picture Services. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(4) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions.

(5) Transactions for purchase of land, or rental or lease of real property.

(6) Awards to GSA stock and through the GSA Consolidated Purchase Program.

(7) Transactions which involve Government bills of lading or transportation requests.

(8) Awards to individuals in support of dependents schools, *e.g.*, principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350. On this consolidated DD Form 350, enter Code 025039, Dependents School Personnel, in Item 6, and enter the appropriate activity symbol, current fiscal year and five zeros in Item 2A, and enter the number of actions involved in Item 7B. Awards to minority group members shall be consolidated separately and the cumulative dollar amount reported on a separate DD Form 350 with entry of Code A in Item 5A. On each of the consolidated forms, enter the number of awards to women in Item 9C. If none, enter *NONE*.

(9) Orders placed against indefinite delivery-type contracts entered into by the Military Traffic Management Command for stevedoring services. Orders under each such contract shall be consolidated quarterly and the cumulative dollar amount reported on a single DD Form 350.

(10) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract. All DD Form 350 items, except Items 1A, 4, 10A, 24, 25, and 26, shall be completed on each master DD Form 350. Each master DD Form 350 shall also include an attachment which lists Items 1A, 4, 10A, 24, 25, and 26, data for individual actions against each contract.

(11) Orders placed by the U.S. Army Troop Support Agency for resale items in excess of $10,000 against Brand Name Contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. These transactions shall be reported on TSA Form 203-R in accordance with instructions on that form. As a minimum, TSA Form 203-R shall provide for reporting

of total actions and dollar amounts monthly, categorized by place of performance, negotiation authority, and large or small business. This provision is applicable to U.S. Army Troop Support Agency activities only.

(12) Vouchers processed by the U.S. Army Procurement Agency, Europe (USAPAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 for each of Item 10A Codes S111, S112, S114, S119 and S205. On these consolidated reports enter in Item 2A the activity address number of the reporting office, XX for fiscal year, and five zeros; enter in Item 6 Code 666666, European Utility Companies; and enter in Item 7B the number of actions that were consolidated. This provision is applicable only to activities under the jurisdiction of the U.S. Army Procurement Agency, Europe.

(13) Grants for basic research with educational institutions and other nonprofit organizations. (See 4-108.)

(c) Contracting Action refers to any contractual action to obtain supplies, services, or construction, which obligates or deobligates funds, except as indicated in (2) below.

(1) The term includes preliminary contractual instruments and letter contracts; definitive contracts including notices of award; purchase orders; job orders; task orders; delivery orders; contingency orders; administrative notices; communication service authorizations (CSA's); production lists; priced exhibits; and other orders against existing contracts including debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(2) The term does not include contracts which do not obligate funds or do not name a fixed quantity, such as requirements contracts, indefinite quantity contracts, even though these may obligate funds for minimum quantities (orders against such contracts, however, are to be reported as contracting actions), requisitions, and other means of transferring supplies or services within, or between, the Departments or the contracting agencies of the Department of Defense. Indefinite delivery type contracts of the Defense Fuel Supply Center and the Military Sealift Command are an exception to this provision and shall be reported in accordance with (b)(2) above.

(d) The coverage prescribed in (a) above shall include contracting actions against:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds;
(iv) appropriated funds transferred to the Department (such as Military Assistance Program funds); and
(v) appropriated funds obligated pursuant to the provisions of Public Law 85-804 (see 21-123).

(e) For contracts placed with the U.S. Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) - enter in Item 6 after "Company Name" the name of the concern which will be performing under the contract and enter "SBA" after "Division Name". The address and company code shall be that of the performing concern. Also enter the PII number

in Item 2A (*e.g.*, DAAH01-78-F0260). Code A in Item 5A, Code 4 in Item 12, Code 6 in Item 13, Code 5 in Item 15, Code J (or L if place of performance is outside the U.S.) in Item 16, Code 17B in Item 17, Code 7 in Item 18, and enter the appropriate codes for all remaining items.

21-102.1 *Coding Implementation.* The Headquarters of the Military Departments and Defense Logistics Agency may issue implementing instructions pertinent to the coding for data processing of the data elements contained herein.

21-103 Due Date and Distribution.

(a) In addition to instructions given in (b) and (c) below for contracting offices of specified departments and agencies, the following instructions are applicable to all contracting offices.

(1) For the month of September only, prescribed due dates are extended 10 additional calendar days in order to assure complete coverage of all contracting transactions occurring in the fiscal year.

(2) Corrected reports, if required, shall be distributed to all recipients of the original reports. To correct an erroneous report, two DD Forms 350 are required (see 21-109).

(3) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item 11) and System or Equipment Code (Item 10B) may be omitted and the word "classified" inserted in lieu thereof. Similarly, the Estimated Completion Date (Item 25) may be reported as "classified" if this item requires security classification. Should further security classification of items on DD Form 350 be deemed necessary by the reporting office, a communication relating the circumstances justifying such classification shall be submitted to Directorate for Information Operations and Reports, Washington Headquarters Services, Washington, D. C. 20301, through the Departmental or Agency channels prescribed in (b) below. In no case shall the term "classified" be used in lieu of the dollar amount in Item 26.

(b) Except for the Defense Fuel Supply Center, the signed original of each DD Form 350 shall be forwarded within 3 working days after the action shown in Item 24 as shown below. For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 15 working days. (*Letter of Transmittal is not required.*)

(1) *Army* contracting offices (except for Engineer Civil Functions contracting offices) to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310. Additional copies of each DD Form 350 shall be forwarded to the appropriate Head of the Contracting Activity when directed by Departmental instructions.

(2) *Army Engineer Civil Functions* contracting offices to HQDA (DAEN-PRP) Washington, D.C. 20314. An additional copy shall be sent to this addressee.

(3) *Naval* field purchasing offices to the Head of the Contracting Activity from which purchase authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC); ASO and SPCC to the Naval Supply Systems Command Headquarters. Heads of Contracting Activities shall edit and correct these reports and transmit them together with other DD Form 350 reports prepared by the Contracting Activity to the Headquarters, Naval Material Command, Washington, D. C. 20360, Attn:

MAT 08C14. An additional copy of DD Form 350 shall be forwarded to the Headquarters, Naval Material Command, Attn: MAT 08C2, when required by:

(i) NPD 1-403.61 as the Report After Execution of Contract; and

(ii) NPD 3-306.53(f)(3) as a report of contracting under a Class Determination and Findings.

(4) *Air Force* contracting offices as directed by HQ USAF. All contracting offices except those under AFLC and AFSC shall forward two copies to the appropriate major command headquarters staff contracting office or division. When contract items requiring provisioning actions are involved, a copy of the DD 350 shall be forwarded to the provisioning contracting office.

(5) *Defense Logistics Agency* contracting offices to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Attn: DLA-PA, Alexandria, Va. 22314.

(6) All other contracting offices of the Department of Defense shall forward the signed originals to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310.

(c) Contracting offices shall prepare DD Form 350 for procurement actions in excess of $10,000 which are reportable in accordance with 21-102 and are accomplished by contract administration offices. To facilitate such reporting, the ACO within one working day after the action date shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY". The purchasing office shall prepare and submit the DD Form 350 within 3 working days after the receipt of the "REPORTING COPY."

21-104 Reserved.

21-105 Item 1A, Report Number (Current).

(a) *All Components.* Each contracting office which is identified by a separate number in the Item 5 code block shall enter a four-digit alpha-numerical number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by a dash and the last two digits of the fiscal year. The date of the action entered in Item 24 must reflect a date within the same fiscal year as that assigned to the report number. Numbers with less than four significant digits shall be preceded by zeros, *e.g.*, the fourth report in fiscal year 1980 would be numbered 0004-80. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(b) *Navy.* When DD Form 350 is submitted as a Report After Execution of Contract, enter the RAE number required by NPD 1-403.53(a)(5) immediately following the report serial number.

(c) *Defense Logistics Agency.* Subsistence contracting offices of the Defense Personnel Support Center shall use two blocks of numbers:

(i) perishable subsistence actions shall begin with 0001, and

(ii) nonperishable subsistence with 5000.

21-106 Item 1B, (No title). This item is for optional use by DoD components.

21-107 Item 1C, Report Number (Previous). Enter the report number of the last previous DD Form 350 relating to the same contract.

21-108 Item 2, Contract Number. Enter only Department of Defense contract numbers in Subitem A; contract numbers for all other Federal agencies shall be entered in Subitem B. For orders under contracts awarded by other Federal Agencies (*i.e.*, GSA Federal Supply Schedule, Government Printing Office, and Veterans Administration contracts), enter the Federal Agencies' contract number in Subitem B. For orders covering direct purchases from other Federal agencies, such as Federal Prison Industries, Tennessee Valley Authority, Veterans Administration, Treasury, etc., enter the Defense delivery order number in Subitem A, *e.g.*, DAAH01-78-F0260. If entry is in Subitem A, then Subitem B must be blank, and vice versa.

(a) Subitem A(1). Activity - Enter the first six characters of the contract number which identify the activity listed in Appendix N. Activity symbols assigned prior to the initiation of Section XX, Part 2, shall be expressed as a six character symbol. For Army, the five digit fiscal station code shall be prefixed by the letter A, thus 01-002 for Anniston Army Depot shall be reported as A01002. Navy symbols of less than five digits shall be prefixed by zeros, *e.g.*, 383 for ASO shall be reported as N00383.

(b) Subitem A(2). FY - Enter the last two digits of the fiscal year in which the basic contract number was initially assigned (not the fiscal year of the immediate action); *e.g.*, 78 for fiscal year 1978. If the fiscal year is not known for contract numbers assigned prior to the initiation of Section XX, Part 2, or cannot be ascertained after a reasonable search, enter "XX".

(c) Subitem A(3). Serial No. - Enter as a five-position entry, the serial number assigned to the contract. For serial numbers assigned in accordance with Section XX, Part 2, the first character shall be type of instrument as described in 20-203.1(iii). The remaining four characters shall be the serial number assigned in accordance with 20-203.1(iv). For other contract numbers, *i.e.*, those numbered under exceptions permitted by 20-201, the serial number also shall consist of five characters, *e.g.*, 00001, 00124, 01356, 71284, etc. If a serial number has not been assigned, enter five zeros. Do not enter other supplementary procurement instrument identification numbers in Subitem A(3); such numbers shall be entered in Item 4.

(d) Subitem B. Other - For orders under contracts awarded by other Federal agencies, enter the contract number of the Federal Agency as it appears in the contractual instrument; *e.g.*, GS-00S-27773, GP-16251A, V979P-2048A, etc.

21-109 Item 3, Correction of Previously Reported DD Form 350.

(a) If it is necessary to correct an error on a previously reported DD Form 350, two DD Forms 350 are required.

(1) *Code 1 Corrected Entry.* Enter the correct data in all items. Entries in Item 1A and Item 23 shall be the same as those reported on the report being corrected, except when such items are the subject of the corrections being made.

(2) *Code 2 Reversing Entry.* Enter data in all items exactly as in the incorrect report except that the dollar amount shown in item 25 shall be the reverse of the amount originally reported; that is, if the amount of the incorrect report was a debit, the amount of the reversing entry shall be a credit and vice versa. Entries in Item 1A and Item 23 shall always be the same as those reported on the report being corrected.

(b) The item numbers being corrected will be noted on both the reversing and correcting reports in the spaces provided.

21-110 Item 4, Modification Number and Other Identification. Enter the supplementary procurement instrument identification numbers assigned in accordance with 20-204 for letter contract modifications, orders against indefinite delivery type contracts and basic ordering agreements, contract change notifications, change orders, supplemental agreements, and other modifying actions. For those numbered under exceptions permitted by 20-201, enter the identification and number such as Mod. 35; C.O. No. 2; *etc.*

21-111 Item 5, Purchasing Office. Enter sufficient detail to establish the identity of the purchasing office submitting the report. Enter in the Item 5 code space, the number or symbol assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

21-111.1 *Item 5A, Small Disadvantaged Business Concern* (see 1-701.2).

(a) Enter Code A if the award was made to a small disadvantaged business concern in accordance with the representation required in 1-707.3(f).

NOTE: If Code A is entered, the contractor designated in Item 6 must be small business.

(b) Enter one of Codes B through F for all other awards.

(i) Enter Code B if there is no known small disadvantaged source. Also enter Code B for orders under contracts awarded by other Federal Agencies for which data are not readily available.

(ii) Enter Code C if there was a known small disadvantaged business concern but it was not solicited for a bid or proposal.

(iii) Enter Code D if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iv) Enter Code E if a small disadvantaged business concern was solicited but was not awarded the contract for reasons other than those coded B, C. D, or E.

(v) Enter Code F if a small disadvantaged business concern was solicited, but was not awarded the contract for reasons other than those coded B, C, D, or E.

21-112 Item 6, Contractor Identification. Enter the complete name and office address (street, city, and state) of the concern or division of the concern involved. If the contractor is a division, enter first the name of the parent company, and then the name of the division, followed by the address of the division. For example:

Company Name:	XYZ Company
Division Name (if any):	Flight Propulsion Division
Number and Street:	1 Smith Road
City and State:	Jonesville, Ohio
Zip Code	

Enter in the Item 6 code space, the first six digits of the contractor code as shown in the Department of Defense Procurement Coding Manual, Volume II. If the contractor is not listed in the Manual, no code entry shall be made by the purchasing office. For contracts placed with the Canadian Commercial Corporation, enter "Canadian Commercial Corporation" after "Company Name" and enter the name of the concern performing under the contract after "Division Name". The address shall be that of the performing concern. The company code shall be that of the Canadian Commercial Corporation. For contracts placed with the U.S. Small Business Administration under the Small Business Act, see 21-102(e).

21-112.1 *Item 6A, DUNS CONTRACTOR ESTABLISHMENT NUMBER.* Enter the nine-position number assigned by Dun and Bradstreet, Inc., that identifies the contractor establishment receiving the award as shown in Item 6. This DUNS Contractor Establishment Number should be for the division or plant identified. For contracts placed with the Canadian Commercial Corporation, enter "20-889-1788" in Item 6A code. The DUNS Contractor Establishment Number is available from one of the following sources:

(a) The offeror's response to the solicitation;

(b) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable nine-digit number;

(c) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted. (This listing should contain all successful offerors receiving Federal prime contract awards over $10,000 since October 1, 1978); or

(d) If this listing has no entry for the establishment, the applicable nine-digit number shall be obtained by contacting a Dun and Bradstreet, Inc., representative at the FPDC via automatically answered telecopier (facsimile) (703) 235-9710, or commercial telephone (703) 235-9603. All requests/requestors should provide the following information:

(i) Name of requesting contract office;
(ii) Contracting office location (city/town; state/country) and commercial telephone number (including area code);
(iii) Name of individual making the request;
(iv) The total number of requests, if more than one; and
(v) Contractor establishment name, street address (and/or P.O. Box), city/town, and state/country as displayed in Item 6.

Telecopier requests must provide space on the request for entering the DUNS numbers. Sender must initiate automatic 24-hour telecopies (set for 4 minutes) immediately upon hearing the tone.

(e) For foreign contractors other than the Canadian Commercial Corporation, the procedures in (c) and (d) above apply.

(f) If a DUNS number is still not available after all of the above methods are used, the report shall be submitted within the time limits required by 21-103(b) with Item 6A left blank.

21-113 Item 7, Principal Place of Performance.

(a) Enter the actual location (military installation; *e.g.*, Fort Knox, Kentucky, or the city and state, or foreign country) of the plant or place of business where the items will be produced or supplied or where the service will be performed. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, or place where a service is performed for the Government. If the location is the same as for Item 6, enter in the word "Same". Do not leave Item 7 blank. Also enter in the coding blocks, the military installation or city and state or foreign country codes shown for the contractor in the Department of Defense Procurement Coding Manual, Volume II. If the contractor's name is listed in the Manual, but for a different location than the one in Item 7, no entry shall be made in the code blocks.

(b) Regular dealers ship from stock, in which case the place of performance is the regular dealer's location. Regular dealers also ship from subcontractors who produce the items, in which case the place of performance is the subcontractor's location.

(c) If more than one location is involved, show the location involving the largest dollar amount of procurement. Do not show more than one location in Item 7. Report other locations on the reverse side or on an attached sheet.

(d) For construction contracts, report the actual site of construction.

(e) For architect/engineering contracts, report the planned site of the construction.

(f) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(g) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

21-113.1 *Item 7A, Reserved.*

21-113.2 *Item 7B, Reserved.*

21-113.3 *Item 7C, Multiyear Contracting.* Enter Code A if the action is a multiyear contract as defined in 1-322.1(a). Enter Code C if the action is not a multiyear contract.

21-114 Item 8, Subject to Statutory Reqirements.

Code in accordance with the provisions of the contract as follows:
Code A—Subject to Walsh-Healey Act, Manufacturer: Section XII—Part 6.
Code B—Subject to Walsh-Healey Act, Regular Dealer: Section XII—Part 6.
Code C—Subject to Service Contract Act: Section XII—Part 10.
Code E—Subject to Davis-Bacon Act: 18-702.1(a).
Code Z—Not subject to above statutory requirements. Also enter Code Z for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115 Item 9, Labor Surplus Area Preference.

(a) *Labor Surplus Area.* See 1-801.2 for definition. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 6, 7, or 8 is entered, the entry in Item 7 must be a city which on the date of the action is located within a labor surplus area (see 21-113(g)).

(b) *Code 1.* Reserved.

(c) *Code 2.* Partial Labor Surplus Area Set-Aside Preference. (See 1-804.) Enter this code if the action was awarded to a concern in a labor surplus area, wherein preference was given under partial labor surplus set-aside procedures, except if set-aside preference resulted from a combined Small Business/Partial Labor Surplus Set-Aside as set forth in subparagraph (g) below. If Code 2 is entered, Code 1A must be entered in Item 17.

(d) *Code 3.* Labor Surplus Area - Tie Bid Preference. Enter this code if the action was awarded to a concern in a labor surplus area and tie bid preference was given.

(e) *Code 4.* Reserved.

(f) *Code 5.* Not a Labor Surplus Area Preference Award. Enter this code if the action did not involve labor surplus area preference considerations as defined for Codes 2, 3, 6, 7, or 8. Also enter this code if a Labor Surplus Area Set-Aside results in an award under Group 7 to a Small Business concern which is not located in a labor surplus area (see 1-804.2).

(g) *Code 6.* Combined Small Business/Partial Labor Surplus Area Set-Aside (see 1-706.7). Enter this code when reporting the successful labor surplus portion of a combined set-aside. (See 21-102(a)(iv)). If Code 6 is entered, Code 1B or 17A must be entered in Item 17.

(h) *Code 7.* Total Labor Surplus/Small Business Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas in combination solely with small business firms in such areas, in accordance with Priority 1 in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior year procurement and research and development funds, and all Military Construction Appropriation funds. If Code 7 is entered, Code 1B or 17A must be entered in Item 17.

(i) *Code 8.* Total Labor Surplus Area Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas, but with no further preference as to whether it is to be awarded to large or small business firms, in accordance with Priority 4, in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior-year contracting and research and development funds, and all Military Construction Appropriation funds. If Code 8 is used, Code 1A must be entered in Item 17.

(j) *Modifications.* If the action is a modification, the codes will be determined on the basis of the area classification at the time of such modifying action. If a supplemental agreement is used to award the partial labor surplus set-aside portion of a contract to a concern in a labor surplus area which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-804.2(d)(2)).

21-115.1 *Item 9A. Affirmative Action Plan.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that an affirmative action plan has been developed and is on file. Where certification is exempted (see 12-806), enter Code "3". Also enter Code "3" for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.2 *Item 9B. Previously Held Contracts.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that there have been previous contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor. Enter Code 3 where certification is exempt or for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.3 *Item 9C. Woman Owned Business.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor is a woman owned business or entity. Enter Code 3 if the contractor does not complete this certification (see 7-2003.80) or if the award is an order under contract awarded by another Federal Agency for which data are not readily available.

21-115.4 *Item 9D. Consultant Services.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the award is for consulting type services.

21-116 Item 10A, FSC or Service Code. Enter a Federal Supply Classification, a Research, Development, Test or Evaluation (RDTE) Code, or a Service Code in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section I). Each DD Form 350 must contain a four-digit entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(a) *Research, Development, Test, and Evaluation.* RDTE is defined in 4-101. Each DD Form 350 action for RDTE shall be assigned a code beginning with the letter "A," in accordance with Section I, Part A of the coding manual, including in general:

(i) all contracts negotiated under the authority of 10 U.S.C. 2304(a)(11), Experimental, Development, or Research Work;

(ii) most but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;

(iii) all contracts funded by Research, Development, Test and Evaluation appropriations; and

(iv) all contracts where the purpose is for research and development even though not authorized under 10 U.S.C. 2304 (a) (5) or (11), or funded by RDT & E appropriations.

However, do not assign RDTE codes for the procurement (including rental or lease) of equipment or housekeeping supplies/services separately purchased in support of RDTE work. This exception refers to the purchase of equipment upon which RDTE work will be performed, test equipment, office equipment, structural steel plates, etc.; or services such as construction, maintenance of facilities or equipment, utilities, rental of ADP equipment, guard services, etc. Generally procurement of services or supplies that are incidental to the fulfillment of RDTE work, *but does not require contractor RDTE performance*, shall be coded in accordance with Parts B and C, Section 1 of the coding manual, even though such purchases are in support of RDTE work and RDTE funds are cited. In no case shall RDTE codes be assigned for orders under GSA Federal Supply Schedule contracts. The purchase request, as prepared by the research and development technical sections, will provide the necessary information to enable personnel preparing the DD Form 350 to properly identify the RDTE code.

(b) *Services*. All services, except RDTE actions, shall be coded in accordance with Part B, Section 1 of the coding manual. Each category is assigned a series of four-digit codes for specific types of services and construction.

(c) *Supply*. Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) code from Part C, Section 1 of Volume 1 of the Department of Defense Procurement Coding Manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct four-digit code.

21-117 Item 10B, System or Equipment Code.

(a) Enter the code for weapons system or equipment in accordance with Volume 1 of the Department of Defense Procurement Coding Manual (Section II). If a weapons system or equipment code is not applicable, enter three zeros, *i.e.*, 000.

(b) Codes in Section II are not applicable to construction, subsistence, clothing/textiles, or petroleum, and generally have been assigned to all production end items whose annual programmed procurement is $2,000,000 or more. Accordingly, if a code cannot be found for a DD Form 350 action of $2,000,000 or more, which is for an end item or a component identifiable to an end item, a specific request for a code together with the applicable DD Form 350 should be addressed to the appropriate organization specified in 21-103(b). Submission of the DD Form 350 will not be delayed pending resolution of the inquiry. This reporting requirement is not applicable to the Defense Logistics Agency.

21-118 Item 10C, DD Claimant Program Number. Enter the appropriate DDCP number that identifies the commodity described in Item 11. Claimant Program Numbers are defined in Volume I of the Department of Defense Procurement Coding Manual (Section III). If the description in Item 11 is for research and development, the objective of the research and development shall control the DDCP number to be entered; *e.g.*, if the objective of the research and development is a guided missile, enter Code A-2. If the description in Item 11 is for research that cannot be identified with a particular claimant program, enter Code S-1. Contracts for ship repair, IRAN and modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of electrical accounting machines or electronic data processing equipments) and utility services shall be coded S-1. If a particular claimant program cannot be identified, enter Code S-1 for services and C9E for supplies or equipment.

21-119 Item 11, Description of Commodity or Service.

(a) Enter brief description of commodity or service. Specify end use of item and model numbers where possible, *e.g.*, M-16 Rifle; B-52 Aircraft; A-4E Aircraft, Radio Set AN/FRT-51. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Typhon, Jupiter, etc., or an identifying program number, *e.g.*, WS-107A, can be used without classifying the report.

(b) When an increase or decrease in funds is the result of price redetermination, change in fixed-fee, contract termination, engineering change, overrun, accelerated amortization, or continuation of research and development, specify the equipment or service acquired under the basic contract, such as "Price Redeter-

mination for M-60 tanks," "Termination of Contract for J-57 Engines," "Engineering Changes on Submarine SS(N)585," "Accelerated Amortization on Contract for B-4 Maintenance Platform."

21-120 Item 12, Coordinated Procurement. Enter one of Codes 1 through 9 for each contracting action.

(a) *Code 1. Procurement Agreements*—Enter this code for contracts made under agreements among the departments or other agencies for procurement of commodities or services not assigned in accordance with Section V, Part 12. (See Section V, Part 11.)

(b) *Code 2. Other Federal Agencies.* Enter this code for all procurements from or through other Federal Agencies (except General Services Administration and Small Business Administration), such as, Government Printing Office, Federal Prison Industries, National Industries for the Blind, Veterans Administration, Tennessee Valley Authority, Treasury, Agriculture, Commerce, Justice, etc. When Code 2 is entered, Code 6 shall be entered in Item 13, Code 4 in Item 14, and Code 1 or J, as appropriate, shall be entered in Item 15. Code 2 is not applicable to Defense Logistics Agency contracting offices.

(c) *Code 3. GSA Supply Schedules.* Enter this code for all procurements under GSA Federal Supply Schedule contracts (see Section V, Part 1). Also enter this code for all contracting under GSA ADP schedule contracts. For orders under Veterans Administration contracts published in GSA Federal Supply Schedules, enter Code 2. When Code 3 is entered, Item 15 shall be coded *I* or *J*, as appropriate.

(d) *Code 4. Small Business Administration.* Enter this code if the award is to the Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) (see 21-102(e)).

(e) *Code 5. Single Department Procurement*—Enter this code only if the reporting office has a current commodity assignment to purchase a commodity listed in 5-1201.

(f) *Code 6. Defense Logistics Agency*—Enter this code for all contracts by Defense Logistics Agency centers except contracts from or through the General Services Administration and the Small Business Administration. Military Departments also shall enter this code for orders placed against indefinite delivery-type contracts awarded by Defense Logistics Agency centers except those awarded by the Defense Fuel Supply Center.

(g) *Code 7. Outside U.S.*—Enter this code for all contracts other than those classifiable as Codes 1 through 6 above made by contracting offices located outside the United States, its possessions, and Puerto Rico.

(h) *Code 8. All Other*—Enter this code for all contracts not classifiable in codes 1 through 7 above.

21-121 Item 13, Synopsis of Proposed Procurement. Enter one of the codes described below. The term "Not Applicable" shall not be used. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply.

(a) *Code A. Was Synopsized*—Enter this code if a synopsis of the proposed contract was prepared and transmitted in accordance with 1-1003.9.

(b) *Code E. Was Not Synopsized: Original Estimate Under $10,000*—Enter this code if the proposed contract was not synopsized because it was originally estimated to be less than $10,000.

(c) *Codes 1 Through 9. Was Not Synopsized*—Enter one of these codes to identify the permissive authority of 1-1003.1(c)(i) through (ix), which correspond with Codes 1 through 9, respectively, for not synopsizing a proposed procurement. However, Code 5 shall not be used since orders under existing contracts are to be coded the same as the basic contract. Code 6 shall be used for all contracts from or through another Government department or agency, including contracting under GSA Federal Supply Schedules. Code 6 also shall be used for orders placed against DLA schedules for proprietary (brand name) items. Code 9 shall be used for contracts in which only foreign sources were solicited.

21-122 Item 14, Kind of Procurement Action. Enter one of Codes 1 through 9 for each procurement action. With respect to modifications of existing contracts, including letter contracts designated as modifications, enter one of Codes 6 through 9, as appropriate (except see (c) below).

(a) *Code 1. Initial Letter Contract*—Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, see Code 6.)

(b) *Code 2. Definitive Contract Superseding Letter Contract* — Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an existing contract, see Code 6.)

(c) *Code 3. Definitive Contract (Including Notice of Award)* — Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter Code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(d) *Code 4. Order Under Contract*—Enter this code when reporting orders or amendments to orders, against indefinite delivery type contracts or basic ordering agreements, GSA/DLA schedules, priced exhibits, production lists, job orders, task orders, and the like, where firm obligations are created by the issuance of such documents. Also enter this code for orders issued to other Federal agencies, such as, Federal Prison Industries, National Industries for the Blind, Treasury, Interior, Tennessee Valley Authority, Commerce, etc.

(e) *Code 5. Reserved.*

(f) *Code 6. Additional Work*—Enter this code when additional work is acquired by means of a modification to the basic contract or order (other than an order included in the list in (d) above), as follows:

(i) Bilateral modifications which increase the scope of work of existing contracts but are not authorized by the terms of existing contracts and do not meet the criteria of (iv) below.

(ii) Exercise of options for increased quantities or extended performance, or incremental yearly buys under multiyear contracts.

(iii) Modifications to letter contracts increasing the scope of work, including letter contracts designated as modifications and definitive modifications superseding letter contracts designated as modifications.

(iv) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(v) When more than one DD Form 350 is required as outlined in 21-102(a) to report an initial letter contract or new definitive contract, Code 6 shall be used for the second or subsequent DD Form 350; Code 1 or 3 shall be used only for the first DD Form 350.

(g) *Code 7. Funding Action*—Enter this code for letter contract amendments and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multi-year contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price redetermination, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see 21-122(c) and (f)(iv)). Code 4 shall be used for all transactions under GSA/DLA schedules.

(h) *Code 8. Change Order*—Enter this code when reporting change orders issued pursuant to the "Changes" or "Differing Site Conditions"; or similar provisions of existing contracts.

(i) *Code 9. Termination or Cancellation*—Enter this code when reporting a termination or cancellation action.

21-123 Item 15, Contract Placement. Enter one of Codes 1 through 5, or Code J as appropriate, to show the method used in making the procurement. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, provisioning order obligating documents, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. For modifying actions made pursuant to the provisions of PL 85-804, enter code 5 in Item 15, enter code 17B (PL 85-804) in Item 17, and enter code 5 in Item 18.

(a) *Code 1. Intragovernmental*—Enter this code if the contractor in Item 6 is a Federal Government Agency other than the Department of Defense, *e.g.*, Federal Prison Industries or National Industries for the Blind; or if the procurement action is an order under a contract awarded by another Federal Agency, *e.g.*, orders under General Services Administration Federal Supply Schedules or Government Printing Office contracts. When Code 1 is entered, no entries shall be made in Items 16 through 23.

(i) Orders against contracts placed by Department of Defense purchasing offices shall not be reported as intragovernmental, but shall be reported by the ordering office in all applicable items of DD Form 350 on the basis of information to be furnished by the contracting office. The contracting office shall include in its advice to ordering agencies, specific information on the appropriate codes to be entered in Items 10A, 11, 13 and 15 through 23, as well as information customarily furnished with respect to the contractor and product or service. This subparagraph is not applicable to orders against indefinite delivery type contracts placed by the Defense Fuel Supply Center (21-102(b)(2).

(ii) Purchases from State, local and non-Federal government agencies shall not be reported as intragovernmental, but shall be classified as advertised or negotiated in Item 15, and also as nonprofit organizations in Item 16.

(b) *Code 2. Two-Step Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids following request for an evaluation of technical proposals in accordance with Section II, Part 5. When Code 2 is entered, no entries shall be made in Items 17 through 19A. Do not use this code if solicitations are restricted to small business (see (d) below).

(c) *Code 3. Other Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids, except two-step formal advertisement. When code 3 is entered, no entries shall be made in Items 17 through 19A.

(d) *Code 4. Small Business Restricted Advertising*—Enter this code for Small Business Restricted Advertising which is a form of negotiated procurement conducted in the same way as prescribed for formal advertising under Section II except that bids and awards are restricted to small business concerns (see 1-706.5(b)). When code 4 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or Code 17A shall be entered in Item 17, as appropriate; and Code 1 shall be entered in Item 18.

(e) *Code 5. Other Negotiated*—Enter this code for new or modifying actions relating to procurement resulting from negotiated procedures (see Section III). When code 5 is entered, the appropriate negotiation exception shall be entered in the code block for Item 17 and the appropriate code shall be entered in Items 18 through 23. Also enter this code for Labor Surplus Restricted Advertising (LSRA) (see DAC #76-15, Item II, 1 June 1978. When reporting LSRA, Code 1A must be entered in Item 17 and Code 1 or 2 in Item 18.

(f) *Code 6. Other Total Small Business Set-Aside.* Enter this Code if the solicitation/award is restricted totally to small business firms under set-aside procedures through conventional negotiation, *i.e.*, other than through Small Business Restricted Advertising (Code 4). (See 1-706.5(b)). When Code 6 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or 17A shall be entered in Item 17 and Code 1 or 2 shall be entered in Item 18, as appropriate.

(g) *Code J. Foreign Military Sales.* Enter this code if the procurement is known to be under Foreign Military Sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. When Code J is entered no entries shall be made in Items 16 through 22.

1. Code J will be entered for Foreign Military Sales purchases from or through other Federal agencies, *e.g.*, GSA Federal Supply Schedules, except that all awards to Small Business Administration will be reported in accordance with 21-102(e).

2. If only part of a procurement action is of the kind described above, that part (if in excess of $10,000) shall be reported on one DD Form 350, and the other part (if in excess of $10,000) shall be reported on a second DD Form 350.

21-124 Item 16, Type of Business Concern. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multiyear contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, where a modification is for procurement of additional quantities or extends the scope of work under the contract, the size of concern will be determined as of the date of the modifying action.

(a) *Awarded to Large Business Because Small Business:* Enter one of Codes A through D if the contractor is a large concern and the place of performance (Item 7) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see DoD Procurement Coding Manual, Volume II, page v), as follows:

(i) Enter Code A when no small business source was solicited for a bid or proposal.

(ii) Enter Code B when a small business source was solicited, but no bid or proposal was received from small business, or small business did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iii) Enter Code C when a small business source was solicited, but the low bid or proposal was not from small business, or small business was not willing to accept award of a set-aside portion of a procurement at the prices offered as determined by the price the Government would otherwise have had to pay.

(iv) Enter Code D when a small business source was solicited, but small business was not awarded the contract for reasons other than those coded A, B, or C.

(b) Enter Code J, if the award was made to a small business concern as defined in 1-701.1 and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. Also see 21-102(e) for reporting 8(a) awards to Small Business Administration.

(c) Enter Code L, if the principal place of performance (Item 7) was outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. See DoD Procurement Coding Manual, Volume II, page v.

(d) Enter Code M, N, or P, if the award was made to a nonprofit institution and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. A nonprofit institution is defined as any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any

private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and State, local, and other non-Federal government agencies. Enter Code *M* if the contractor in Item 6 is an Educational Institution, Code *N* if a hospital, and Code *P* for all other nonprofit institutions.

(e) Enter Code *R* if the award is made to an overseas firm, and the place of performance (Item 17) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

21-125 Item 17, Negotiated Under 10 USC 2304(a) Exception. This entry applies only to negotiated procurement actions.

(a) Negotiation of original contracts and of amendments for additional quantities or services shall cite as authority for such negotiation the authority of 10 U.S.C. 2304(a), which applies as specified by the appropriate "Determination and Findings" or other required Departmental procedure. Negotiations of all other amending actions which are negotiated in accordance with the provisions of the basic contract and have not been made subject to a separate "Determination and Findings" shall cite as authority for such negotiation the authority under 10 U.S.C. 2304(a) which was cited as authority for negotiating the basic contract. If a supplemental agreement is used to award the set-aside portion of a contract to a small business concern which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-706.6(d)(2)).

(b) Enter Code 1A to record negotiated actions pertaining to labor surplus area or industry set-asides. Labor Surplus Set-Aside designates a method of procurement whereby a portion of the requirement is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with labor surplus area concerns as defined in 1-801.1.

(c) Enter Code 1B to record negotiated actions pertaining to small business set-asides made unilaterally by a Department of Defense contracting officer. Small Business Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for small business concerns. These procurements are considered "negotiated" regardless of whether the contract is awarded by Small Business Restricted Advertising.

(d) Enter Code 1C to record negotiated actions pertaining to major disaster area set-asides. Major Disaster Area Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for firms located in major disaster areas and is to be performed substantially within such major disaster areas.

(e) Enter Code 1E if use of authorities in Exceptions (2) through (17) of 10 U.S.C. 2304(a) is not appropriate in awarding contracts to domestic suppliers for supplies and services in support of the Balance of Payments Program pursuant to Section VI, Part 8.

(f) Enter one of the codes from 2 through 16, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (2), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), or (16).

(g) Enter one of the codes from 10-1 through 10-26, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (10). The procurement circumstances applicable to the negotiation as described in 3-210.2 are set

forth as 10-1 through 10-18 representing (i) through (xviii). However, Negotiation Exception 10-18 pertains to purchases under Foreign Military Sales arrangement which for reporting purposes does not require an entry in Item 17; therefore, codes 10-18 will not be used. Codes 10-19 through 10-25 may be used for those procurement circumstances which are authorized in Departmental instructions and for additional procurement circumstances later approved and published in the DAR. Enter Code 10-26 if none of the procurement circumstances set forth in 3-210.2 or Departmental instructions is applicable.

(h) Enter Code 17A when reporting Joint Small Business Set-Asides pursuant to 15 U.S.C. 644 (P.L. 85-536), *i.e.*, set-asides agreed to jointly by the Small Business Administration representative and the Department of Defense contracting officer. (See definition of set-aside for Code 1B above.) Enter Code 17B when any other public law authorized the negotiation, and in the space provided specify the number of the public law or U.S. Code citation. For repurchase actions following default, where no other negotiation authority is utilized, enter Code 17B and specify the words "Repurchase Action".

21-126 Item 18, Extent of Competition in Negotiation.

(a) The purpose of this item is to provide statistics reflecting the extent and kind of competition obtained under contracts executed pursuant to the negotiation authorities of the DAR. Detailed information with respect to the presence or absence of competition in negotiated procurement is of vital importance to the Department of Defense. Information obtained from these reports is used throughout the Department for internal management purposes. Additionally, this information is provided to various Committees of the Congress on a continuing basis. It is critically important that this item receive careful attention by reporting activities to ensure its completeness and accuracy.

(b) Provision is made to record the extent of competition as follows:

(i) price competition;
(ii) design, technical, or other competition;
(iii) follow-on actions after price competition;
(iv) follow-on actions after technical or other competition;
(v) other noncompetitive actions;
(vi) catalog or market price actions; and
(vii) not considered for competition.

(c) The following contract actions are exempt from reporting the extent of competition and shall be entered as Code 7:

(i) awards for brand name items for commissary resale;
(ii) awards to nonprofit institutions;
(iii) awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation; and
(iv) awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(d) (1) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices. However, a contract may also be reported as "price competition" even though only one offer is received when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(2) Procurements shall not be reported as "price competition" where only one responsive offer was received and the solicitation was restricted to a prime contractor and his vendor for that item.

(3) Multiple awards in such areas as subsistence, clothing and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(4) Transactions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the responses to solicitations, the procurement history of the items procured, and other relevant information, and shall exercise sound judgment in the reporting of transactions as "price competition."

(e) Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts, and many initial contracts for new military weapons fall into the category of design or technical competition. If some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (c) above, the contract should be reported as a "design, technical, or other competition" award.

(f) A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. Incremental yearly buys under multi-year contracts and exercise of options shall not be included in this category, except as provided in (f)(6) below. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (*i.e.*, price or design or technical) will be reported as Code 3 or 4 as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis will be reported as Code 5. Nothing in the foregoing should be construed as providing authorization for noncompetitive procurement. DAR provisions requiring either formal advertising or competitive negotiation shall be complied with.

(g) Codes 1 through 5 shall be entered as follows:

(1) Enter Code 1 when the award of the contract is based on price competition as defined in (d) above. Awards for set-aside quantities under set-aside procedures shall be included in this category. Also include actions when adequate price competition exists based on catalog or market price (see 3-807). In no case shall cost-reimbursement type contracts be coded 1.

(2) Enter Code 2 when the award of the contract is based on design, technical, or other competition as defined in (e) above. For example, this code shall be entered where evaluation was made of technical or design proposals submitted by several different firms and a determination was made to conduct further negotiations with only one of the firms. Also enter Code 2 where some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above.

(3) Enter Code 3 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of price competition as described in (f) above.

(4) Enter Code 4 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of design, technical, or other competition as described in (f) above.

(5) Enter Code 5 to report procurement actions where there was no competition and Codes 3, 4 and 6 do not apply.
in the award and where the work involved was not a follow-on procurement reportable as Code 3 or 4 above.

(6) Enter Code 6 to report noncompetitive actions based on established catalog or market prices but which are not reportable as Code 3 or 4 above.

(7) Enter Code 7 to report contract actions exempt from reporting the extent of competition as listed in (c) above.

(h) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, a modification pursuant to the terms of an existing contract shall not be reported as price competition (Code *1*) unless the basic contract conforms to the definition in (d) above. If a basic contract was reported as price competitive under an earlier definition but does not conform to the definition in (d) above, the modification shall be reported as Code 3, Follow-on Action After Price Competition.

21-127 Item 19, Certified Cost or Pricing Data. Enter Code A or B to identify the applicability of Public Law 87-653 to the current DD Form 350 action being reported.

(a) Enter Code *A* if pursuant to 3-807.3 the contractor was required to submit certified cost or pricing data in connection with the specific procurement action covered by the instant DD Form 350.

(b) Enter Code *B* if the contractor was not required to submit certified cost or pricing data.

21-128 Item 19A, Cost Accounting Standards Clause. Enter the following codes to identify whether or not the contract (original contract and/or modifications) being reported on DD Form 350 includes or is subject to the Cost Accounting Standards clause as required by 3-1204.

(a) Enter Code *1* if the contract includes the clause or in the case of a modification, is subject to the clause.

(b) Enter Code *2* if the contract does not include the clause or in the case of a modification, is not subject to the clause.

21-129 Item 20, Type of Contract. Enter only one of the codes in accordance with the provisions of the basic contract. (See Section III, Part 4.) Where the contract involves more than one type, the predominant type based on dollars shall be entered. However, if any non-predominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the contract. The total of the DD Forms 350 so reported shall equal the total contract action.

(a) For fixed-price contracts with redetermination clause Type A (see 7-109.2), enter Code *A*; for Type E (see 7-109.3), enter Code B.

(b) Code L shall be entered for a fixed-price incentive contract which contains performance incentive provisions as outlined in 3-407; and Code M shall be entered for an FPI contract without such performance incentive provisions. Similarly, Code V shall be entered for a cost-plus-incentive-fee contract which contains performance incentive provisions; and Code W for one which does not contain such provisions. Care shall be exercised to assure that FPI and CPIF contracts which contain only cost incentives are not coded L or V, but are coded M and W, respectively.

(c) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. Modifying actions for additional supplies and services shall be reported according to the pricing provision applicable to the modifying action. If a contract is converted from one pricing provision to another, e.g., from CPFF to CPIF, the DD Forms 350 used to report this adjustment shall reflect only the amount that will be paid under the new pricing provision. When reporting original letter contracts and amendments thereto, enter the type of contract that will most likely be used when the letter contract is converted to a definitive contract.

21-130 Item 21. Subcontracting Program Plan Clause. Enter the appropriate code to indicate which subcontracting program plan clause or clauses (see 7-104.14(b), (c), and (d)) are associated with this procurement action or contract. Enter Code 1 if no subcontracting program plan clause was incorporated; enter Code 2 if only the negotiated clause (see 7-104.14(b)) was incorporated; enter Code 3 if both the negotiated clause (see 7-104.1(b)) and incentive clause (see 7-104.14(d) or any other incentive type clause with the same intent) have been incorporated; and enter Code 4 if the formally advertised clause (see 7-104.14(c)) was incorporated.

21-131 Item 22, Trade Data. The Trade Data elements shown below apply to all supply, service, and construction acquisitions, except those exempt from the Buy American Act.

(a) Subitem A. Enter the number of firms that offered foreign end products. If no firms offered foreign products, enter zero. If the number of firms offering foreign products is 9 or greater, enter 9.

(b) Enter as a two-digit code the percent of the contract award price that represents the foreign content of the item or service acquired. Enter zero as 00, 1 through 9 percent as 01 - 09, and 100 percent as 99. This information is required only from the successful offeror.

(c) Subitem C. If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter zero.

21-132 Item 23. Enter Code 1 if the contract contains one of the clauses prescribed by 7-104.31(a), 7-104.32, or by 7-2003.49, related to the entitlement to the issuance of duty-free entry certificates. Enter Code 2 if only 7-104.31(b) is included or if no clause dealing with this matter is included.

21-133 Item 24, Date of This Action. Enter the year, month and day when a mutually binding agreement was reached. Enter each segment as a two-digit number using 01 through 12 for January through December. For example, enter 2 January 1980 as 80/01/02. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. In the case of letter contracts, the date to be entered in this block is the date when the signed copy is received from the contractor. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 21-122(c) and (f)). For contracts awarded under the provisions of 1-318(a), the date shall be when the contract becomes effective. The action date shall determine the fiscal year in which the DD Form 350 is reportable. Actions with dates in one fiscal year shall not be assigned report numbers in a subsequent fiscal year. Thus, for example, the first action reported by a purchasing office in fiscal year 1980 must carry an action date of 1979 October 1 or later.

21-134 Item 25, Estimated Completion Date. Enter the year and month it is estimated the work called for by the contract will be completed. Enter each segment as a two-digit number, using 01 through 12 for January through December. For example, enter 80 April as 80/04. Words such as "continuous," "indeterminate," "unknown," or "100 days after approval of first article," are not acceptable. For basic contracts, the last delivery date shall govern the entry in this item. For supplemental agreements, the entry shall be governed by the delivery date in the specific supplemental agreement rather than the delivery date of the basic contract. For engineering changes, enter the date of delivery of the last end item involved. For spare parts provisioning actions, enter the date of the last spare parts delivery. Where the estimated completion date is not affected by the action being reported, enter the date of delivery of the last end item involved.

21-135 Item 26, Total of This Action. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. If the action decreases the amount of Government obligation, also enter the symbol "CR" for credit. Do not enter the word "decrease," parentheses, or dashes. Enter whole dollars only; drop cents without rounding. For example, $25,000.10 or $25,000.90 shall be entered as $25,000.

21-136 Item 27 Reserved.

21-137 Item 28, Typed Name and Signature of Contracting Officer or Representative. Self-explanatory.

21-138 Item 29, Telephone Extension. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

21-139 Item 30, Date Submitted.

21-140 Remarks. Use the reverse side of DD Form 350 or attach a separate 8½-inch x 11-inch sheet of paper to explain entries on the form.

Part 2—Monthly Procurement Summary (DD Form 1057)

21-200 Scope and Purpose of Part. This Part prescribes the reporting on DD Form 1057 (set forth in F-200.1057) of procurement actions of $10,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 21-101.

This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1015.

21-201 Applicability and Coverage.

(a) Reports on DD Forms 1057 shall be prepared (*typewritten*) by each purchasing office of the Department of Defense to which a reporting office code has been assigned. Separate codes may be assigned to an installation, base or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of procurement, such as base and central procurement, or RDTE and non-RDTE procurement. Subject to the approval of the organizations listed in 21-202, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit procurement actions of $10,000 or less involving:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds;
(iv) appropriated funds transferred to the Departments, such as Military Assistance Program funds; and
(v) appropriated funds obligated pursuant to provisions of Public Law 85-804 (see 21-123).

Procurement actions include definitive contracts, purchase orders, notices of award, delivery orders or calls (except those against indefinite delivery type contracts entered into by the Defense Fuel Supply Center), work orders, work requests, service orders, task orders, orders against blanket purchase agreements, imprest (petty cash) fund transactions, any other orders against existing contracts, and debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(c) The report shall exclude actions of $10,000 or less which:

(i) involve nonappropriated funds;
(ii) are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center shall report the estimated total cost of indefinite delivery type contracts;
(iii) are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;
(iv) are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;
(v) are orders on GSA stores depots;
(vi) involve Government bills of lading or transportation requests; and

(vii) are for purchase of land, or rental or lease of real property.

21-202 Due Date and Distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) *Army* contracting offices shall distribute DD Form 1057 as follows.

(1) The original (except from Engineer Civil Functions contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Engineer Civil Functions contracting offices shall forward the original to HQDA (DAEN- PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy field contracting offices shall forward the original DD Form 1057 to the Head of the Contracting Activity from which contracting authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC). ASO and SPCC shall forward their reports to the Naval Supply System Command Headquarters. Heads of Contracting Activities shall review and correct the feeder reports, prepare a consolidated DD Form 1057 and submit the consolidated report to Headquarters, Naval Material Command, Washington, D. C. 20360, Attn: MAT 08C14.

(d) *Air Force* contracting offices shall forward the original DD Form 1057 to AFLC/ACOCS, Wright-Patterson AFB, Ohio 45433. Separate reports shall be submitted by each activity which has been determined to be a separate reporting office. Air Force contracting offices, except those under AFLC and AFSC shall forward one copy to the appropriate major command headquarters staff contracting office or division.

(e) *Defense Logistics Agency* contracting offices shall forward the original DD Form 1057 to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Alexandria, VA, 22314, ATTN: DLA-PA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D. C. 20310.

(g) Procurement actions of $10,000 or less which are reportable in accordance with 21-201 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

21-203 Terms Used. The terms used in DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. (See Section XXI, Part 1.)

21-204 Heading.

(a) *Reserved.*

(b) *Month Ending*—Enter the year, month and day indicating the ending date of the month reported.

(c) *Contracting Office and Mailing Address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(d) *Reporting Office Code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item 5 of DD Form 350.

21-204.1 *Number of Actions.*

(a) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (b) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(b) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $10,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(i) meals and lodging;

(ii) automatic deliveries, such as, bread, milk, and ice cream;

(iii) utilities, such as, electricity, gas, and telephone.

(Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

21-204.2 *Dollar Value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.-. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes, whole dollar. (Do not enter cents.) For example, $2,510.50 shall be reported as $2,511; $1,834.49 shall be reported as $1,834. If the net amount is a decrease, enter the symbol "*CR*" following the amount to signify a credit entry.

21-205 Section A, All Procurement Actions of $10,000 or less.

(a) Enter on Lines 1 through 4 the number and value of actions of $10,000 or less according to type of contractor (*i.e.*, small business, large business, educational and nonprofit institutions), and for work outside the U.S., according to whether the actions were advertised or negotiated.

(b) Report on Line 5*a* orders under GSA Federal Supply Schedules. Orders under Veterans Administration contracts published in GSA Federal Supply Schedules shall be reported on Line 5*b*.

(c) Report on Line 5*b* purchases from or through other Federal agencies.

(d) Report on Line 6 transactions involving Foreign Military Sales (see 21-123(g)).

(e) Enter on Line 7 the totals of Lines 1 through 6.

(f) Purchases from overseas exchange and educational services (*e.g.*, European-Korean Exchange Systems) shall be reported on line 4b of Section A and line 6 of Section B.

21-206 Section B, Negotiated Actions.

(a) Enter the number and dollar amount of negotiated actions of $10,000 or less according to the authority of 10 U.S.C. 2304(a) which was used. The totals of Lines 1 through 17 in Section B shall equal the sums of the entries on Lines 1*b*, 2*b*, 3*b*, and 4*b* in Section A.

(b) Enter on line 3A the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(c) Enter on line 3B the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(d) The following provision is applicable only to U.S. Army Troop Support Agency Activities. In lieu of separately tabulating nonfood/food transactions for commissary resale items that are reportable under negotiation authority 10 U.S.C. 2304(a)(8) and (9), a ratio of the total shall be reported as follows:

(1) Enter 26% of the total actions on Line 8 and 74% on Line 9.

(2) Enter 37% of the total dollar value on Line 8 and 63% on Line 9.

21-207 Section C, Research Development, Test and Evaluation Actions. (These actions are also reported in Sections A and B). Enter the number and dollar amount of actions of $10,000 or less for research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDTE work but do not require contractor RDTE performance (see 21-116(a)).

21-208 Section D, Competition in Negotiated Actions.

(a) In order to better represent competitive award data within DoD, certain contract actions of the types specified in 21-126(c) are exempt from reporting under this Section D and are to be separately identified in line 3 of this section.

(b) Enter on line 1 the number and dollar amount of those negotiated actions considered for competition that were determined to be price competitive in accordance with the criteria set forth in 21-126(d) and 21-126(g)(1).

(c) Enter on line 2 the number and dollar amount of those negotiated actions considered for competition that were determined not to be price competitive.

(d) Enter on line 3 the number and dollar amount of those negotiated actions meeting the requirements of 21-126(c) which are exempt from reporting under this Section D.

(e) Enter on line 4 the sums of entries on lines 1, 2, and 3 of Section D. The line 4 totals shall equal the totals on line 18 of Section B.

21-209 Section E. Small Disadvantaged Business Actions (see 1-707.3).

(a) Enter on line 1 the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act - Public Law 85-536, Section 8(a). Entries on this line shall also be reflected on line 17B of Section B.

(b) Enter on line 2 the number and dollar amount of awards made directly to small disadvantaged business concerns.

(c) Enter on line 3 the sums of the entries on lines 1 and 2 of Section E.

21-210 Section F, Women-Owned Business Actions (see 7-2003.80).

(a) Enter on line 1 the number and dollar amount of those awards shown in Section A, Line 2, that were made to women-owned business concerns.

(b) Enter on line 2 the number and dollar amount of those awards shown in Section A, line 1, that were made to women-owned buisness concerns.

(c) Enter on line 3 the sums of entries on lines 1 and 2 of Section F.

21-211 Adjustments. Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report for the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "*CR*" following the amount to signify a credit entry.

Part 3—Report of Individual Contract Profit (DD Form 1499)

21-300 Scope and Purpose of Part. This part prescribes the reporting on DD Form 1499 (F-200.1499) of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this part, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

21-301 Applicability. DD Form 1499 shall be prepared by each contracting office of the—

(i) Army Materiel Development and Readiness Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(ii) Air Force Logistics and Systems Commands; and

(iii) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

21-302 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 21-301 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractual instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to 3-807.3, a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments

E-315.10 In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

E-315.11 When a contracting officer or other person within a procuring activity responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

Part 4—Advance Payments

E-400 Scope of Parts—References. This Part covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in E-419. It is to be applied in conformity to the policies stated in Part 2. Paragraphs E-000, E-001, E-002, E-003, E-100, E-103, E-104, E-107.2, and E-107.3 are also applicable to advance payments.

E-400.1 *Advance Payments on Subcontracts.* The policies, standards and procedures of this Part 4 are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to these regulations, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers. See paragraph (17) of the clause in 7-104.34.

E-401 Types of Contracts That May Have Advance Payments. Advance payments may be made on any approved type of contract as defined in 1-201.4.

E-402 Advance Payments in Addition to Progress Payments. Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See E-508.

E-403 Interest.

(a) Interest will be charged on all advance payments hereafter authorized at either (i) the published prime rate of the banking institution (Depository) in which the special bank account (E-413) is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. It will be a floating interest rate (non-fixed) depending on the prime rate of the Depository which is subject to fluctuations and the semiannual determination by the Secretary of the Treasury under Public Law 92-41. The prime rate and the changes therein during the month will be obtained from the Depository on the last business day of each month. Interest will be computed at the end of each month upon the daily unliquidated balance of advance payments at the applicable daily interest rate. However, advance payments may be approved without interest when in connection with (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work; (ii) nonprofit contracts in the dependents' medical care program; (iii) contracts solely for the management and operation of Government-owned plants; (iv) cost type contracts with governments or instrumentalities thereof; or (v) unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for

Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments hereafter authorized should provide that the contractor will charge interest in accordance with the above paragraph on advances to subcontractors, and that interest charged on such will be credited to the account of the Government. However, interest need not be charged on advances on cost-reimbursement contracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as cost under any cost-reimbursement contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide for allowance of such interest as an item of cost.

E-404 Standards—Amounts—Need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work, and (ii) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

E-405 Statutory Requirements. The authorizing statutes (E-103) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(i) the contractor give adequate security (E-413);

(ii) the advance payments shall not exceed the unpaid contract price;

(iii) the making of advance payments is in the public interest, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to the authority of Title 10 U.S.C. Section 2307;

(iv) the making of advance payments will facilitate the national defense, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to P.L. 85-804, and Executive Order No. 10789; and

(v) a provision providing for such payments where it is estimated that it will result at some time in unliquidated advance payments exceeding $25 million; such a provision shall not be inserted in any contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.

E-406 Responsibility—Delegation of Authority. Except as provided in E-406.1, the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. However, no agreement for advance payments shall be entered into by any such designated authorities without the prior written coordination of the Office of the Director of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000. The Government may not be committed, in any manner directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with E-406.1), and no procurement involving advance payments may become final until such approval is obtained.

E-406.1 *Delegation of Authority.* The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army; to the Director of Contract Financing (and an alternate within his office) in the Department of the Navy; to the Assistant for Banking and Contract Financing, Office of the Assistant Secretary of the Air Force (Financial Management); and to the Comptroller, Defense Logistics Agency, or an alternate responsible to him. For other Departments (1-201.5), this delegation of advance payment authority may be only to the Comptroller of the Agency, or an alternate responsible to him. However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Director of Defense Research and Engineering.

E–407 Public Law 85-804—Formally Advertised Contracts.

(a) Pursuant to Public Law 85-804, and Executive Order No. 10789, as amended, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments. No contract or amendment or modification of any contract shall be entered into under the authority of this Act which would provide for unliquidated advance payments in an amount in excess of $25,000,000, unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Furthermore, no agreement for advance payments shall be entered into by any officials of the above designated Departments under the authority of this Public Law without the prior written coordination of the Office of the Under Secretary of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for unusual progress or advance payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition,

qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (i) the award may be made with provision for advance payments, in conformity with these regulations, or (ii) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (iii) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

E–407.1 *Special Contract Provisions.* All contracts providing for advance payments under the authority of the above-cited Act (Public Law 85-804) and Executive Order shall:

(i) make reference to the Act and Executive Order; and

(ii) include appropriate clauses required by the Act and Executive Order (17-102), or by other applicable regulations. See 7-104.15 and 7-402.7.

E–407.2 *Data.* Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Public Law 85-804) and Executive Order.

E–408 Uses of Advance Payments. Advance payments are last in the general order of preferences stated in E–209. Subject to the provisions of these regulations, advance payments are considered useful and appropriate for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work (E–404); (ii) contracts solely for the management and operation of Government-owned plants (E–404); (iii) contracts for acquisition of Government production and research property under facilities contracts (see 13-101.11); (iv) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan; (v) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract; (vi) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned; (vii) contracts for the financing of which a financing institution will not (A) assume a reasonable portion of the risks under a guaranteed loan, or (B) provide funds except at excessive interest rates or other exorbitant charges; and (viii) exceptional cases in which the utilization of advance payments will be more beneficial to the interest of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small business concerns, in which advance payments will be more beneficial to the interest of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

E–409 Standards for Advance Payment Determinations—All Contracts. It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this paragraph and E–202 through E–212, E–404, E–405, E–407, and E–408. Affirmative recommendations should be made in favor of granting advance payments when (i) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (ii) the contractor or prospective contractor is otherwise qualified as a responsible contractor (1–903.1, 2–407, E–211), (iii) there will be a benefit to the Government from performance prospects or other practical advantages, and (iv) the case is within one or more of the categories described in E–408. These recommendations should be approved unless the responsible contract financing office (E–212), or the Under or Assistant Secretary or other official concerned (E–406 and E–406.1), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to these regulations.

E–410 Findings, Determinations, and Authorization. The following is the standard text of findings, determinations, and authorization (E–412(vi)) for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(DEC. 1980)

1. I hereby find that:

a. The _____ (*Procuring Activity*) and _____ (*Contractor*) (propose to enter) into negotiated (formally advertised) Contract No. _____, (dated _____).

Summary of the specific facts and significant circumstances concerning the contract and Contractor, which, together with the other findings, will clearly support the determinations below.]

b. Advance payments (in an amount not to exceed $_____ at any time outstanding) (in aggregate amount not exceeding $_____ less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of d. above.]

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor, and the United States will have a paramount lien upon (1) any supplies contracted for and (2) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the Contractor, and the amount designated above is predicted upon the use of the Contractor's own working capital to the extent possible in performing the contract.

f. The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the Contractor without interest:

[*Recitation of pertinent facts and circumstances*]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 , on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $_____, are hereby authorized pursuant to (10 U.S.C. 2307, as amended) (The Act of August 28, 1958, as amended, Public Law 85-804, 72 Stat. 972, amended by 87 Stat. 615 (1973), and Executive Order No. 10789, as amended), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. _____ are hereby superseded.)

_____ (*Name typed*)

_____ (*Title of authorized official*)

Instructions:

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (E–406), by such office as may be designated by the procedures of each Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will *not* be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e will not be included in the case of cost type contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g., or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

E–411 Application for Advance Payment. The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by—

(i) Cash flow forecast (E–214(f), E–214.1, E–214.2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in E–408(i) or E–408(ii));

(ii) Proposed amount of advance payments;

(iii) Name and address of bank suggested as depository for the advance payment special account (this item is not applicable where the alternate method of advance payments under E–413.1 below is to be used);

(iv) Except for contracts mentioned in E–408(i) and E–408(ii), description of efforts made to obtain private financing, including guaranteed loan; and

(v) Such other information and data (E–214) as may be appropriate under the circumstances of the case for the purposes outlined in E–214 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in E–408(i) and E–408(ii).

E–412 Action by Contracting Officer—Approval. After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

(i) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available;

(ii) The request and information furnished by the contractor;

(iii) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(iv) Comment on (A) the need for the advance payments for performance of the contract, and (B) the benefits to the Government from the contemplated contract performance;

(v) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(vi) The appropriate findings, determination and authorization (E–410) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(vii) Recommendation that the advance payment be approved; and

(viii) Justification of proposal, if any, for waiver of interest charge (E–403).

E–412.1 *Action by Contracting Officer—Disapproval.* If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the appropriate contract financing office (E–212). This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of these regulations.

E–413 Security—Supervision—Covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts, unless the alternate method of advance payments under E–413.1 below is to be used, and should include suitable covenants to protect the Government's interest. Advance payments under such authorization should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or standby of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

E-413.1 *Alternate Procedure for Advance Payments Without a Special Bank Account.* In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, advance payments in reasonable amounts will be made, when prudent and practical, on experimental, research and development contracts with such institutions by interest-free advance payment arrangements, without the use of either special bank accounts or letters of credit. The advance payments will be periodically made directly to the institutions under the procedure described below:

(a) The contract clause set forth in 7-104.34 for advance payments will be used; however, in lieu of the requirements relative to a special bank account, there will be provisions for advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for performance of pool contracts and submit a statement (request) for an advance payment, in an acceptable format with supporting information as prescribed by the administering office, to the Administrative Contracting Officer or other designated approving official who will determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the contractor's need for such period, the request will be approved and forwarded to the disbursing office for payment of only that amount determined by the approving official to be needed by the contractor. The approving official will act promptly, in

accordance with contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request for an advance payment.

(b) The contractor shall submit cost reimbursement vouchers under its contracts being financed by advance payments to the therein designated disbursing office on at least a monthly basis. The proceeds from the payments that would otherwise be due the contractor under such vouchers will be applied in liquidation of the outstanding advance payments. If the payments due exceed the outstanding advance payments, the proceeds will first be applied to fully liquidate the outstanding advance payments and the remaining balance due will be paid to the contractor. The amount otherwise due the contractor under such cost reimbursement vouchers should never exceed the outstanding advance payments under normal operations, except upon implementation and/or termination of an advance payment arrangement. This is because all of the financing under the applicable contracts is provided under the advance payment arrangement and there is always a time lag in submission of vouchers for materials and/or services previously provided by the contractor.

(c) The advance payments will be requested, approved, and paid based on estimates. There will be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over or under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

E-414 Forms of Contract Provisions and Supplemental Agreements. The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify E-414.1(b) and the second sentence of paragraph (7) of the clause in 7-104.34.

E-414.1 *Form of Agreement for Special Bank Account.* For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT (DEC. 1980)

AGREEMENT entered into this _____ day of _____, 19____, between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, _____, a corporation under the laws of the State of _____, hereinafter called the Contractor, and _____, a banking corporation under the laws of _____, located at _____, hereinafter called the Bank.

RECITALS

(a) Under date of _____, 19____, the Government and the Contractor entered into Contract(s) No. _____, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264); separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "_____(*Name of Contractor*), _____ (*Department*), Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that—

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the _____ stationery and purporting to be signed by, or by the direction of _____ or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the _____

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify _____ (*Administering Office*).

(5) The Bank will advise the Government of its published prime interest rate and the changes therein during the month on the last business day of each month so long as this Special Bank Account remains in existence. (This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments.)

IN WITNESS WHEREOF the parties thereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

E–414.2 *Advance Payment Provisions.* Approved contract provisions for advance payments, with directions for use where appropriate, are in 7–104.34.

E–415 Pooled Advance Payments—General. Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of cost type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in E–103.

E–415.1 *Distinction Between Pool Contracts and Designated Pool Contracts.* An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

E–416 Advance Payments Pool Agreements—Special Features. The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are—

(i) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s);"

(ii) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(iii) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"

(iv) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"

(v) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account, except in those cases where the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1 and, in such cases, payments otherwise due the contractor under pool contracts are applied in liquidation of the outstanding advance payments; and

(vi) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

E-417 Liquidation—Designated Pool Contracts—Administering Office. It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

E-418 Pooled Advance Payments—Understandings. Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. The following guidance is provided.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of E-306. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a nonpreponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

E-419 Excluded Advance Payments. These regulations do not apply to advance payments for:

(i) extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;

(ii) authorized insurance premiums, including insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by Section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;

(iii) rentals, as authorized by Section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;

(iv) tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);

(v) subscriptions to publications, as authorized by 31 U.S.C. 530;

(vi) small purchases of goods or services in foreign countries, when the purchase price does not exceed $10,000 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314); or

(vii) advertising for military recruitment in high school and college publications not to exceed $500.00 under any single contract.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 5—Progress Payments Based on Costs

E-500 Scope. This Part provides uniform policies, procedures, and forms for progress payments based on costs.

E-500.1 *References.* Paragraphs E-000, E-001, E-002, E-003, E-100, E-105, E-106, E-107, and all of Part 2 apply to all progress payments, whether based on costs or on a percentage or stage of completion.

E-500.2 *Exclusions.* This Part does not apply to (i) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (E-514), or (ii) contracts for construction (as defined in 10-101.6), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

E-500.3 *Contract Coverage.* Except as provided in E-500.2 above, this Part applies to all contracts (1-201.5) providing for progress payments. This Part applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith. However, a provision for unusual progress payments not specifically provided for in a contract at the time such contract was initially entered into and which may result in unliquidated unusual progress payments exceeding $25,000,000 shall not be inserted in a contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. In addition, no agreement for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into, shall be entered into without the prior written coordination of the ODDR&E if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for such payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

E-501 Percentage or Stage of Completion. Progress payments based on a percentage or stage of completion will be confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable.

E-502 Obligations. Nothing in these regulations shall be construed to authorize payment of more than the amount obligated on a contract.

APPENDIX F

ILLUSTRATIONS OF STANDARD AND

DEPARTMENT OF DEFENSE FORMS

REFERENCED IN ASPR

F-000 Scope. This Appendix contains illustrations of Standard and Department of Defense forms referenced in this Regulation.

Part 1—Standard Forms

F-100 Scope of Part. Standard Forms referenced in this Regulation are illustrated in this Part in numerical order to provide a ready source of reference. The subparagraph numbers correspond with the Standard Form numbers—thus, Standard Form 18 appears as F-100.18.

STANDARD FORMS

F-100.18 *Standard Form 18: Request for Quotations*

REQUEST FOR QUOTATIONS
(THIS IS NOT AN ORDER)

1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 RATING:

5. ISSUED BY

FOR INFORMATION CALL: (Name and tel. no.) (No collect calls)

6. DELIVER BY: (Date)

7. DELIVER:
- ☐ FOB DESTINATION
- ☐ OTHER (See Schedule)

8. TO: (Name and address, including ZIP code)

9. DESTINATION: (Consignee and address, including ZIP code)

10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE ON OR BEFORE CLOSE OF BUSINESS _____ (Date). SUPPLIES ARE OF DOMESTIC ORIGIN UNLESS OTHERWISE INDICATED BY QUOTER. THIS IS A REQUEST FOR INFORMATION, AND QUOTATIONS FURNISHED ARE NOT OFFERS. IF YOU ARE UNABLE TO QUOTE, PLEASE SO INDICATE ON THIS FORM AND RETURN IT. THIS REQUEST DOES NOT COMMIT THE GOVERNMENT TO PAY ANY COSTS INCURRED IN THE PREPARATION OF THE SUBMISSION OF THIS QUOTATION, OR TO PROCURE OR CONTRACT FOR SUPPLIES OR SERVICES.

SCHEDULE

11 ITEM NO.	12 SUPPLIES/SERVICES	13 QUANTITY	14 UNIT	15 UNIT PRICE	16 AMOUNT

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(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - GENERAL PROVISIONS	
	A	Contract Form			I	General Provisions	
	B	Supplies/Services & Price				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS	
	C	Description/Specifications			J	List of Documents, Exhibits and Other Attachments	
	D	Packaging and Marking				PART IV - GENERAL INSTRUCTIONS	
	E	Inspection and Acceptance			K	Representations, Certifications and Other Statements of Offerors	
	F	Deliveries or Performance			L	Instructions, Conditions and Notices to Offerors	
	G	Contract Administration Data			M	Evaluation Factors for Award	
	H	Special Provisions					

17. PRICES QUOTED: INCLUDE APPLICABLE FEDERAL, STATE, AND LOCAL TAXES.

DISCOUNT FOR PROMPT PAYMENT _____ % 10 CALENDAR DAYS _____ % 20 CALENDAR DAYS _____ % 30 CALENDAR DAYS _____ % _____ CALENDAR DAYS

NOTE: Reverse must also be completed by the quoter.

18. NAME AND ADDRESS OF QUOTER (Street, city, county, State, including ZIP Code)	19. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	20. DATE OF QUOTATION
	21. SIGNER'S NAME AND TITLE (Type or print)	22. TELEPHONE NO. (Area code and number)

19-112

Exception approved by NAPS, 6/20/80

STANDARD FORM 18 (Rev. 2-77)
Prescribed by GSA FPR (41 CFR) 1-16.701

STANDARD FORMS

F-100.18 *Standard Form 18: Request for Quotations—Continued*

REPRESENTATIONS AND CERTIFICATIONS

The Quoter represents and certifies as part of his quotation that: (Check or complete all applicable boxes or blocks.)

1. SMALL BUSINESS

He ☐ is, ☐ is not, a small business concern. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. MINORITY BUSINESS ENTERPRISE

He ☐ is, ☐ is not, a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

3. REGULAR DEALER-MANUFACTURER (Applicable only to supply contracts exceeding $10,000.)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

4. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (Applicable only to quotations in excess of $10,000.)

(a) By submission of this quotation, the quoter certifies, and in the case of a joint quotation, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this quotation have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other quoter or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the quoter and will not knowingly be disclosed by the quoter prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other quoter or to any competitor; and

(3) No attempt has been made or will be made by the quoter to induce any other person or firm to submit or not to submit a quotation for the purpose of restricting competition.

(b) Each person signing this quotation certifies that:

(1) He is the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2)(i) He is not the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign quoter submitting a quotation for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A quotation will not be considered for award where (a)(1), (a)(2), or (b) above, has been deleted or modified. Where (a)(2) above, has been deleted or modified, the quotation will not be considered for award unless the quoter furnishes with his quotation a signed statement which sets forth in detail the circumstances of the disclosure and the head of the Agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

STANDARD FORM 18 BACK (Rev. 2-77)

F-100.19 *Standard Form 19: Invitation, Bid, and Award (Construction, Alteration or Repair).* (See 16-401.1(i)).



INVITATION, BID, AND AWARD

(Construction, Alteration or Repair)

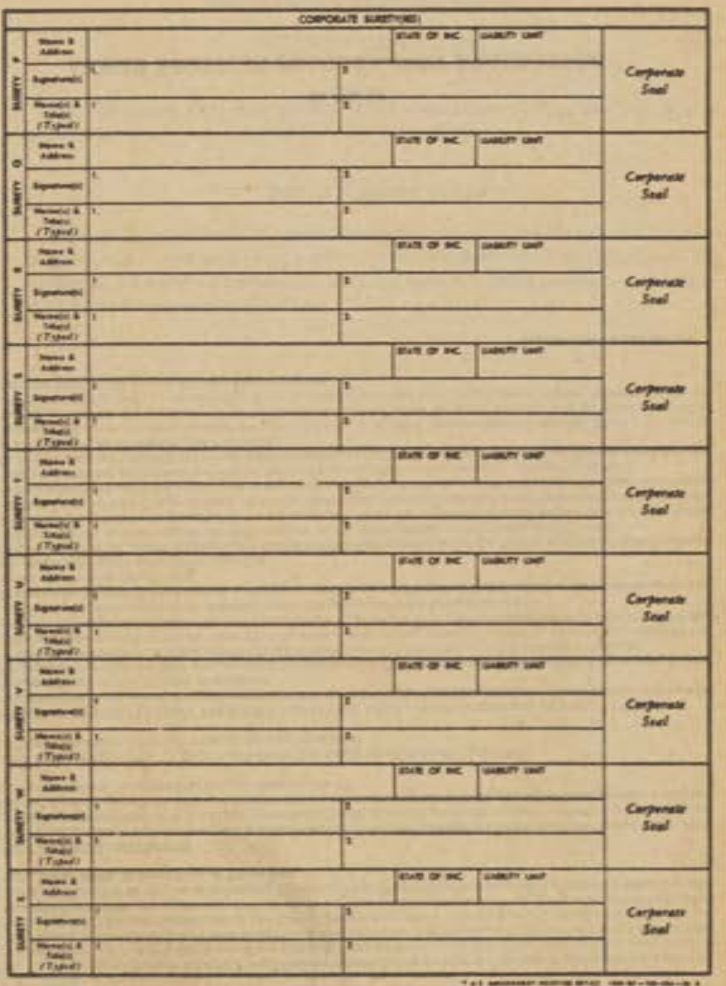
INVITATION FOR BID

The representations and certifications on the accompanying STANDARD FORM 19-B are made a part of this bid.

*Include ZIP CODE in all mailing addresses.

F-100.19

F-100.25-B *Standard Form 25-B: Continuation Sheet (For Standard Forms 24, 25 and 25-A)*—Continued



CORPORATE SURETY(IES)

SURETY A	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY B	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY C	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY D	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY E	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY F	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY G	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	
SURETY H	Name & Address	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.	
	Name(s) & Title(s) (Typed)	1.	2.	

F-100.25-B

F-100.26 *Standard Form 26: Award/Contract*

STANDARD FORM 26, JULY 1968 GENERAL SERVICES ADMINISTRATION FPR PROC. REG. 1-16.101	Exception approved by NARS, 6/20/80	**AWARD/CONTRACT**	PAGE 1	OF
1. CONTRACT (Proc. Inst. Ident.) NO.	2. EFFECTIVE DATE	3. REQUISITION/PURCHASE REQUEST/PROJECT NO.	4. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 RATING	
5. ISSUED BY CODE		6. ADMINISTERED BY (If other than Block 5.) CODE		7. DELIVERY FOB DESTINATION ☐ OTHER (See below.) ☐
8. CONTRACTOR NAME AND ADDRESS (Street, city, county, State and ZIP code.) CODE FACILITY CODE			9. DISCOUNT FOR PROMPT PAYMENT	
			10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK	
11. SHIP TO/MARK FOR CODE		12. PAYMENT WILL BE MADE BY CODE		
13. THIS PROCUREMENT WAS ☐ ADVERTISED, ☐ NEGOTIATED, PURSUANT TO: ☐ 10 U.S.C. 2304 (a) ( ) ☐ 41 U.S.C. 253 (c) ( )				
14. ACCOUNTING AND APPROPRIATION DATA				

15 ITEM NO.	16 SUPPLIES/SERVICES	17 QUANTITY	18 UNIT	19 UNIT PRICE	20 AMOUNT

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(X)	SEC.	PAGE	(X)	SEC.	PAGE
PART I - THE SCHEDULE			PART II - GENERAL PROVISIONS		
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	B Supplies/Services & Prices		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS		
	C Description/Specification			J List of Documents, Exhibits and Other Attachments	
	D Packaging and Marking		PART IV - GENERAL INSTRUCTIONS		
	E Inspection and Acceptance			K Representations, Certifications and Other Statements of Offerors	
	F Deliveries or Performance			L Instructions and Conditions and Notices to Offerors	
	G Contract Administration Data			M Evaluation Factors for Award	
	H Special Provisions				

21. TOTAL AMOUNT OF CONTRACT $

CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE

22. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return ____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

26. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number ____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

23. NAME OF CONTRACTOR	27. UNITED STATES OF AMERICA
BY (Signature of person authorized to sign)	BY (Signature of Contracting Officer)
24. NAME AND TITLE OF SIGNER (Type or print) / 25. DATE SIGNED	28. NAME OF CONTRACTING OFFICER (Type or print) / 29. DATE SIGNED

F-100.26

ARMED SERVICES PROCUREMENT REGULATION

F-100.149 Reserved.

F-100.149

ARMED SERVICES PROCUREMENT REGULATION

STANDARD FORMS

F-100.252 *Standard Form 252: Architect-Engineer Fixed-Price Contract.*

	ARCHITECT-ENGINEER FIXED-PRICE CONTRACT	1. CONTRACT NO. 2. DATE OF CONTRACT
3. NAME AND ADDRESS OF ARCHITECT-ENGINEER		
4. AUTHORIZED FOR AGENCY USE (Name)		
5. PROJECT TITLE AND LOCATION		
6. CONTRACT FEE (General description of services to be provided)		
7. CONTRACT AMOUNT (Express in words and figures)		
8. PERFORMANCE SCHEDULE		
9. ENUMERATION, SPECIFICATION, AND ACCOMPANYING DATA		

*Include ZIP code, Area code, and Telephone Number

F-100.252

DEPARTMENT OF DEFENSE FORMS

F-200.254 *DD Form 254: Contract Security Classification Specification*

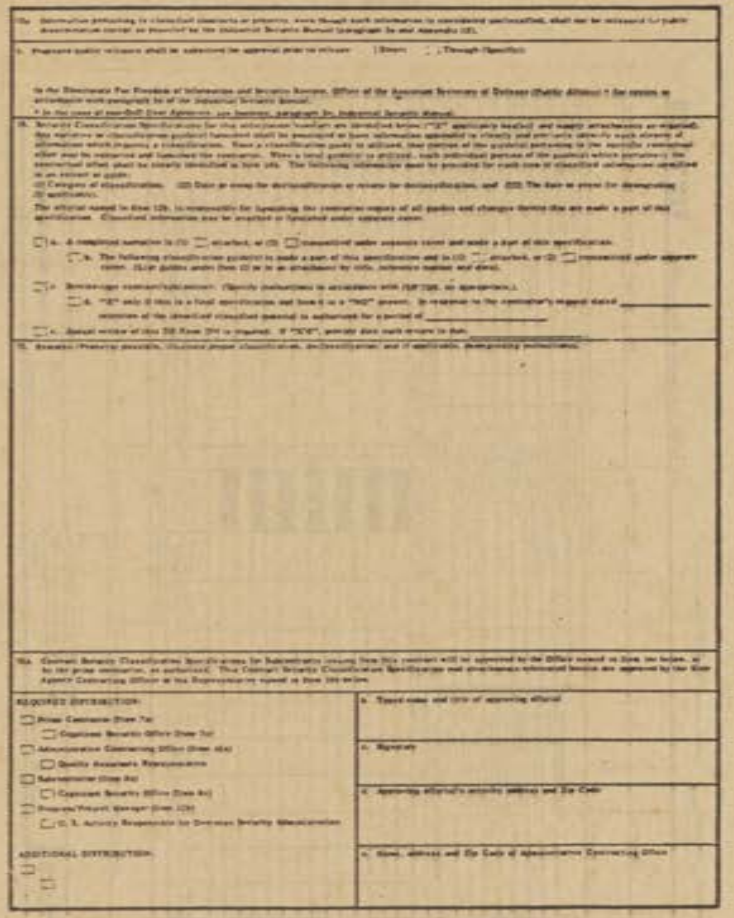
DEPARTMENT OF DEFENSE CONTRACT SECURITY CLASSIFICATION SPECIFICATION							
1. THIS SPECIFICATION IS FOR:	2. CONTRACT NUMBER OR OTHER IDENTIFICATION NUMBER	3. DATE TO BE COMPLETED	4. THIS SPECIFICATION IS				
a. PRIME CONTRACT	a. PRIME CONTRACT NUMBER	a.	a. ORIGINAL				DATE
b. SUBCONTRACT	b. FIRST TIER SUBCONTRACT NO.	b.	b. REVISED				DATE
c. REQUEST FOR BID REQUEST FOR PROPOSAL OR RFQ FOR QUOTATION	c. IDENTIFICATION NUMBER	c. DUE DATE	c. FINAL				DATE
5. Is this a follow-on contract? Yes No. If YES, complete the following:							
a. PRECEDING CONTRACT NUMBER	b. DATE COMPLETED	c. Classification for classified material on preceding contract					
In response to the solicitation cited above.							
6a. Name, Address & Zip Code of Prime Contractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office					
7a. Name, Address & Zip Code of First Tier Subcontractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office					
8a. Name, Address & Zip Code of Second Tier Subcontractor or Supplier associated with DPA, RFP OR RFQ *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office					
9. * Where actual performance is at a location other than that specified, identify each other location at Item 13							
10a. General Identification of the Procurement for which this specification applies		b. IF ANY, Number of preceding SPECIFICATION identified at Item 2c?					
c. Are there additional security requirements established in accordance with paragraph 3-104 or 3-105 ISM? Yes No. If YES, identify the pertinent contractual clauses in the contract document itself, or provide an explanation.							
d. Are any elements of this contract outside the inspection responsibility of the cognizant security office? Yes No. If YES, explain and identify specific areas or elements.							
11. ACCESS REQUIREMENTS	YES	NO	ACCESS REQUIREMENTS (Continued)	YES	NO		
a. Access to Classified Information Only at other contractor/Government activities			j. Access to SENSITIVE COMPARTMENTED INFORMATION				
b. Receipt of classified documents or other material for reference only (no generation)			k. Access to other Special Access Program information. (Specify in Item 13).				
c. Receipt and generation of classified documents or other material.			l. Access to U. S. classified information outside the U. S. Panama Canal Zone, Puerto Rico, U. S. Possessions and Trust Territories.				
d. Fabrication/Modification/Storage of classified hardware			m. Defense Documentation Center or Defense Information Analysis Center Services may be requested.				
e. Graphic arts services only			n. Classified ADP processing will be required.				
f. Access to IPO information			o. REMARKS				
g. Access to RESTRICTED DATA							
h. Access to classified COMSEC information							
i. Cryptographic Access Authorization required							
12. State all questions pertaining to contract security classification specification to the official named below (CONTRACTOR, direct with written consent of Activity and re-release to ACO) (Any prime contractor for subcontracts)							
a. The classification guidance contained in this specification and attachments referenced herein is complete and adequate.							
b. Typed name, title and signature of program/project manager or other designated official			c. Activity name, address, Zip Code, telephone number and office symbol				
NOTE: Original Specification (Item 1a) is required for all solicitations and contracts. Revised and Final Specifications (Items 1b and c) are required when the contractor is directed to change the original classification guidance. Such actions by contractors shall be taken in accordance with the guidance set forth in the Industrial Security Manual.							

DD Form 254 EDITION OF 1 JAN 79 IS OBSOLETE. ALSO REPLACES DD FORM 254, WHICH IS OBSOLETE

F-200.254

DEPARTMENT OF DEFENSE FORMS

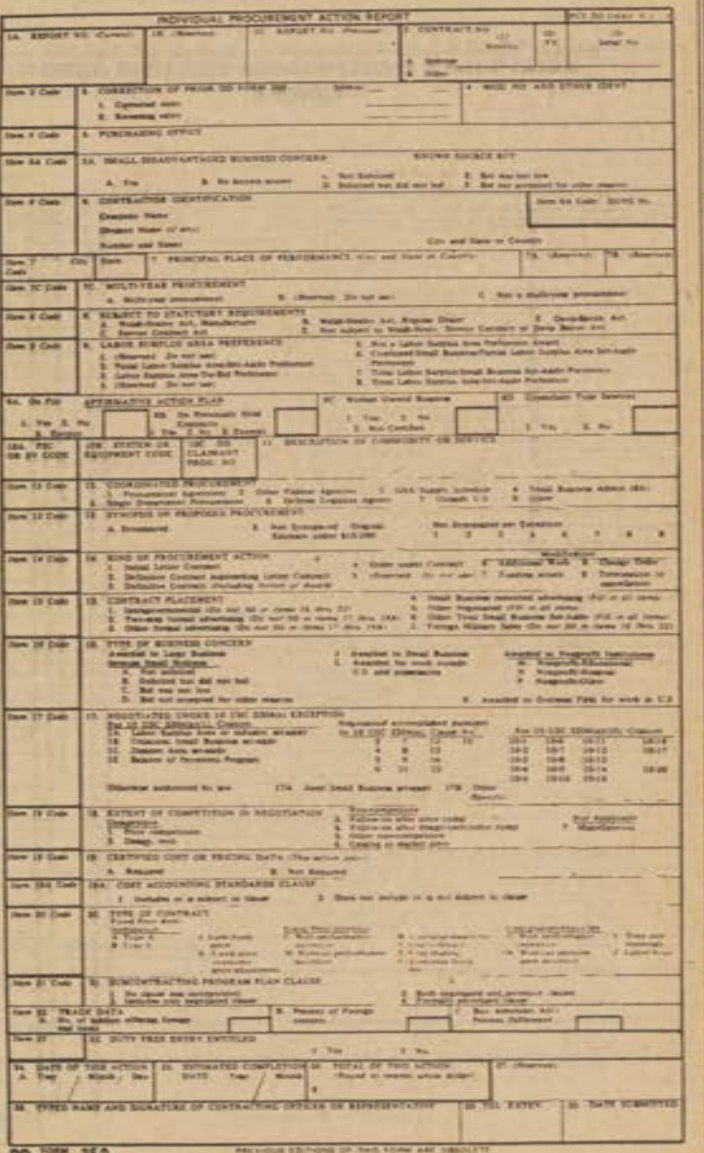
F-200.254 *DD Form 254: Contract Security Classification Specification*—Continued



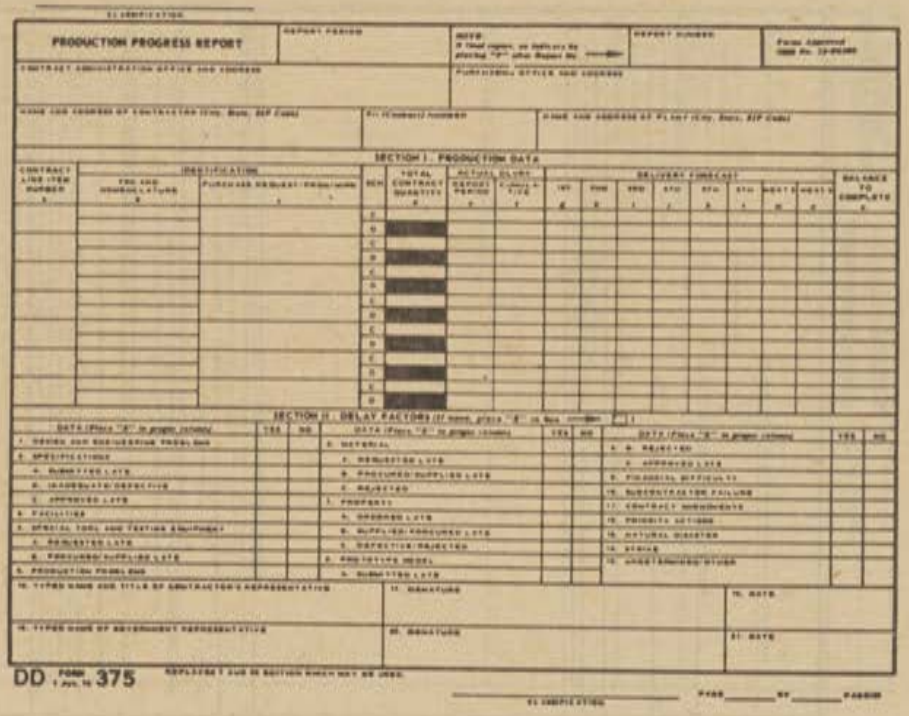
[The next page is F87]

DEPARTMENT OF DEFENSE FORMS

F-200.350 *DD Form 350: Individual Procurement Action Report*



F-200.375 *DD Form 375: Production Progress Report*



PRODUCTION PROGRESS REPORT

DD FORM 375

F-200.375 ARMED SERVICES PROCUREMENT REGULATION

F-200.882 *DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause)—Continued*

INSTRUCTIONS TO CONTRACTOR

This form *(in triplicate)* is for use in submitting **INTERIM** and **FINAL** reports to the Contracting Officer.

An **INTERIM** report is due at least every 12 months from the date of the contract and shall include (a) a listing of Subject Inventions during the reporting period, (b) a certification of compliance with required invention identification and disclosure procedures, and (c) any required information on Subcontracts having a Patent Rights clause awarded during the reporting period which has not been previously reported.

A **FINAL** report is due within 3 months after completion of the contract work and shall include (a) a listing of all Subject Inventions required by the contract to be reported, and (b) any required information on Subcontracts awarded having a Patent Rights clause which has not been previously reported.

Reverse side of DD Form 882, 1 OCT 75

F-200.882 ARMED SERVICES PROCUREMENT REGULATION

DEPARTMENT OF DEFENSE FORMS

F-200.1057 *DD Form 1057: Monthly Procurement Summary of Actions $10,000 or Less*

MONTHLY PROCUREMENT SUMMARY OF ACTIONS $10,000 OR LESS				REPORT CONTROL SYMBOL DD-M(Q)(M) 1057	
PURCHASING OFFICE AND MAILING ADDRESS				MONTH ENDING	
				REPORTING OFFICE CODE	
CATEGORY	NUMBER OF ACTIONS	DOLLAR VALUE	CATEGORY	NUMBER OF ACTIONS	DOLLAR VALUE
SECTION A - ALL PROCUREMENT ACTIONS			SECTION B - NEGOTIATION AUTHORITY 10 U.S.C.		
1. WITH LARGE BUSINESS FIRMS TOTAL			1. SECTION 2304(a)(1)		
a. ADVERTISED			a. Labor Surplus Area or Industry Set-Aside		
b. NEGOTIATED			b. Small Business Set-Aside (Unilateral)		
2. WITH SMALL BUSINESS FIRMS TOTAL			c. Disaster Area Set-Aside		
a. ADVERTISED			d. Balance of Payments Program		
b. NEGOTIATED			2. SECTION 2304(a)(2)		
3. WITH EDUCATIONAL AND NON-PROFIT INSTITUTIONS TOTAL			3. SECTION 2304(a)(3)		
a. ADVERTISED			a. RESERVED FOR SMALL BUSINESS		
b. NEGOTIATED			b. NOT RESERVED FOR SMALL BUSINESS		
4. FOR WORK OUTSIDE THE U.S. TOTAL			4. SECTION 2304(a)(4)		
a. ADVERTISED			5. SECTION 2304(a)(5)		
b. NEGOTIATED			6. SECTION 2304(a)(6)		
5. INTRA-GOVERNMENTAL TOTAL			7. SECTION 2304(a)(7)		
a. GSA Federal Supply Schedules					
b. Other Federal Agencies			8. SECTION 2304(a)(8)		
6. FOREIGN MILITARY SALES TOTAL			9. SECTION 2304(a)(9)		
7. TOTAL (Lines 1+2+3+4+5+6)			10. SECTION 2304(a)(10)		
			11. SECTION 2304(a)(11)		
			12. SECTION 2304(a)(12)		
			13. SECTION 2304(a)(13)		
SECTION C - RESEARCH, DEVELOPMENT, TEST AND EVALUATION ACTIONS			14. SECTION 2304(a)(14)		
1. LARGE BUSINESS FIRMS			15. SECTION 2304(a)(15)		
2. SMALL BUSINESS FIRMS			16. SECTION 2304(a)(16)		
3. EDUCATIONAL AND NON-PROFIT INSTITUTIONS			17. SECTION 2304(a)(17)		
4. TOTAL (Lines 1+2+3)			a. Small Business Set-Aside (Joint)		
			b. Other		
			18. TOTAL (Lines 1 thru 17)		
SECTION E - SMALL DISADVANTAGED BUSINESS ACTIONS					
1. THROUGH SBA (8(A))					
2. DIRECT			SECTION D - COMPETITION IN NEGOTIATED ACTIONS		
3. TOTAL (Lines 1+2)			1. PRICE COMPETITION		
			2. OTHER NEGOTIATED		
			3. NOT CONSIDERED FOR COMPETITION		
SECTION F - WOMEN-OWNED BUSINESS			4. TOTAL (Lines 1+2+3)		
1. SMALL BUSINESS					
2. LARGE BUSINESS					
3. TOTAL (Lines 1+2)					
REMARKS (Continue on separate sheet)					
DATE SUBMITTED	TYPED NAME AND SIGNATURE			TELEPHONE NUMBER	

DD FORM 80 OCT 1 1057 EDITION OF 1 OCT 77 IS OBSOLETE

F-200.1057

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 81-20581 Filed 7-13-81; 8:45 am]

BILLING CODE 3810-70-C

32 CFR Parts 1 through 39

[DAC 76-27]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-27. Some of the changes include: termination of the Wage and Price Regulatory Program; debarment and suspension of subcontractors; automatic data processing contracting; fast payment procedures; rights in commercial computer software; liability for shipping loss or damage; allowance of costs for long-term leases; shipment or storage of personal property; Department of Defense precious metals program; and deferment proposals. In addition to these changes, there is included material concerning the Simplified Research Contract Procedures.

EFFECTIVE DATE: May 15, 1981.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations.

The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-27.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-27, issued May 15, 1981. The following is a summary of the amendments:

Termination of the Wage and Price Regulatory Program. In conformance with Executive Order 12288, dated January 29, 1981, which terminated the Wage and Price Regulatory Program, DAR 1-341, which implemented the program, is canceled. The clauses at 7-2003.83 and 7-104.101, concerning compliance with the program, and related paragraphs in DAR Section VII are deleted. In addition to these changes, the most recent list of noncompliant contractors has been rescinded.

Debarment and Suspension of Subcontractors. DAR Section I, Part 6 is revised to confirm and clarify the Department of Defense policy that debarment and suspension procedures apply to subcontractors.

Automatic Data Processing (ADP) Contracting. Part 11 is added to Section IV of the DAR to provide comprehensive guidance to DoD personnel with respect to contracting procedures for ADP equipment, software, maintenance services, and support services. The coverage incorporates in one document existing guidance contained in the Federal Property Management Regulations, the Federal Procurement Regulations, Department of Defense Directives and Instructions, and related Departmental implementation. Associated changes are made in other sections of the DAR as appropriate. NOTE: Two new General Services Administration Regulations regarding the acquisition of ADPE became effective January 15, 1981. They are published in the **Federal Register,** Volume 46, No. 2, January 5, 1981. (46 FR 1196 and 46 FR 1213).

Fast Payment Procedures. The coverage in DAR 3-606 and the related changes in 7-104.84 are revised to incorporate provisions for overseas shipments and to clarify the information to be submitted by contractors with invoices and DD Form 250.

Rights in Commercial Computer Software. DAR Section IX and the related clauses in 7-104.9 are revised to authorize the use of a special Restricted Rights Legend for commercial computer software. Related changes are included in the coverage concerning Government use of such software.

Liability for Shipping Loss or Damage. Paragraph (c) of the clause at DAR 7-1601.14 is revised with regard to the liability for loss of or damage to military goods during shipment.

Allowance of Cost for Long-Term Leases. DAR 15-205.9 and 15-205.34 are revised to reinstate the "grandfather" clause, similar to the one which appeared in the DAR (ASPR) from December 31, 1969 (Revision 6) to September 1, 1978 (DAC 76-17), for application to leases as originally provided in ASPR Revision 6. It should be noted that when lease costs are allowed under the grandfather provision the asset values may not be included in computation of facilities capital cost of money.

Shipment or Storage of Personal Property. DAR 22-602.1 is revised to authorize substitution of "MTMC Pamphlet 5512, dated October 12, 1978," for "Federal Specification PPP-B-580" for shipping containers.

DoD Precious Metals Program. DAR 24-204.4 is revised to recognize the Defense Property Disposal Precious Metals Recovery Office in Colts Neck, New Jersey, as the single DoD control point for precious metal reporting. The coverage also is revised to provide for the disposition of all precious metals, not just silver and gold material, when it is determined that recovery is not feasible.

Deferment Proposals. Appendix E (E-614) is revised to incorporate language to clarify existing policy relative to deferment proposals and to be consistent with E-623 which sets forth the responsibility of the contract financing office for acting on such proposals.

Editorial Changes. Editorial changes are included in this DAC to correct typographical errors or administrative oversight, and to provide other editorial corrections.

Test of the Short Form Research Contract. The Defense Acquisition Regulatory (DAR) Council, on January 17, 1980, approved a two-year test of a Short Form Research Contract (SFRC) for awards to educational institutions and nonprofit organizations whose primary purpose is the conduct of scientific research, when the basis of award is an unsolicited proposal. DD Form 2222 (Test), 1 Jan 80; the Simplified Research Contract Procedures (DAR Section IV, Part 10); and the SFRC Contract Clauses (DAR Section VII, Part 22), established for the purpose of the test are included as part of this DAC, but not in the form of replacement pages in the Regulation.

Neither the SFRC nor the accompanying contract procedures are intended to provide new policy coverage or guidance on the use of research contracts versus grants for educational institutions and/or nonprofit organizations. The SFRC test coverage does, however, present a significant departure from current DoD research contracting procedures by providing for:

Unilateral awards when unsolicited proposals receive favorable technical evaluation;

Use of a one-page contract document through incorporation by reference of the proposal and general provisions;

Consolidation of all applicable contract clauses and provisions for educational institutions and other qualifying nonprofit organizations into the newly established test, DAR Section VII, Part 22.

It is believed that use of the SFRC will enhance the use of unsolicited proposals and provide a more consistent approach and format for DoD research contracting with educational institutions and other nonprofit organizations. For this reason, use of the SFRC by all DoD contracting activities is mandatory for applicable contracts during the two-year test period. A special instrument identification code (DAR 20–203.1(iii)) for SFRCs has been assigned as follows: "K Short Form Research Contract." Use of the Basic Agreements with educational institutions and nonprofit organizations, as prescribed by DAR 4–118.5, is suspended during the test period. The SFRC is also exempt from the Uniform Contract Format prescribed by DAR 3–501.

At the end of the first year of the test, all DoD contracting activities will be requested to report on implementation of the SFRC. Any necessary changes or adjustments to the SFRC format, procedures or contract provisions will be made at that time.

DD Form 2222 (Test), 1 Jan 80, may be reproduced for local use pending receipt of the form through normal form distribution channels.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on May 15, 1981.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–27. The number at the top of each page (for example, 1:9) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1–39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
	Volume I
1-112	1:10, 1:11.
1-201.14	1:17, 1:18.
1-201.29	1:19.
1-201.37	1:20.
1-341	1:77-A, 1:77-B.
1-600	1:90.
1-601.1	1:90.
1-601.3	1:90.
1-601.4	1:91.
1-603	1:91, 1:92.
1-604.1	1:93, 1:94.
1-605	1:95.
1-605.1	1:96.
1-701.1	1:106.
1-704.3	1:122-D.
1-1502	1:197.
3-603.1	3:78.
3-606.1	3:83.
3-807.7	3:128.
3-1100.1	3:173.
3-1100.2	3:173.
Sect. IV, Part 10 (Reserved).	4:49.
4-1100	4:50.
4-1101	4:50, 4:51.
4-1102	4:51.
4-1102.1	4:51.
4-1102.2	4:52.
4-1102.3	4:52.
4-1102.4	4:52.
4-1102.5	4:52.
4-1102.6	4:52.
4-1102.7	4:52.
4-1102.8	4:53.
4-1102.9	4:53.
4-1102.10	4:53.
4-1102.11	4:53.
4-1102.12	4:53.
4-1102.13	4:53.
4-1102.14	4:54.
4-1102.15	4:54.
4-1102.16	4:54.
4-1102.17	4:54.
4-1103	4:54.
4-1103.1	4:54, 4:55, 4:56.
4-1103.2	4:56.
4-1104	4:56.
4-1104.1	4:57 through 4:59, 4:60.
4-1104.2	4:60.
4-1104.3	4:60, 4:61.
4-1104.4	4:61, 4:62, 4:63.
4-1104.5	4:63, 4:64.
4-1104.6	4:64, 4:65.
4-1104.7	4:65, 4:66.
4-1104.8	4:66.
4-1104.9	4:66.
4-1104.10	4:66, 4:67, 4:68.
4-1104.11	4:68.
4-1104.12	4:68.
4-1104.13	4:68, 4:69, 4:70.
4-1104.14	4:70.
4-1104.15	4:70.
4-1105	4:70.
4-1106	4:70.
5-900	5:38.
5-903	5:39.
6-001.7	6:3.
6-603.1	6:33.
6-1306.1	6:56.
6-1406.1	6:81.
6-1406.2	6:90.
6-1406.3	6:99, 6:101.
6-1406.4	6:108.
6-1406.5	6:113.
6-1406.6	6:121.
6-1406.9	6:143.
	Volume II
7-104.3	7:33.
7-104.9	7:36 through 7:36-C, 7:45.
7-104.20	7:57.
7-104.32	7:76, 7:76-A.
7-104.84	7:128-F through 7:130.
7-104.101	7:140-B, 7:140-C.
7-204.67	7:205.
7-303.69	7:241.
7-403.65	7:266.
7-504.19	7:271.
7-603.62	7:314-D.
7-606.33	7:332.
7-608.24	7:342-A.
7-705.35	7:368.
7-902.46	7:391.
7-1601.14	7:429.
7-1702.22	7:439.
7-1903.42	7:455.
7-1903.58	7:456.
7-2003.83	7:526-D.
7-2102.23	7:538.
Sect. VII, Part 22 (Reserved).	7:538-A.
7-2300	7:539.
7-2301	7:539.
7-2302.1	7:539.
7-2302.2	7:540.
8-216	8:22.
9-202.2	9:29, 9:29-A.
9-202.3	9:33.
9-601	9:56.
9-602	9:57.
9-603	9:57.
9-605	9:58, 9:59.
12-1007.3	12:44-E.
13-301	13:9.
15-205.9	15:23.
15-205.34	15:33-A, 15:36.
	Volume III
16-303	16:16.
21-109	21:7.
21-111.1	21:8.
21-118	21:12.
21-126	21:20.
21-204.2	21:25-A.
22-602.1	22-22.
24-204.4	24:12.
24-205.8	24:21, 24:22.
E-614	E:74.
I-401	I:20.

Dated: July 8, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

BILLING CODE 3810-70-M

requirements of Federal agencies, and provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of adherence to prescribed policy. Basic to the preparation of all these regular and special reports, so far as they affect individual contracting officers, is DD Form 350 (Individual Procurement Action Report) (Section XXI, Part 1). Each item of this form enters into the preparation of reports furnished the President, the Congress, and other Federal agencies, and is used for management purposes within the Department of Defense. The accuracy, completeness, and timeliness of these reports are fully dependent on the careful preparation and prompt submission of DD Form 350.

1-111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

1-111.1 *Reporting Procedures.* Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in Part 6 of this Section.

1-111.2 *Noncompetitive Practices.*

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of the bid or proposal, other contract documents, and supporting data. The report should set forth:

(i) the noncompetitive pattern or situation under consideration;

(ii) purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstract of bids;

(iii) community of financial interest among bidders, insofar as is known;

(iv) the extent, if any, to which specification requirements or patents restrict competition;

(v) information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(vi) any other information deemed pertinent.

(c) The reports required by this paragraph do not satisfy the reporting requirement contained in 1-114.

1-111.3 *Subcontractor Kickbacks.* The Anti-Kickback Act (41 U.S.C. 51) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States action, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly, makes or receives, directly or indirectly, any such prohibited payment.

1-111.4 *Contractor Gratuities to Government Personnel.*

(a) The right of a contractor to proceed under the contract may be terminated if it is found, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the Government to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.

(b) To constitute a violation under the Gratuities clause (7-104.16) three elements must be present:

(i) the contractor must have a contract which contains the Gratuities clause;

(ii) the contractor, his agent, or other representative must have offered or given a gratuity to an officer, official, or employee of the Government; and

(iii) the gratuity must have been offered or given with the intent to obtain a contract or favorable treatment in the awarding or amending, or the making of determinations concerning the performance, of a contract (in this respect, intent generally must be inferred because an admission is rarely obtainable).

A lack of any of these elements will cause an action taken by the Government pursuant to the Gratuities clause to fail. Procedural requirements for gratuities hearings are set out in Appendix D.

1-112 Federal Property Management Regulations, Federal Procurement Regulations, and GSA Regulations Relating to Acquisition of Supplies and Services. Except for acquisition of ADPE under delegation of contracting authority from GSA, all policy and procedural matters of Federal Procurement Regulations and General Services Administration Regulations applicable to the Department of Defense within the scope of this Regulation are as set forth herein. Changes will be

implemented through the DAR system. The applicable DoD Directives covering the assignments of responsibility for the purchasing of specific supplies under Interagency Purchase Assignment will be incorporated by reference in this Regulation. For DoD implementation of Federal Supply Schedules, see Section V, Part 1.

1-113 Standards of Conduct.

1-113.1 *Government Personnel.* All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR600-50, for the Army; SECNAV Instr. 5370.2E of 29 November 1967, for the Navy; AFR 30-30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220-50-1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

1-113.2 *Organizational Conflicts of Interest.*

(a) Appendix G—Rules for the Avoidance of Organizational Conflicts of Interest sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, Appendix G describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Appendix cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Appendix. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in the Appendix to contracts under his cognizance and shall determine whether each proposed procurement is subject to the Appendix.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis justifying his recommendation to contract with either no restraint, partial restraint, or strict hardware exclusion provisions, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and where appropriate a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. This analysis and recommendation shall be reviewed by the Head of the Procuring Activity who shall examine the circumstances for benefits and detriments to both the Government and potential contractors, and who shall either approve, modify or reject the contracting officer's recommendation to contract with either no restraint, partial restraint or strict hardware exclusion provisions. In the event the Head of the Procuring Activity modifies, or rejects the contracting officer's recommendation, he shall document his decision. A standard form of solicitation notice or clause is not prescribed in this Regulation since such notices and clauses must be especially adapted to apply the principle of the rules to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of Appendix G is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 of Appendix G.) In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) The contracting officer shall include his recommendations and the Head of the Procuring Activity's determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of the Appendix are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this paragraph 1-113.2 defer the determination of the application of the Appendix to a time after the contract has been awarded.

(5) When a contract contemplates a Rule 4 situation, it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under the Appendix in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain, in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this paragraph 1-113.2.

1-114 Reporting of Identical Bids.

(a) *General.* Executive Order 10936 dated 24 April 1961, as implemented by the Department of Justice, requires a report to be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over $10,000 which involves identical bids. Identical bids are two or more bids for the same line item which:

Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Organization; and
Assistant Chief of Staff for Automation and Communications.

FOR THE NAVY:
Headquarters, Naval Material Command;
Office of Assistant Deputy Chief of Naval Material for Contracts and Business Management;
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.

FOR THE AIR FORCE:
HQ USAF, Director of Contracting and Acquisition Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe; and
Alaskan Air Command.

FOR THE DEFENSE LOGISTICS AGENCY:
Office of the Deputy Director for Contract Administration Services;
Office of the Executive Director, Procurement and Production;
Defense Supply Centers; and
Defense Personnel Support Center;
Office of Deputy Commander for Subsistence and Commander, Subsistence Field Activities.

FOR THE DEFENSE COMMUNICATIONS AGENCY:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

FOR THE DEFENSE NUCLEAR AGENCY:
Headquarters, Defense Nuclear Agency.

FOR DEFENSE MAPPING AGENCY:
Headquarters, Defense Mapping Agency, Logistics Office.

FOR THE NATIONAL SECURITY AGENCY:
Headquarters, National Security Agency.

FOR THE DEFENSE SUPPLY SERVICE--WASHINGTON:
Director, Defense Supply Service--Washington

It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

1-201.15 *Secretary* means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department. Secretary shall also include the Director and Deputy Director of the Defense Supply Agency, the Director of the Defense Communications Agency, the Director, Defense Nuclear Agency, the Director, Defense Mapping Agency, and the Director of the National Security Agency, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, such authority shall be exercised by the Assistant Secretary of Defense (Installations and Logistics).

1-201.16 *Shall* is imperative.

1-201.17 *Small Business Concern.* See 1-701.1.

1-201.18 *Supplemental Agreement* means any contract modification which is accomplished by the mutual action of the parties. (See 16-103.)

1-201.19 *Supplies* means all property except land or interest in land. It includes public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts, and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this Regulation is synonymous with "property" as described in 10 U.S.C. 2303(b).

1-201.20 *United States*, when used in a geographic sense, means the States and the District of Columbia.

1-201.21 *Construction.* See 18-101.1.

1-201.22 *Classified Procurement* is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see 1-320.

1-201.23 *Designee*, as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

1-201.24 *Purchasing Office* means the office which awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office.

1-201.25 *Contract Administration Office* means the office which performs assigned functions related to the administration of contracts, and assigned pre-award functions.

1-201.26 *Assignment of Contract Administration* means that process whereby identified functions, duties, or responsibilities related to the administration of

contract are assigned either by this Regulation or by individual assignment to a contract administration office.

1-201.27 *Transfer of a Contract* means that process whereby all future responsibility for a contract held by an individual or office is transferred, in writing by proper authority, to another office to take action necessary to carry out the responsibility transferred.

1-201.28 *Local Purchase* means the authorized purchase of materials, supplies and services by an installation for its own use or the use of an installation or activity logistically supported by it. Local purchase is not limited to the immediate geographical area in which the purchasing installation is located.

1-201.29 *Automatic Data Processing Equipment (ADPE)* means:

(i) Digital and Analog Computer components and systems, irrespective of type of use, size, capacity or price;

(ii) all peripheral, auxiliary, and accessorial equipment used in support of Digital and/or Analog Computers, either cable connected, or "self standing" and whether selected or acquired with the computers or separately;

(iii) Punched Card Machines (PCM) and systems used in conjunction with or independently of Digital or Analog Computers; and

(iv) Digital and Analog Terminal and Conversion equipment that is acquired solely or primarily for use with a system which employs a Computer or Punched Card Machines.

1-201.30 *Paying Office* means the office which makes payments under the contract.

1-201.31 *Supporting Contract Administration* means the performance by another contract administration office of specific contract administration functions as required by the office to which the contract has been assigned for administration.

1-201.32 *Standard Dating Technique*. When it is necessary to insert the date on any contractual document or required report, it shall be written using seven characters in the following order: year (two digits), month (three letters), and day (two digits). For example, July 6, 1968, would be entered on contractual documents and required reports as "68 JUL 06."

1-201.33 *Exhibit* means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule; see 20-305.

1-201.34 *Classified Contract* is any contract that requires or will require access to classified information by the contractor or his employees in the performance of the contract. A contract may be a classified contract even though the contract document is not classified.

1-201.35 *Data* means recorded information, regardless of form or characteristic.

1-201.36 *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document

research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

1-201.37 *Reserved.*

1-201.38 *Computer Program* means a series of instructions or statements in form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs; as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

1-201.39 *Automatic Data Processing System (ADPS)* means an interacting assembly of procedures, processes, methods, personnel, communications, and automatic data processing equipment to perform a series of data processing operations—a combination of automatic data processing resources and automatic data systems.

1-201.40 *Offer* means *bid* where the procurement is advertised, and *proposal* where the procurement is negotiated.

1-201.41 *Major Systems Acquisition* is an acquisition specifically designated by the Secretary of Defense / Deputy Secretary of Defense under the procedures set forth in Department of Defense Directive Number 5000.1, and such other systems as designated by the Secretaries of the Military Departments.

perty. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should

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be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistent with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Geographic Distribution of Department of Defense Subcontract Dollars. Section 836 of the 1978 DoD Appropriation Act requires DoD to render an annual report to Congress on the geographical distribution of DoD subcontract dollars. To implement this requirement, the clause in 7-104.78 shall be inserted in any contract to be awarded which is expected to exceed $500,000, or when any modification increases the aggregate amount of a contract to $500,000 or more. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification.

1-341 Reserved.

1-342 Certification of Requests for Adjustment or Relief Exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained in 7-104.102 shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by 3-807.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

Part 4—Procurement Responsibility and Authority

1-400 Scope of Part. This Part deals with the procurement responsibility and authority of (i) the Head of a Procuring Activity, (ii) purchasing offices, (iii) contract administration offices, and (iv) contracting officers, and with the appointment of contracting officers. This Part also imposes limitations upon the authority to enter into and administer contracts. For the purpose of this Part, the term "contracting officer" does not include authorized representatives of the contracting officer.

1-401 Responsibility of Each Procuring Activity. Except as otherwise prescribed by procedures of each respective Department, the Head of a Procuring Activity is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity.

1-402 Authority of Contracting Officers. Contracting officers at purchasing offices (see 1-201.24) are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of the United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and when authorized by 20-703 to administer such contracts, in accordance with this Regulation. This authority is subject to the requirements prescribed in 1-403 and 1-404 and any further limitations, consistent with this Regulation, imposed by the appointing authority. Contracting officers at contract administration offices (see 1-201.25) are, except as provided in 20-703.3, authorized to perform the applicable contract administration functions (see 1-406) and to perform additional procurement functions when delegated by the purchasing office.

1-403 Requirements To Be Met Before Entering Into Contracts. No contract shall be entered into unless all applicable requirements of law and of this Regulation, and all other applicable procedures, including business clearance and approval, have been met.

1-404 Special Requirements To Be Met Before Entering Into Negotiated Contracts. In addition to the requirements in 1-403, no negotiated contract shall be entered into until the determinations and findings required by Section III, Parts 3 and 4, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

1-405 Selection, Appointment, and Termination of Appointment of Contracting Officers. The selection, appointment, and termination of appointment of contracting officers shall be made only by the Secretary of the Department, the Head of a Procuring Activity, or their designees.

1-405.1 *Selection.*

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation, and ethics.

(b) *Evaluation of Experience, Training, and Education.* In considering experience, training, and education, the following shall be evaluated:

(i) experience in a Government procurement office, commercial procurement, or related fields;

(ii) formal education or special training in business administration, law, accounting, or related fields;

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propriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms; i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;

(iii) consider the bidder's or offeror's future eligibility as a contractor; or

(iv) consider referring the case to the Department of Justice.

1-508.4 *Reports.* A report shall be made in accordance with 1-608 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1-508.3(iv).

1-509 Preservation of Records.

(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.

(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.

Part 6—Debarment, Ineligibility, and Suspension

1-600 Scope of Part.

(a) This Part prescribes policies and procedures relating to the debarment and suspension of bidders, offerors, contractors, subcontractors, and other firms and individuals, and to ineligibility of bidders and offerors under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

(b) For the purpose of this Part, the authorized representatives of the Secretaries are:

(i) in the Army, an Assistant Judge Advocate General;

(ii) in the Navy, the Chief of Naval Material;

(iii) in the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(iv) in the Defense Logistics Agency, the Counsel;

(v) in the National Security Agency, The Director;

(vi) in the Defense Communications Agency, the Counsel;

(vii) in the Defense Nuclear Agency, the Director; and

(viii) in the Defense Mapping Agency, the Counsel.

1-601 Establishment and Maintenance of Records and Lists of Firms or Individuals Debarred, Ineligible or Suspended.

1-601.1 *General.* Each Department shall maintain a record of firms and individuals which it has debarred or suspended. As provided in this Part, contract awards of any character, including sales, will not be made to and bids or proposals will not be solicited from, and subcontracts will not be approved or consented to for listed firms and individuals.

1-601.2 *Information Contained in Departmental Records.* Each Departmental record shall show as a minimum the following information:

(i) names and addresses of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross reference where more than one name is involved in a single action);

(ii) basis of authority for each action and a brief description of the violation charged;

(iii) extent of restrictions imposed; and

(iv) termination date for each debarred listing.

1-601.3 *Joint Consolidated List.* The Department of the Army is responsible for the issuance of a Joint Consolidated List (DA Circular 715-1; NAVMAT P-4386; AFR 70-23; MCO 4386.2J; DLA Regulation 4105.3; DCAI 260-145-3; DNAI 4105.1 of firms and individuals debarred, declared ineligible, or suspended under 1-603. The authorized representative for the Army (see 1-600(b)) shall be furnished by the authorized representative of each of the other Departments, not later than the third day of each month, the information set forth in 1-601.2, including additions, deletions, or modifications of information previously furnished, necessary for issuance of the Joint Consolidated List which shall be a composite of the information provided by the Departments. Each Department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Policy).

1-601.4 *Protection of Records.* Records relating to debarment and suspension shall be protected to prevent inspection of the contents by personnel who are not required to have access to such information. The reports made pursuant to 1-608 and all related internal correspondence shall be marked "For Official Use Only" unless the information warrants a security classification. The Joint Consolidated List shall not be considered part of the records relating to debarment and suspension which require protective markings.

1-601.5 *Limitation.* No firm or individual will be listed on a consolidated list for causes or under conditions other than those set forth in this Part.

1-601.6 *Inquiries from Debarred, Ineligible, or Suspended Individuals and Firms.*

(a) *Debarred and Suspended Firms and Individuals.* All inquiries relating to debarred or suspended firms and individuals shall be referred or forwarded to the authorized representative of the Secretary concerned.

(b) *Ineligible or Disqualified Firms or Individuals.* Inquiries from contractors or individuals listed as ineligible or disqualified by the Comptroller General and the Department of Labor under the Walsh-Healey or Davis-Bacon Acts shall be answered by indicating the nature of the prohibition, as shown on the consolidated list, and requesting that the inquirer communicate with the Wage and Hour Division, Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20210.

1-602 Reserved.

1-603 Grounds for Listing and Treatment To Be Accorded Listed Concerns.

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

Type A includes debarments in any of the following categories:

(i) those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) for violating the requirements of that Act; and

(iii) those which the Secretary concerned or his authorized representatives has determined to debar for any of the causes and under all of the conditions set forth in 1-604.

Contracts shall not be awarded to, nor bids or proposals solicited from, nor invitations for bids or requests for proposals furnished to, concerns which are listed as Type A and which are debarred because of Walsh-Healey or Davis-Bacon violations (categories (i) and (ii) above). Contracts shall not be awarded to, nor bids or proposals solicited from nor invitation for bids or requests for proposals furnished to, nor subcontracts be approved for, concerns which are listed as Type A within category (iii) above, unless the Secretary concerned or his authorized representative determines it to be in the interest of the Government to make an exception for a particular procurement action, or unless the listing indicates that the debarment is not to apply to sales contracts or to procurement contracts (see 1-606).

Type B includes concerns which the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded the concerns under Type B listings for those materials, articles, or equipment with respect to which the concern has been found to be ineligible. However, contracts in any amount may be awarded, and bids or proposals may be solicited, for commodities with respect to which the concern has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listing only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers from receiving contracts subject to the Walsh-Healey Public Contracts Act.

Type C includes concerns which the appropriate Secretary, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the "Buy American Act" clause required for construction contracts (see 18-510). Contracts for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be awarded to concerns under Type C listings nor shall bids or proposals for such work be solicited from such concerns. However, concerns under Type C listings may be awarded contracts and may be solicited for bids or proposals for other than the construction, alteration, or repair of public buildings or public works, unless listed under Type A.

Type D includes concerns which have been suspended under the conditions set forth in 1-605. Concerns under Type D listings shall not be awarded contracts or solicited for bids or proposals, or be approved for subcontracts subject to 1-603(c), except when the Secretary concerned or his authorized representative determines it to be in the best interest of the Government to make an exception for a particular procurement or where the listing indicates that the suspension does not apply to sales contracts or to procurement contracts (see 1-606).

Type E includes concerns which have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes: Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276c); Contract Work Hours Standards Act (76 Stat. 357-360); National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703); Hospital Survey and Construction Act (60 Stat. 1040); Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101); Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441); School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251); Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended; Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and Area Redevelopment Act of 1961 (75 Stat. 47). Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

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Type F includes concerns which have been debarred by the appropriate Secretary or the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity for noncompliance with the Equal Opportunity clause. Concerns under Type F listings may not be awarded contracts or be solicited for bids.

(b) Administration of current contracts in all phases may be continued, notwithstanding the listing of a contractor, unless otherwise directed by the Secretary concerned or his authorized representative. However, payment of all or part of funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Secretary concerned or his authorized representative.

(c) When a listed concern is proposed as subcontractor, the contracting officer should decline to consent to or approve subcontracting with such concern in any instance in which consent or approval is required of the Government before the subcontract is placed (see 7-104.23 and 7-203.8), unless the Secretary or his authorized representative determines such placement to be in the best interest of the Government.

1-604 Administrative Debarment of Firms or Individuals (Type A). The Secretary of each Department, or his authorized representative (see 1-600(b)), except as limited below, is authorized to debar in the public interest a firm or an individual for any of the causes and under all of the conditions set forth below. Debarment of a firm or individual shall operate to debar such firm or individual throughout the Department of Defense. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment.

1-604.1 *Causes for Debarment.* The following are causes for debarment:

(i) conviction by or a judgment obtained in a court of competent jurisdiction for—

(A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract, or any subcontract thereunder;

(B) violation of the Federal antitrust statutes arising out of submission of bids or proposals to the Government; or

(C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense and all mitigating factors should be considered in making the decision to debar.

(ii) clear and convincing evidence of violation of contract provisions of a contract with the Government as set forth below, when the violation is of a character so serious as to justify debarment action—

(A) willful failure to perform in accordance with the specifications or delivery requirements in a contract (including violation of the Buy American Act with respect to other than construction contracts);

(B) a history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; *provided*, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. (Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment.);

(C) violation of the contractual provision against contingent fees; or

(D) violation of the Gratuities clause, as determined by the Secretary in accordance with the provisions of the clause.

(iii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify debarment; or

(iv) debarment for any of the above causes by some other executive agency of the Government. (Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts obtained by the original debarring agency.)

1-604.2 *Period and Scope of Debarment.*

(a) *Period of Debarment.* All debarments shall be for a reasonable specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment shall not exceed three years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period, the Department or Agency which imposed the debarment should review all the facts and circumstances relating to the debarment. The debarment shall be removed at the expiration of the specified period unless it is determined that debarment for an additional period is required in order to protect the Government's interest. However, a debarment shall not be extended for an additional period solely on the basis of the facts and circumstances on which the initial debarment action was based. When debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished to the individual or firm concerned in accordance with 1-604.3. The debarment of an individual or firm may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the Equal Opportunity clause (Type F), the debarment shall be removed prior to the expiration of the debarment period by the Secretary who imposed the debarment upon receipt of satisfactory evidence that corrective action has been taken.

(b) *Scope of Debarment.*

(1) Debarment may include all known affiliates of a concern or individual. Business concerns are considered affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or a third controls or has the power to control both.

(2) A decision to include known affiliates in a proposed debarment is an individual determination which must be made on a case by case basis.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected when the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

1-604.3 *Notice of Debarment.*

(a) The firm or individual and its known affiliates concerned shall be furnished with a written notice of the proposed debarment, stating as a minimum:

(i) the fact that debarment is being considered;

(ii) the reasons for the proposed debarment; and

(iii) the period of time to be afforded to present information for consideration.

Information in opposition to a proposed debarment may be presented in person, in writing, or through representation. The period of time to be afforded to present information for consideration shall be limited to 30 days unless the subject of the proposed debarment requests additional time. When no additional time is requested, the debarment determination, including notice to the firm or individual and known affiliates involved, shall be completed within 90 days. If the subject of the proposed debarment requests additional time to present information, the 90 day period shall be extended commensurately. When no suspension is in effect under 1-605, the notice of proposed debarment shall state that no contracts will be awarded pending the debarment determination. If debarment is effected, the firm or individual shall be notified in writing within 10 days after determination of debarment has been made. This notice shall:

(i) reference the earlier notice of proposed debarment;

(ii) specify the reasons for debarment;

(iii) state the period of debarment, including effective dates; and

(iv) advise that the debarment is effective throughout the Department of Defense.

If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the firm or individual shall be notified in writing accordingly.

(b) Copies of the notice of debarment and of any removals from debarment prior to termination of the specified period shall be furnished to the General Services Administration.

(c) The notices referred to in (a) and (b) above shall be sent by certified mail return receipt requested.

1-605 Suspension of Firm or Individual. Suspension of a contractor, subcontractor, bidder, or offeror is a drastic action which must be based upon adequate evidence rather than mere accusation. In assessing adequate evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the

interest of the Government and not for punishment. Suspension is an administrative determination which may be modified when determined to be in the interest of the Government.

1-605.1 *Causes for Suspension.* The Secretary or his authorized representative (see 1-600(b)) may, in the interest of the Government, suspend a firm or individual:

(i) suspected, upon adequate evidence, of—

(A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract or subcontract;

(B) violation of the Federal antitrust statutes arising out of the submission of bids and proposals to the Government; or

(C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

(ii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify suspension.

Suspension of a firm or individual by the Secretary or his authorized representative shall operate to suspend such firm or individual throughout the Department of Defense.

1-605.2 *Period and Scope of Suspension.*

(a) *Coordination with Department of Justice.* Upon suspension, notice shall be furnished in accordance with 1-605.3. Except as provided in (b) below, when a request for a hearing is received, the formal advice of the Department of Justice shall be solicited concerning the possible impact of release of evidentiary material on possible civil or criminal action against the firm or individual. (If such advice is orally given, a request will be made that the Department of Justice promptly confirm it in writing.) Based upon this advice, the Secretary or his authorized representative shall determine whether, and to what extent, a hearing should be held.

(1) If a hearing is granted, it will be held not later than 20 days after receipt of the request. The Secretary or his authorized representative shall promptly decide after the hearing whether to continue or terminate the suspension and notify the firm or individual accordingly.

(2) If it is determined, based upon the advice received from the Department of Justice, that to hold a hearing would adversely affect possible civil or criminal prosecution against the firm or individual, this determination will be reduced to writing and made a part of the formal record. Notice shall then be furnished to the firm or individual within 20 days after receipt of the request for a hearing that substantial interests of the Government would be prejudiced if a hearing were held but that any information or argument in opposition to the suspension may be presented in person, in writing, or through representation. Any information or argument submitted will be promptly considered by the Secretary or his authorized representative and, if such action is deemed warranted, the suspension shall be terminated.

b. Manufacturing Industries.

1. Food Canning and Preserving Industry—For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

2. Refined Petroleum Products—Any concern bidding on a contract for a refined petroleum product other than Paving mixtures and blocks, Asphalt felts and coatings, Lubricating oils and greases, or Products of petroleum and coal, not elsewhere classified, is classified as small if (1)(i) its number of employees does not exceed 1,500 persons, (ii) it does not have more than 50,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90% components refined by the bidder from either crude oil or bona fide feed stocks: *Provided*, however, that a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (iii) of this subparagraph: And, *provided further*, that the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph. The proviso that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feedstocks contemplates that, in accomplishing such refining, the bidder will utilize his own employees and facilities which he owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso permitting a concern which meets the requirements in subdivision (1)(i) and (ii) of this paragraph to furnish the product of a refinery not qualified as a small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product

exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only his own employees and his own facilities or facilities obtained through a bona fide lease.

3. Pneumatic Tires—For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided*, that (i) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture, (ii) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5% of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period. This section does not apply to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

4. Passenger Cars—A company is classified as small if it is bidding on a contract for passenger cars: *Provided*, that (i) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5% of the total value of all such cars manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

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

6. Fluid Milk — Any concern bidding on a contract for fluid milk classified in SIC Code 2026 is small if its number of employees, exclusive of home delivery routemen, does not exceed 500 persons.

7. Manufacturing Industries Listed in 1-701.5 — For a product classified within an industry listed in 1-701.5, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

8. Manufacturing Industries Not Listed in 1-701.5 — For a product classified within an industry not set forth in this paragraph or in 1-701.5, the number of employees of the concern and its affiliates must not exceed 500 persons.

(vii) participate in determinations concerning responsibility of a prospective contractor (see 1-904) whenever small business concerns are involved;

(viii) participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) review and make appropriate recommendations to the contracting officer on any proposal to furnish Government owned facilities to a contractor if such action may hurt the small business program;

(x) assure that participation of small business concerns is accurately reported;

(xi) bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) make available to SBA copies of solicitations when so requested;

(xiii) when a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) advise potential suppliers how they can obtain information about formal advertising and negotiated acquisitions and that they can subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) brief his commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to 1-702(b)(v), 1-706.1(d) and 1-706.5;

(xviii) assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade and other associations;

(xxiii) be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) recommend to his Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices; and

(xxv) participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU.

In unusual circumstances, solicitations may require that option quantities be offered at prices no higher than those for the initial quantities. Such circumstances may exist, for example, when (i) the option cannot be evaluated pursuant to 1-1504(c) or (d) because additional requirements are foreseeable but not known, and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded. However, because such limitations as to option prices tend to cause a "frontloading" of costs on the basic quantity which are transferred from the option quantity to equalize the prices offered, their improper inclusion could result in prices which are unfair to the Government should the options not be exercised. Therefore, the procedures in 1-1503(d) shall be followed.

(e) The total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for five years in the case of supplies. This 5-year limitation shall not apply to automatic data processing equipment, software, and maintenance services; however, the basic option periods shall not exceed the approved systems life as defined in 4-1102.

1-1503 Procedures.

(a) If a contract is to contain an option clause, the solicitation must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (i) necessary lead time in order to assure continuous production and (ii) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option.

(b) If exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (i) percentage of specific contract line items, (ii) a number of additional units of specific contract line items, or (iii) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. If exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. If exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the

solicitation contains an *Evaluation of Options* provision pursuant to 1-1504, it shall also specify the price at which the options will be evaluated (*e.g.*, highest option price offered or option price for specified quantities or dates).

(d) If a solicitation is to require the offering of option quantities at prices no higher than those for the initial quantities pursuant to 1-1502(c), then:

(i) the inclusion of such limitation as to option price shall be justified and documented by the contracting officer in the contract file;

(ii) the solicitation shall also include a conspicuous notice adjacent to such limitation as to option price cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; and

(iii) if the option is for additional quantities of supplies, an option quantity shall not exceed 50% of the initial quantity of the same contract line item or of the line item with the same nomenclature; *provided*, however, that in unusual circumstances a greater percentage of quantity may be approved in writing by the Chief of the Purchasing Office.

(e) When it is anticipated that the Government may exercise an option to fulfill Foreign Military Sales requirements, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the Foreign Military Sales requirements. The contract shall contain an additional paragraph in the option provision substantially as set forth in 7-104.27(d) which provides for the Government's right to exercise the option for Foreign Military Sales purposes (see 6-1309).

1-1504 Evaluation.

(a) Except as otherwise provided in this paragraph, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(b) If it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an *Evaluation of Options* provision substantially as set forth in 7-2003.11(a).

(c) The option quantity may be considered in the evaluation for award of a firm fixed-price contract, a fixed-price contract with economic price adjustment provisions, or such other types of contracts as may be approved by Departmental procedures, if, before issuance of the solicitation, it has been determined by the Chief of the Purchasing Office that:

(i) there is a known requirement which exceeds the basic quantity to be awarded, but either (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (B) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity; *provided* that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(ii) realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possi-

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotations(s) that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

mand utilizing the blanket purchase agreement shall conduct the necessary review. In addition, the contracting office which entered into the blanket purchase agreement shall also review and update, as required, each blanket purchase agreement at least annually.

3-606 Fast Payment Procedure.

3-606.1 *General.* The fast payment procedure is designed to reduce lead time to consignees and to improve supplier relations by expediting payment for small purchases. The procedure provides for payment for supplies based on the contractor's submission of an invoice which constitutes a representation that the supplies have been delivered to a post office, common carrier or point of first receipt by the Government, and that the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements. Consignees shall notify the contracting office as soon as possible of supplies not received, damaged in transit, or not conforming to specifications of the purchase order.

3-606.2 *Conditions for Use.* When the conditions set forth below are present, the fast payment procedure should be used to the maximum extent possible, provided such use is consistent with the other conditions of the purchase. Use of the fast payment procedure would not be indicated, for example, in small purchases by posts, camps, and stations when material being purchased is destined for use at such activities and contract administration will be performed by the contracting office of such activities.

(i) Individual orders do not exceed $10,000, except that for purchases of (*a*) brand name commissary resale subsistence and (*b*) commercial type medical supplies for direct shipment overseas, the procedure may be used without limitation (see 7-104.84).

(ii) Title to the supplies will vest in the Government (A) upon delivery to a post office or common carrier for mailing or shipment to destination, or (B) upon receipt by the Government when the shipment is by means other than the post office or common carrier.

(iii) Supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

3-606.3 *Preparation and Execution of Orders.*

(a) Orders shall be issued on Order for Supplies or Services/Request for Quotations (DD Form 1155), except that calls against blanket purchase agreements shall be issued in accordance with 3-605.5. Orders may be either priced or unpriced.

(b) Purchase orders or blanket purchase agreements using fast payment procedures shall include:

(i) a requirement for the supplies to be shipped transportation or postage prepaid;

(ii) a requirement that invoices be submitted direct to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 3-608.3(c));

(iii) the following statement on consignee's copy: *Consignee's Notification to Contracting Activity of Nonreceipt, Damage, or Nonconformance.* The consignee shall notify the contracting office promptly after specified date of delivery in the purchase order, of supplies not

received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, such notification should be made not later than 60 days after specified date of delivery;

(iv) when DD Form 1155 is not used, the clause in 7-104.84(a);

(v) a requirement that outer shipping containers shall be marked "FAST PAY."

3-606.4 *Responsibility for Collection of Debts.* The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see E-602 and E-603).

3-607 Imprest Fund Method.

3-607.1 *General.* An imprest fund is a cash fund of a fixed amount established through an advance of funds, without appropriation charge, to an authorized imprest fund cashier to effect immediate cash payments of relatively small amounts for authorized purchases of supplies and nonpersonal services.

3-607.2 *Establishment of Imprest Funds.*

(a) *Authority.* Commanders of installations and of activities with purchasing authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible.

(b) *Amount of Imprest Funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden, but shall not exceed $5,000. A review shall be made at least quarterly to insure that the fund is not in excess of actual needs, and necessary adjustments shall be made.

(c) *Imprest Fund Cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, *e.g.*, in "Central Receiving." Disbursing officers and individuals responsible for originating, approving, and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) name of individual and duty station;

(ii) identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) specific duties to be performed;

the offeror and the Government which are part of the proposal.

Firm .....

Name .....

Title .....

Date of Execution ..... ***

(End of certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (*e.g.*, RFP No. . . . .).

** The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete and current data.

*** This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(b) Because the certificate pertains to "cost or pricing data," it does not make representations as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the contractor's judgment is based. This distinction between fact and judgment should be clearly understood.

(c) Whenever a Certificate of Current Cost or Pricing Data is required, the applicable clause in 7-104.29 shall be included in the contract.

(d) Although Cost or Pricing Data were requested in the solicitation, a Certificate of Current Cost or Pricing Data shall not be requested in connection with the award of any contract of any dollar value where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used, does not require re-certification.

(f) Negotiated final pricing actions such as total final price agreements under fixed price incentive and redeterminable contracts, final overhead rate settlements under cost type contracts, or partial termination settlement agreements under any type of contract are contract modifications for which certified cost or pricing data are required. A certificate shall be submitted as soon as practicable after agreement is reached on the amount of the modification. That certificate is required when the amount of the total final price agreement exceeds $100,000 or partial termination settlement agreement plus the estimate to complete exceeds $100,000.

(g) A Certificate of Current Cost or Pricing Data is not a substitute for examination and analysis of the contractor's proposal.

(h) Data supplied during negotiation of an advance agreement and FPRA's (see 15-107 and 3-807.8) will not be certified at the time of agreement. When an advance agreement is used in partial support of a later contractual action which does require certification, the price proposal certificate will cover both the data

originally supplied to support the advance agreement referenced on the DD Form 633 and all data required to update the specific price proposal data to the time of agreement on the contract price.

3-807.7 *Adequate Price Competition, Catalog or Market Prices and Prices Set by Law or Regulation.* For the purpose of paragraphs 3-807 and 15-205.22(e), the terms "adequate price competition", "established catalog or market prices of commercial items sold in substantial quantities to the general public", and "prices set by law or regulations" shall be construed in accordance with the following general guidelines.

(a) *Adequate Price Competition.*

(1) Price competition exists if offers are solicited and (i) at least two responsible offerors, (ii) who can satisfy the requirements, (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price, (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(2) If the foregoing conditions (i) through (iv) are met, price competition shall be presumed to be "adequate" unless it is determined that:

(i) the solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) the low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (*e.g.*, a determinative advantage because substantial costs, such as start up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(iii) the lowest final price is not reasonable and this finding is supported by an enumeration of the facts upon which it is based; *provided*, that such finding is approved at a level above the contracting officer.

(3) A price is "based-on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (*e.g.*, (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with 1-1505(d) and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition).

(4) Prices based on adequate price competition exempt offerors from the requirements for submission and certification of cost or pricing data. (*But see 3-1200 for CAS requirements.*)

Part 11–Acquisition of Automatic Data Processing Equipment

3–1100 Contractor Acquisition of Automatic Data Processing Equipment (ADPE).

3–1100.1 *General.*

(a) This paragraph 3–1100 is applicable to all ADPE, as defined in 4–1102.1, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Section XIII.

3–1100.2 *Review of Decision To Lease.*

(a) If the total cost of leasing the ADPE is to be allocated to one or more Government contracts requiring the negotiation or determination of costs, the contracting officer shall, prior to approval of the proposed lease agreement:

(i) require the contractor to submit a request for leasing ADPE in writing. Such request shall be in accordance with 3–1100.3;

(ii) survey the Defense Supply Agency (DSAH-LSR) for availability of excess ADPE which could be issued as GFP (see 13–301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(iii) determine whether, under 15–205.48, leasing is the appropriate method of acquisition from the Government's standpoint;

(iv) consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Section V, Part 9);

(v) if the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(vi) obtain approval of the ADPE leasing arrangement as provided by 4–1104.13(a)(2).

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to Government contracts requiring the negotiation or determination of costs, the administrative contracting officer should arrange for:

(i) an initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under 15–205.48, his existing ADPE capability and the need to continue leasing, irrespective of whether the term of the lease was renewed or otherwise extended by the contractor (see 3–1100.3 for documentation required; and

(ii) submission by the contractor to the ACO of any proposed lease of a new ADPE system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost. (See 3–1100.3 for documentation required.)

(A "*major change*" is any addition or substitution of ADPE which will have an annual cost in excess of $50,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new ADPE system or major change, the ACO should either enter into an advance understanding with the contractor pursuant to 15–107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under 15–205.48. The Government shall approve or disapprove submissions of contractor data in a timely manner.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

3–1100.3 *Contractor Documentation for ADPE Acquisition.*

The documentation specified by this section is required only when the total cost of leasing is to be reimbursed under one or more Government contracts or the total annual cost of leasing exceeds $500,000 and 50 percent or more is charged to Government contracts. The documentation is acceptable in the same format used by the contractor to make ADPE decisions. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if it is voluminous, reference to the submission is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The contractor's request for approval of a proposed lease agreement or to justify his leasing decisions under 15–205.48(d)(3) shall, as a minimum, consist of the following supporting data, prepared prior to acquisition.

(1) Inventory and analysis of utilization of existing installed ADPE:

a. List each computer component by manufacturer, type, and model number.

b. Give location of ADP system.

c. Furnish acceptance date(s) by component.

d. Give type of ownership, i.e., leased, purchased, Government-furnished, lease back.

e. Furnish operational use by component for the past 12 calendar months. Also show nonproductive use separated into categories: preventive maintenance and remedial maintenance for the Central Processing Unit components which affect the ADPE system for the same period.

f. Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 10—RESERVED

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 11—Automatic Data Processing (ADP) Contracting

4-1100 Scope of Part. This Part sets forth policies and procedures for the contracting by the Department of Defense of automatic data processing equipment, software, maintenance services, certain other contractual ADP support services, and supplies as defined in 4-1102. In addition, 4-1104.13(c) identifies policies and procedures related to reporting requirements for excess ADP equipment in the possession of contractors.

4-1101 Policy.

(a) Public Law 89-306, 40 USC 759, authorizes and directs the Administrator of General Services to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies subject to fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of General Services shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by any agency. Under this authority, the General Services Administration (GSA) has promulgated regulations pertaining to the availability of Federal sharing and reutilization of ADP resources, and for the contracting for Government-wide automatic data processing equipment, software, maintenance services and supplies.

(b) The OSD and Departments, in turn, have issued regulations regarding the selection, acquisition, and reutilization of requirements for ADP equipment, software, maintenance services, certain other contractual ADP support services, and supplies. These regulations establish the selection and acquisition approvals that are required before contracting actions can be initiated.

(c) The GSA authority set forth in 4-1101(a) does not extend to--

(1) ADP equipment, specifically designed (not configured) and/or physically incorporated as a part of a tactical weapon or space system.

(2) Items especially designed or manufactured for the Government under a development contract.

(3) Software specifically developed for (1) and (2) above.

(4) Contractor-acquired ADP items unless:
(i) leased and full lease costs are paid by the Government under one or more ADP service contracts, or
(ii) purchased by an ADP service contractor for the account of the Government or for which title will pass to the Government.

(5) Any contractual ADP support services as defined in 4-1102.

(d) In addition, the GSA has established through regulation, blanket delegations of authority, as set forth in 4-1103.1(b), for DoD to contract for ADP. These blanket delegations of authority do not require an agency procurement request (APR) (see 4-1102.3) or a specific GSA delegation of procurement authority (DPA) (see 4-1102.7).

4-1102 Definitions. The following definitions apply only to the contracting for automatic data processing equipment, software, maintenance services, contractual ADP support services and supplies for the DoD as set forth in this Part and elsewhere in the DAR.

4-1102.1 *Automatic Data Processing Equipment (ADPE).* General purpose, commercially available, mass-produced automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application. This definition includes:

(a) Digital, analog, or hybrid computer equipment; and/or

(b) Auxiliary or accessorial equipment such as plotters, communications terminals, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, paper tape typewriters, magnetic tape cartridge typewriters, and other data acquisition devices), etc., to be used in support of digital, analog, or hybrid computer equipment either cable connected, wire connected, or self-standing, and whether selected or acquired with a computer or separately; and/or

(c) Punched card accounting machines (PCAM) used in conjunction with or independently of digital, analog, or hybrid computers.

4-1102.2 *Contractual ADP Support Services.* All services excluding hardware maintenance, timesharing services and systems software support, but including systems analysis, programming, software and/or data conversion, service bureau, teleprocessing, and other nonpersonal services.

4-1102.3 *Agency Procurement Request (APR).* A request by a DoD Component for GSA to contract for ADPE, software, or maintenance services, or for GSA to delegate the authority to contract for these items. It includes the applicable Request for Proposals (RFP), Invitation for Bids (IFB), or Request for Quotations (RFQ), and amendments thereto, and other pertinent information regarding the proposed contract. When the APR is submitted before preparation of the solicitation, the data systems specifications and/or the equipment performance requirements, as available, and the attendant software requirements may be provided in lieu of the RFP, IFB, or RFQ. In such instances, the software requirements shall include the software as defined in 4-1102.14 below, software in the public domain, and any additional software. However, applications programs to be developed either in-house or by contract shall not be included in the APR.

4-1102.4 *Reserved.*

4-1102.5 *Competitive Contracting.* Competitive contracting means that the Government's requirements are set forth in the form of data systems specifications or equipment performance requirements, a combination thereof, or other unrestrictive specifications which allow full competition and are devoid of bias toward either a specific product or a specific offeror.

4-1102.6 *Data Systems Specifications.*

(a) The delineation of the objectives which the system is intended to accomplish; and

(b) The data processing requirements underlying that accomplishment. The latter includes a description of the data output and its intended uses, the data input, the data files, and record content, the volumes of data, the processing frequencies, timing, and such other facts as may be necessary to provide for a full description of the system.

4-1102.7 *Delegation of Procurement Authority (DPA).* A written notification from GSA to a DoD Component granting authority to contract for ADPE, software, or maintenenace services beyond the thresholds established in 4-1103.1(b).

4-1102.8 *Desirable Features.* Those contractual conditions and technical specifications which are established by the Government but which do not have to be offered in order to be responsive to the specific solicitation. When set forth in a solicitation, the desirable features, individually or collectively, may be offered at the discretion of the offeror.

4-1102.9 *Equipment Performance Requirements.* A statement of those hardware factors such as cycle time, computing speed, tape read or write speed, printer speed, size of memory, expandability (modularity), and related software, which are a measure of the operating capability of equipment and which, when applied to the data systems specifications, provide a measure of the operating time required to process the applications involved in that equipment.

4-1102.10 *Lowest Overall Cost.* The least expenditure of funds over the systems or items life, price and other factors considered. Lowest overall cost shall include but shall not be limited to such elements as personnel, purchase price or rental, maintenance, site preparation and installation, programming, training, and telecommunications, as applicable.

4-1102.11 *Maintenance Services.* Those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance");

(b) Restore a component of ADPE which is not functioning properly to its proper operating status (commonly referred to as "remedial maintenance"); and

(c) Modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modifications").

4-1102.12 *Mandatory Requirements.* Those contractual conditions and technical specifications which are established by the Government as being the minimum requirements for the Government. When set forth in a solicitation, the mandatory requirements must be met by an offer in order for such offer to be considered responsive to the solicitation.

4-1102.13 *Noncompetitive Procurement.* A noncompetitive procurement ("sole source procurement") means that the Government's requirements are set forth in the form of necessary specifications which are so restrictive that there is only one known supplier capable of satisfying the Government's requirement. Contracts based on specific make and model specifications/purchase descriptions fall in this category, notwithstanding the existence of adequate price competition.

4-1102.14 *Software.* Commercially available proprietary computer programs and routines used to extend the capabilities of ADPE. This category of software includes those software packages available in the commercial market through lease or purchase. Software packages provided by original equipment manufacturers which are separately priced from ADPE are included in this category.

4-1102.15 *Supplies.* Consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punch cards, and tabulating paper.

4-1102.16 *Systems or Items Life.* A forecast or projection of the period of time which begins with the installation of the systems or items, and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not synonymous with actual life of the equipment.

4-1102.17 *Tactical Weapons Systems.* For the purpose of this Part, tactical weapons system is defined as an instrument of combat, either offensive or defensive, used to destroy, injure or threaten the enemy. It consists of the total entity that is an instrument of combat which may incorporate in itself a complex assembly of functional parts; e.g., F-15 aircraft, FBM submarine, M60 tank, Minuteman Missile.

4-1103 Procurement Authority. This paragraph prescribes the conditions under which ADP procurement authority is vested in the General Services Administration or the Department of Defense.

4-1103.1 *General Services Administration (GSA).* The GSA has the exclusive authority to provide for the contracting for automatic data processing equipment, software, maintenance service, supplies, and certain other contractual ADP support services, as defined in 4-1102, unless the contract is within the exceptions set forth in 4-1101(c). Consequently, unless the acquisition is within such exceptions, the provisions of the GSA regulations shall apply in the event of conflict with this Part.

(a) Delegation of Procurement Authority (DPA). When a requirement exists for ADPE, software, or maintenance services, as defined in 4-1102, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets the exceptions set forth below. In response to an APR, the GSA may contract or issue a DPA. For the procedures to be followed in submitting the APR, see 4-1104.1.

(b) Exceptions. ADP contracts may be made without the prior approval of the GSA under the following conditions:

(1) Automatic Data Processing Equipment. Except for contracts involving the GSA ADP Fund (see 4-1104.14), excess leased ADPE or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA, *provided* that at least one of the following conditions is met.

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against a GSA schedule contract, *provided* that:

a. the order is placed under the terms and conditions of the contract;

b. the order is within the maximum order limitation (MOL) of the applicable contract;

c. when an ADTS/ADP schedule contract is utilized, the total purchase price of the item(s) covered by the order does not exceed $300,000 (Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

d. the requirements set forth in 4-1104.4 on the use of GSA schedule contracts for ADP are met; or

(iii) the value of the contract does not exceed:

a. $300,000 purchase price or $7,500 basic monthly rental charges for competitive procurement; or

b. $50,000 purchase price or $1,500 basic monthly rental charges for noncompetitive procurements.

(2) Software. Except for software available through the Federal Software Exchange Center (FSEC), DoD may contract for software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), *provided* that at least one of the following conditions is met:

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against an applicable nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract;

(iii) the total value of the contract for the specific software package(s) does not exceed $10,000 annual lease charges, excluding maintenance, or $10,000 purchase price; or

(iv) the software is provided by the original equipment manufacturer and is not separately priced from the ADPE.

(3) Maintenance Services. The DoD may contract for maintenance services without approval of GSA when:

(i) such services are available from a nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract; or

(ii) the maintenance charges do not exceed $100,000 annually for a fully competitive procurement, or $50,000 annually for a sole source procurement.

4-1103.2 *Department of Defense (DoD).* The DoD has authority to contract for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services covered in 4-1101(c)(1) through (5). Additionally, the DoD has the authority to obtain ADP resources outside the scope of definitions provided in 4-1102.

4-1104 Contracting Procedures. This paragraph sets forth the procedures for performing ADP contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that the delegation of procurement authority has been obtained.

4-1104.1 *General.*

(a) Contracts requiring GSA approval shall be initiated by the submission of 4 copies of the agency procurement request (APR) and other applicable documents to the General Services Administration (CDS), Washington, D. C. 20405. The APR shall contain the name and telephone number of an individual within the DoD component who shall act as the point of contact with GSA. The APR shall include:

(1) Copies of the proposed solicitation, if available. If the solicitation document is not available, the specifications of the ADPE configuration that is to be acquired shall be included. The description should reflect the estimated number of central processing units, storage devices and controllers, terminals, other peripheral devices and communications devices.

(2) Estimated dollar value of the contract.

(3) Estimated system or item life.

(4) Location (city and state) of the data processing facilities involved.

(5) Fiscal quarter during which the solicitation is expected to be released to industry for contract action.

(6) Unique software, maintenance and support requirements, if any.

(7) A statement or other evidence which indicates that a performance evaluation has been made of currently installed ADP system(s), when applicable, to ensure that the proposed contract represents the lowest overall cost alternative for meeting the agency's data processing needs.

(8) Evidence that site construction/modification is, or is not, required. One of the following statements shall be used for this purpose:

(i) *The acquisition of this equipment will not require site construction or modification by GSA;* or

(ii) *The acquisition of this equipment will require construction or modification by GSA which must be completed by (date).*

(9) A statement that the need to acquire ADPE or ADP systems has been documented as required by Federal Property Management Regulations 101-35.2.

(10) A statement that ADP resources available from the sharing and reutilization programs have been screened and no ADP resources are available to satisfy the user's requirements.

(11) A justification, if applicable, to support either a contemplated noncompetitive acquisition or use of a specific make and model purchase description. This justification must address:

(i) the intended use or application of the equipment;

(ii) the critical installation schedule(s) or unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to one source of supply or a specific make and model (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(iii) the fact that no other known or probable source of supply exists for the required equipment, if a sole source procurement is contemplated (the justification also shall elaborate on the steps taken which led to this conclusion);

(iv) the existence of patent, copyright, or other limitations; and

(v) the practical factors which preclude the development of specifications and/or the requirement for competition.

(12) The ADP and Telecommunications Requirements checklist as prescribed by OSD and Department regulations.

(b) In response to an APR, GSA will either:

(1) Delegate to the DoD authority to contract;

(2) Delegate to the DoD the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD.

(c) A copy of the APR and the GSA response shall be made a part of the contract file.

(d) When the DoD is authorized to contract for ADPE, software, ADPE maintenance services, and certain other contractual ADP support services, 2 copies of the solicitation and any subsequent amendments thereto that change the specifications, evaluation criteria, or installation date, shall be forwarded to the

General Services Administration (CDS), Washington, D. C. 20405 as soon as available, but in no event shall the documents arrive later than 8 workdays before the proposed date of issuance to industry. GSA will notify DoD of the date of receipt of the solicitation as soon as it is received. However, if timely issuance of the solicitation is critical to the DoD component mission accomplishments, copies of the solicitation may be forwarded to GSA concurrently with issuance to the industry, provided the specifications have been previously reviewed by industry and the resultant comments evaluated. Amendments to all solicitations which are clearly administrative in nature, or are for clarification purposes, need not be forwarded to GSA until the dates the amendments are sent to industry. In addition, one copy of all contracts and subsequent modifications thereto shall be forwarded to GSA when they are issued. Also, a list of commercial prices shall be forwarded for each separately identified and priced component, special feature, and software package included in the contract that is not listed on an ADP Schedule contract of the vendor selected.

(e) When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case DoD shall:

(1) Submit documentation to include the DoD requirements, systems or items life, the technical specification, and justification to support negotiated contracting;

(2) Prepare the technical portion of the solicitation and define any unique requirements;

(3) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(4) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(5) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(6) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(7) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(8) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(9) Provide the following administrative information to the GSA contracting officer along with the data required in (8) above:

(i) finance data (e.g., paying office, and fund citation);

(ii) contract distribution list and addresses; and

(iii) identity of assigned contracting officer within the requiring activity;

(10) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(11) If required, place the delivery order(s);

(12) Accomplish any other task not included above which will further the joint contracting objective or expedite completion of the contract action at the DoD's discretion and with GSA concurrence; and

(13) Administer the contract in accordance with the terms and conditions thereof.

4-1104.2 *Timesharing and Systems Software Support Services.* GSA Form 2068 (Request for ADP Services) shall be submitted for GSA timesharing and systems software support services but need not be submitted for any contractual ADP support services, as defined in 4-1102.2.

4-1104.3 *Specifications.* Data systems specifications are the preferred method for expressing the user's requirements in solicitation documents. The data systems specifications may be augmented with equipment characteristics and elements of performance when necessary to reflect the user's needs. If data systems specifications cannot be used to describe the user's complete requirement, other types set forth below may be used. However, to minimize limitations on competition, other types of specifications or purchase descriptions shall be used in the order of precedence as listed below:

(i) equipment performance requirements;

(ii) plug-to-plug compatible purchase descriptions;

(iii) brand name or equal purchase description;
(iv) specific make and model purchase description. (This type of purchase description limits competition to the extent that its use shall be deemed a non-competitive procurement and must be justified.)

4-1104.4 *Schedule Contracts.* FSS Schedule contracts and ADTS/ADP Schedule contracts are provided by the Federal Supply Service (FSS) and the Automated Data and Telecommunications Service (ADTS), GSA, respectively.

(a) FSS/FSC Group 70 ADPE Item Schedule Contracts.

(1) A limited number of ADPE (FSC Group 70) items are available under Federal Supply Service (FSS) Schedule contracts. These items shall be contracted for in accordance with the terms and conditions of the particular contract and the applicable policies and procedures at 5-102 through 5-106. For each contract for ADPE from this source, the requirement shall be synopsized in accordance with 4-1104.6 and the contract file documented with the results of the synopsis action. If affirmative response is received (other than from FSS sources) and the FSS Schedule is used, the contract file shall be documented to include the method of acquisition; e.g., lease or purchase, with evidence that the use of the FSS Schedule is the lowest overall cost alternative, price and other factors considered. As a minimum, the other factors to be considered shall be the continued availability of spare parts and maintenance services for the ADPE items.

(2) The contract file shall also be documented with an appropriate justification for noncompetitive procurements.

(3) Use of the FSS Schedule does not waive applicable acquisition planning requirements. Necessary privacy approvals shall be obtained before acquiring ADPE from FSS Schedule contracts, when applicable.

(4) To the extent specific mandatory provisions of the pertinent FSS Schedule contract apply to the specific requirement to be ordered, the item(s) shall be contracted for in accordance with procedures applicable to the FSS Schedule contracts, notwithstanding the above.

(b) Nonmandatory ADTS/ADP Schedule Contracts. A large number of items of ADPE, software, and maintenance services are available under nonmandatory ADTS/ADP Schedule contracts, subject to the following:

(1) General. Nonmandatory ADTS/ADP Schedule contracts are not awarded on a competitive basis; therefore, competition shall be obtained unless sole source procurement is authorized. Requirements shall be synopsized in accordance with 4-1104.6; however, publication of contract award information in the Commerce Business Daily (CBD), as set forth in 1-1005, is not required when an order is placed against an ADTS/ADP Schedule contract. If ADPE, software, or maintenance services are procured under an ADP Schedule at other than lowest price available under any ADTS/ADP Schedule contract, the action shall be justified. A copy of the justification and supporting data shall be submitted to GSA if procurement was conducted under specific delegation of procurement authority. In addition, the availability of items under the ADTS/ADP Schedule contract shall not preclude or otherwise impede contracting for components, including peripheral equipment or components for augmenting an existing system from a number of different sources, if this action will be in the best interests of the Government. Suitable equipment must be considered whether or not this equipment is on an ADTS/ADP Schedule contract.

(2) Use of Nonmandatory ADTS/ADP Schedule contracts for the initial acquisition of ADPE. A delivery order may be placed against the ADTS/ADP Schedule contract under terms of the contract, *provided* that:

(i) the ordering activity has the necessary procurement authority;
(ii) the dollar value of the order does not exceed $300,000 and is within the maximum order limitation (MOL) of the applicable ADTS/ADP Schedule contract; and
(iii) the contract file is documented with the results of the synopsis action required in 4-1104.6 and evidence that use of the ADTS/ADP Schedule contract, including the method of acquisition (e.g., lease or purchase), results in the lowest overall cost to the Government, price and other

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factors considered. As a minimum, the other factors to be considered shall be continued availability of maintenance services and spare parts for the ADPE item.

(3) Use of Nonmandatory ADTS/ADP Schedule contracts for the continued lease or rental of an installed central processing unit (CPU). ADTS/ADP Schedule contracts may be used for the continued lease or rental of installed equipment and software except that a specific delegation of procurement authority must be obtained from GSA before issuing an order to renew the lease of a CPU when the current price to purchase under the schedule exceeds $300,000 and when available from a source other than the ADTS/ADP Schedule contract. Requirements for continued lease of an installed CPU shall be synopsized.

(4) Use of Nonmandatory ADTS/ADP Schedule contracts for the conversion from lease to purchase of installed ADPE. A specific delegation of procurement authority pursuant to 4-1103 must be obtained from GSA before issuing an order to purchase ADPE with an aggregate list purchase price of more than $300,000 when identical; i.e., specific make and model or suitable substitute equipment is available from a source other than the schedule contracts. Requirements shall be synopsized. The contract file shall be documented with an appropriate justification when ADPE item is contracted for on a noncompetitive basis.

(5) When alternate sources of supply are not expected to be available, the synopsis may be in the form of a notice to contract, without developing a solicitation package and due date. If no affirmative responses are received from potential offerors by the due date for responses to the notice, the contract file shall be so documented and no further use of the CBD is required. If affirmative responses (other than sources available under the ADTS/ADP Schedule contract) are received, and it is determined that the use of the ADTS/ADP Schedule contract is in the best interest of the Government, further synopsizing of the contract action is not required.

4-1104.5 *Requirements Contracts.* GSA makes selected ADPE and software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contracts. Copies of the contracts are distributed to recipients of the ADTS/ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the

General Services Administration, 8BRC, Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (CDP), Washington, D. C. 20405, before placing an order. ADPE or software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (i) documents the contract file as to why the requirements contract could not be used, and (ii) obtains a delegation of procurement authority from GSA, unless the contract falls within the exceptions noted under 4-1103.1(b).

4-1104.6 *Publicizing Contract Actions.*

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of Section I, Part 10. Notwithstanding exception under 1-1003.1(c)(v), a requirement which may result in an order against an ADTS/ADP Schedule contract shall be synopsized when ADPE requirements referred to in 4-1104.4(b) exceed $35,000. Synopsis is not required when placing orders against ADTS/ADP Schedule contracts in any amount, for maintenance services and software. However, the existence of an ADTS/ADP Schedule contract shall not preclude or waive the requirement for maximum practicable competition in obtaining ADPE maintenance and software.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 shall be used for competitive ADPE and software and ADPE maintenance service procurements over $50,000. Each addressee on the BML must be informed that he must request, in writing, copies of the solicitation if he desires to compete. DoD Components shall obtain the GSA BML by a written request to the General Services Administration (8FSS), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010-0001	ADPE Configuration
7020-0001	ADP Central Processing Unit (CPU, Computer), Analog
7021-0001	ADP Central Processing Unit (CPU, Computer), Digital
7022-0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025-0001	Memory-Magnetic Storage

7025-0002	Magnetic Tape Subsystems
7025-0003	Magnetic Disk Subsystems
7025-0004	Printers, High Speed (ADP)
7025-0005	Paper Tape Devices
7025-0007	Interactive Display
7025-0008	Interactive Graphics
7025-0009	Interactive Hard Copy
7025-0010	Other ADP Input/Output and Storage Devices
7030-0001	Operating System
7030-0002	Application Programs
7030-0003	Data Base Management Programs
7030-0004	Other Software
7035-0001	ADP Accessorial Equipment
7040-0001	Punched Card Equipment
7045-0002	ADP Support Equipment
7050-0001	ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, *provided* the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) FPR Section 1-4.1107-3(b) shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (CDP), Washington, D. C. 20405.

(d) To contract for ADP maintenance services, agencies shall obtain the GSA maintenance BML by written request to the Office of Customer Service and Support, GSA location which serves the requesting activity. FPR 1-4.1107-3(d) shall be cited as the authority for requesting this BML.

(e) Copies of the complete solicitation shall be forwarded to all known active bidders and those who respond affirmatively as a result of paragraphs (a), (b), and (d) above.

4-1104.7 *Restrictions on the Use of Simulation in the ADPE Contracting Process.* The restrictions on the use of computer system simulation for ADPE contracting are set forth below.

(a) A simulation input definition format shall not be used as the only means of describing data processing requirements in solicitation documents. Any such format shall be accompanied by a narrative description of the ADP objectives and workload and any available application logic diagrams.

(b) Solicitations shall not be structured in such a way as to require offerors to use a specific computer system simulator in order to offer, but where offerors submit computer simulation as part of the offer, they shall be required to describe clearly the simulation used and the make and model of the computer on which the simulation was run.

(c) Offers shall not be considered to be nonresponsive or unacceptable solely on the basis of simulation results.

4-1104.8 *Software Contracts.* The contracting for computer software shall be consistent with Section IX, Parts 2, 5, and 6. In addition, contracting officers shall strive to:

(i) avoid restrictive clauses that limit the use of the software to a specific system, installation or organization;

(ii) incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(iii) obtain additional quantity discounts, should any other Government agency acquire the same software under the contract in question; and

(iv) ensure that the vendor is contractually obligated to support and maintain the software in subsequent years.

4-1104.9 *Contracting for ADP Supplies.* ADP supplies as defined in 4-1102 shall be contracted for in accordance with the following procedures.

(a) EDP tape and instrumentation tape—The provisions of 5-102 apply.

(b) Tabulating machine cards—The provisions of 5-102 apply.

(c) Marginally punched continuous forms—The provisions of 5-601 apply.

(d) Other ADP supplies—The provisions of 5-102 and 5-103 apply in the event the supplies are included in mandatory or nonmandatory Federal Supply Schedules.

4-1104.10 *Methods of Acquisition and Evaluation of ADPE.*

(a) Methods of Acquisition. The method chosen for a given ADPE acquisition shall be that which offers the greatest advantage to the Government, subject to the type of funds available and other circumstances which pertain to each situation. A lease-purchase analysis shall be made and documented to support the selected method of acquisition. Maximum use shall be made of the following four methods of acquisition.

(1) Purchase.

(2) Lease: Vendor retains title to the equipment throughout the systems life.

(3) Lease with Option to Purchase (LWOP): A method of acquisition whereby the Government leases the ADPE with options to purchase.

(4) Lease to Ownership Plan (LTOP): A method whereby title to ADPE transfers to the Government after payment of rental over a specified period in accordance with applicable funding statutes.

(b) Evaluation Factors.

(1) To enable an offerer to prepare a proposal or quotation, the solicitation shall contain all the evaluation factors that are to be considered. In addition to the mandatory requirements, desirable features shall be included where applicable. When desirable features are included in a solicitation, their value to the Government shall be expressed in dollars as an evaluation factor.

(2) Conversion rental credits (those credits proposed by a contractor for the reduction or termination of monthly lease charges for equipment already installed but which is to be replaced) applicable to installed ADPE during the period of conversion to new equipment, when parallel systems are in operation, shall not be considered as an evaluation factor in the contracting for ADPE. Conversion rental credits are not the same as, and should not be confused with, purchase option credits (those credits which accrue to the Government under contracts awarded for lease and which contain an option to purchase). The latter, when applicable, are to be considered in the evaluation.

(3) Evaluation of offers shall be based on the systems life cost and shall, among other factors, consider the following:

(i) residual value of ADPE;
(ii) present value of money (discounted for the systems life); and
(iii) maintenance cost.

The net evaluated cost resulting from the application of all factors shall be used in determining the lowest overall cost alternative.

(c) Small Purchase. When the aggregate amount of any one requirement for ADPE, software, and maintenance services does not exceed $10,000, it shall be accomplished in accordance with Section III, Part 6, except that FSC Group 70 items which are available under FSS Schedule contracts for FSC Group 70 items will be subject to this Part 11; however, existing

mandatory ordering provisions representing contractual obligations of the Government will not be disturbed. In addition, monetary thresholds applicable to agency procurement authority are reflected in the ADTS/ADP Schedule contract provisions. The requirement for synopsizing prior to placing an order under a schedule contract applies to ADPE requirements which exceed $35,000.

4-1104.11 *Source Selection.* Proposal evaluation and source selection of ADPE, software, maintenance, and certain other contractual ADP support services shall be in accordance with OSD and Department procedures. A selection plan shall be prepared prior to issuance of the solicitation documents, and a copy shall be retained in the contract file.

4-1104.12 *Sole Source Contracting Documentation.* The following documents, clearly marked "sole source procurement," shall be forwarded to the General Services Administration (CDPSD), Washington, D. C. 20405, for each sole source acquisition of ADPE, if the dollar value involved is between $10,000 and $50,000:

(i) a copy of the contract; or
(ii) a copy of the purchase/delivery order issued against an ADTS/ADP Schedule contract.

4-1104.13 *Defense Contractors.*

(a) When either of the two conditions of 4-1101(c)(4) apply, then:

(1) Contracting procedures of 4-1104 through 4-1104.12 apply, as supplemented herein. (When the two conditions, referred to above, do not apply, see 3-1100 and 13-301(h).)

(2) Defense contractors shall submit requests for all methods of acquisition for ADPE software, maintenance services, and supplies to the Administrative Contracting Officer for processing and approval in accordance with OSD and Department procedures.

(b) The following procedures are applicable when leased ADPE is used on Government contract work and the total cost of leased ADPE is absorbed by the Government under a cost-reimbursement type contract.

(1) The contracting officer shall require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase credits or other benefits earned through rental payments.

(2) When leased ADPE is used on Government contract work under a cost-reimbursement type contract and less than 100 percent of the cost of the equipment is absorbed by the Government, the contracting officer should obtain for the Government, when possible, the right to accrued purchase credits, if the contractor elects not to exercise his purchase option. Accordingly, negotiation objectives for cost-reimbursement type contracts shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government.

(i) the contractor should be encouraged to incorporate in his ADP equipment lease the right to assign accrued purchase credits to the Government;

(ii) the contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise his purchase option; and

(iii) a 60-day advance notice should be provided to the Government when the contractor intends to terminate his ADP equipment lease if the Government has been granted rights to accrued purchase credits.

(3) If the Government has been granted rights to purchase credits in accordance with (b) above and the contractor elects not to exercise his purchase option, the ADPE shall be reported through DoD reutilization channels as provided in paragraph (c) below.

(4) If the Government elects to exercise the option to purchase ADPE leased by the contractor, the applicable provisions in this Part 11 relating to the acquisition of ADPE shall apply to the exercise of the option as if the Government was the initial lessee.

(c) Excess ADPE, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported regardless of the procurement authority under which they were acquired. Accordingly, ADPE, software, and associated spare parts acquired under any of the authorities set forth in 4-1101 are subject to the reporting requirements of DAR Section XXIV and Defense ADPE Reutilization

Manual DOD 4160.19M. ADPE, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special excess screening procedures in DOD Manual 4160.19M.

4-1104.14 *ADP Fund.*

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease of ADP equipment and/or software. When approved by GSA, the ADP fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP fund.

(b) When evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type, the contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon insuring that funds are not available, shall make an inquiry to GSA for the use of the ADP fund. If the ADP fund is not available, this activity shall notify the contracting officer that the ADP fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

4-1104.15 *Contract Clauses.* In addition to the other clauses required by DAR, the clauses in 7-2202 shall be used in all solicitations and contracts for ADP equipment, software, maintenance services, supplies, and certain other contractual ADP support services when GSA has delegated procurement authority either by DPA or by regulation.

4-1105 Conflicts Between DAR and DPA. When contracting for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of the DAR and shall not be processed as a deviation from DAR.

4-1106 Acquisition Assistance. Assistance in any phase of the contracting process covered by this Part may be obtained by contacting:

ARMY:

U.S. Army Computer Systems Selections
and Acquisition Agency
Alexandria, VA 22331

HQ DA DAAC-ZK
The Pentagon
Washington, DC 20310

NAVY:

ADP Selection Office
Washington, DC 20376

Naval Data Automation Command
Washington Navy Yard
Washington, DC 20374

AIR FORCE:

Air Force Computer Acquisition Center
Hanscom AFB, MA 01731

HQ USAF (AF/RDC)
Washington, DC 20330

DEFENSE LOGISTICS AGENCY:

DLA-PP
Cameron Station
Alexandria, VA 22314

Part 8—Procurement of Utility Services Using GSA Area Contracts

5-800 Applicability. This Part is not applicable to the procurement of utility services outside the United States.

5-801 General. The General Services Administration enters into areawide contracts with various utility suppliers for the furnishing of utility services (including electricity, natural and manufactured gas distributed by pipes, stream, sewerage, and water) to Federal agencies located within the service areas of such suppliers. GSA areawide contracts provide that the utility supplier, upon execution of a Government order in the form of an authorization prescribed by the contract, will furnish, without further negotiation, the services involved in accordance with such of the supplier's rate schedules as are applicable to such services and subject to all the provisions of the areawide contract.

5-802 Distribution of Lists and Copies of GSA Areawide Utility Contracts. Upon request, GSA will furnish to Federal agencies a list of GSA areawide public utility contracts showing in each case the kind of utility service, the serving utility, and the area served. GSA also will make available to Federal agencies, upon request, a copy of any areawide contract. Each contract includes the specimen order form authorizing service connection, disconnection, or change. Requests should be made to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-803 Department of Defense Use of GSA Area Contracts.

(a) DoD activities in areas covered by a GSA areawide contract shall procure utility services thereunder, unless it is determined that more advantageous competing services are available; however, when it is in the best interests of the Government, DoD activities may negotiate special rates or special services under a GSA areawide contract or under a separate contract. In determining whether it is in the best interests of the Government to negotiate special rates or special services, consideration should be given to (i) the area contract rates viewed in light of the magnitude of the service required, (ii) any unusual characteristics of the service required, (iii) any special equipment or facility requirements, (iv) any special technical contract provisions required, and (v) any other special circumstances.

(b) When, pursuant to (a) above, a DoD activity determines to procure utility services under a separate contract rather than under a GSA areawide contract, the utility services shall be procured in accordance with Supplement 5 to this Regulation. Such separate contracts shall be reported, upon execution, to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-804 Ordering Under Area Contracts. When utility services are procured under GSA area contracts, the method of ordering prescribed in the appropriate GSA Public Utility Schedule shall be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of the Department concerned, and to contain such additional contract provisions as may be necessary, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034. Where GSA area contracts do not contain the Gratuities clause (7-104.16), the clause shall be included in the order form.

Part 9—Use of GSA Supply Sources by Prime Contractors

5-900 Scope. This Part prescribes policies and procedures for contracting officers regarding the use of General Services Administration (GSA) supply sources (*i.e.*, items available through Federal Supply Schedule contracts, GSA Nonmandatory ADTS/ADP Schedule contracts, GSA ADP Requirements contracts, and from GSA stock) by contractors in performing certain Government contracts. The term *contractor* as used in this Part, unless the context otherwise requires, includes subcontractors who qualify in accordance with the provisions of 5-902(b). (The use of GSA sources by grantees is not authorized.) This Part is applicable to the procurement of supplies to be delivered in the United States, its possessions, or Puerto Rico.

5-901 Policy.

(a) It is the policy of the General Services Administration to make GSA supply sources available to all eligible users in order to promote greater economy and efficiency in Government procurement programs.

(b) To the extent provided in this Part, the policy is applicable to contractors working wholly or substantially on cost-reimbursement contracts.

5-902 Authorization to Contractors.

(a) When the contracting officer determines that it is in the best interest of the Government to do so, the Department shall authorize in writing its prime contractors and, where appropriate, their subcontractors to utilize GSA supply sources in performing Government contracts. Authorizations to subcontractors shall be issued through, and subject to the approval of, the prime contractor. Each authorization (prime or sub) shall be supported by a written finding of the facts which are the basis for the determination to issue the authorization. Such findings shall be retained in Departmental contract files.

(b) The authorization to utilize GSA supply sources may be issued only where a Department deems it advisable for a contractor to utilize GSA supply sources in performing:

(i) Government cost-reimbursement contracts; and

(ii) other types of negotiated contracts where a Department determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.

(c) Subject to the criteria set forth in subparagraph (b) of this paragraph 5-902, a Department may include in its written authorizations such limitations or conditions as it deems necessary in the public interest. For example, it may choose to:

(i) authorize purchases from GSA supply sources of any overhead supplies, but no production supplies; or

(ii) limit any authorization requirement to use GSA sources to a specific dollar amount, leaving the contractor free to make smaller purchases from any source he chooses; or

(iii) restrict the authorization to certain plants or facilities or to specific contracts.

The terms and conditions which the Department may impose are not limited to the foregoing examples.

(d) In determining whether to issue such an authorization, consideration should be given, but not necessarily limited to, the following factors:

(i) the administrative cost of placing orders with Government sources, and the program impact of delay factors, if any;

(ii) lower cost of purchased items;

(iii) suitability of items available through GSA supply sources;

(iv) delivery factors such as cost and time; and

(v) recommendations of prime contractors.

(e) Each authorization issued under this Part shall:

(i) cite the number of the contract or contracts involved;

(ii) specify the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and include the DoD Activity Address Code (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544) to which the authorization applies; and

(iii) whenever practicable, contain a limit upon the period of effectiveness of the authorization.

(f) The authorizing Department shall request a DoD activity address code from the service point (see Section I of Introduction to DODAAD. The request shall be in writing and shall contain the in-the-clear address(es) to which mail, freight, and billing documents are to be directed by GSA for the contractor. Address changes shall also be submitted in writing by the authorizing Department as well as deletions when contracts are terminated.

(g) The contracting officer shall be responsible for insuring that prime contractors and subcontractors comply with the terms of their authorizations and for insuring that supplies and services obtained from GSA sources of supply are properly used.

5-903 Orders Under Federal Supply Schedule Contracts, GSA Nonmandatory ADTS/ADP Schedule Contracts, and GSA ADP Requirements Contracts.

(a) Orders placed by Government contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization issued to the contractor. Each order shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor).

(b) In the event a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor in accordance with Departmental authorization, the contracting officer shall promptly report the facts and circumstances to the General Services Administration, Federal Supply Service, Office of Customer Service and Support-FF, Washington, D. C. 20406.

(c) Orders under GSA nonmandatory ADTS/ADP Schedule contracts and GSA ADP Requirements contracts shall be placed in accordance with the provisions of the applicable contract and 4-1102.4(b) and 4-1104.5, respectively.

5-904 Orders for GSA Stock. Orders placed by Government contractors with GSA shall be placed in accordance with the authorization, using the MILSTRIP format.

5-905 Furnishing Information to Contractors. The contracting officer shall assist the contractors which they have authorized to use GSA supply sources in

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obtaining pertinent Federal Supply Schedules and the GSA Supply Catalog, and shall furnish them with any other desired information. Such schedules and catalogs may be obtained by submitting a completed GSA Form 457, FSS Publications Mailing List Application, in accordance with the instructions on the form. GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

5-906 Form of Authorization to Contractors.

SUBJECT: Authorization to Purchase from GSA Supply Sources.

_____ (Contractor's Name)

_____ (Address)

1. You are hereby authorized to utilize GSA supply sources in performing Contract No. _____ for the Department of _____ as follows:

The purchasing of property for acquisition under Contract No. _____ which is available for purchase by Government agencies either directly from the General Services Administration stock or under Federal Supply Schedules, subject to the limitations set forth herein.

2. a. Purchase Orders Under Federal Supply Schedule Contracts. Orders will be placed in accordance with the terms and conditions of the attached Federal Supply Schedule and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule contractor) and the order shall contain the following statement:

This order is placed pursuant to written authorization dated _____, (*_____). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

b. Requirement for Items in the GSA Stock Catalog. Orders will be placed in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and this authorization. Bills are not issued by GSA until after shipment has been made and should be paid promptly. Any adjustements necessary will be made by GSA.

3. Other provisions.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is _____.

6. This authorization expires _____.

(Contracting Officer) _____

*Insert "a copy of which is attached", or "a copy of which which you have on file", or other suitable language, as appropriate.

**The sponsoring service (see Section I, Introduction to the DODAAD) assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

5-907 Payment for GSA Shipments. Bills for GSA shipments are not rendered by GSA until after shipment has been made. Receipt of billing is construed as sufficient evidence of delivery to establish Government liability and to provide a basis for payment. Accordingly, agencies should direct their contractors to make payments promptly upon receipt of billings.

5-908 Title. Title to all property acquired from GSA supply sources shall vest in either the Government or the contractor in accordance with the provisions of the *"Government Property"* clause of the contract.

5-909 Contract Clause. Insert the clause set forth in 7-204.28 in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government. The last sentence of the clause shall be deleted in the case of facilities contracts.

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

6-001.6 Offer.

(a) Defense cooperation country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifing country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

Part 8--Balance of Payments Program

6-800 Scope of Part.

(a) This Part implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (i) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except Petroleum and Military Assistance Program acquisitions (see Section VI, Part 7), and Foreign Military Sales (see Section VI, Part 13) and (ii) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 6-804. Defense requirements as to the use of U.S. Flag vessels, which affect the Balance of Payments Program, are set forth in Section I, Part 14.

(b) The Balance of Payments Program is an interim measure imposed by the Department of Defense to alleviate the impact of DoD expenditures on the nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the former applies to acquisitions required for use outside the United States, and the latter applies only to acquisitions required for use in the United States. Nevertheless, it is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act (see 6-104 and 6-105).

6-801 Prohibition Against Fragmenting Acquisitions. As to those provisions of this Part which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

6-802 Real Property Construction, Repair and Maintenance. All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4(AR-37-43; AFR 85-6/AFM 86-1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in the project approval.

6-803 Supply and Applicable Service Contracts.

6-803.1 Procedure.

(a) Except as provided in 6-803.2, proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (d) below.

(b) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-803.2) is available to prospective contractors upon request. When quotations are obtained orally, vendors shall be informed that only domestic and qualified country end products shall be acceptable other than those items which have been excepted either on

a blanket or an individual basis (see 6-803.2) or the price for the nonqualifying country end item meets the evaluation criteria in (d) below. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(c) Reserved.

(d) Evaluation.

(1) In accordance with the Balance of Payments Program, where these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 6-104.4(d), offers shall be evaluated so as to give preference to domestic offers as follows:

a. Each nonqualifying country offer of defense equipment (but see exception in b. below) shall be adjusted for purposes of evaluation by increasing such offer by 50 percent. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in 2-407.6.

b. In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. The nonqualifying country offer, adjusted by 50-percent factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying country offer, adjusted by 50-percent factor is $9,000. It is still lower than the

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

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6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, or Thailand are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

6-1406.2 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN P&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT).

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/

Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies,

procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

Willian J. Perry	Sir Clifford Cornford
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
9 October 1978	9 October 1978
Date	Date

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway	For the United States Government
The Minister of Defense	The Secretary of Defense
Rolf Hansen	Harold Brown
Date May 19, 1978	Date May 19, 1978

ANNEX 1

I. INTRODUCTION

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

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B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and adivse the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely

fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government | For the Government of Norway

6-1406.4 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands	For the Government of the United States of America
The Minister of Defense	The Secretary of Defense
Willem Scholten	Harold Brown
Date August 24, 1978	Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

6-1406.5 MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree

that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security

6-1406.9 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

7-104.4 *Notice to the Government of Labor Disputes.* Insert the following clause in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

(End of clause)

7-104.5 *Patent Indemnity.* In accordance with 9-103 and 9-103.1, insert the following clause.

PATENT INDEMNITY (1975 JUN)

If the amount of this contract is in excess of $10,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

(a) In accordance with 9-103.1(b) and 9-103.3, add one of the following sentences:

The foregoing shall not apply to the following:
(Specifically identify the items to be excluded from the Patent Indemnity clause.) (1964 SEP)

or

The foregoing shall apply only to the following:
(Specifically identify the items to which
the Patent Indemnity clause applies.) (1964 SEP)

(b) In accordance with 9–103.4, insert the following clause.

WAIVER OF INDEMNITY (1955 JAN)

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the United States patents identified as listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate).

(End of clause)

7–104.6 *Filing of Patent Applications.* In accordance with 9–106, insert the following clause.

FILING OF PATENT APPLICATIONS (1969 DEC)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–18 or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed in any country, other than in the United States as provided in (a) and (b) of this clause, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter, and shall also promptly furnish to the Contracting Officer the serial number, filing date, and name of country of any such patent application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts which require security classification markings to be placed on the application.

(e) The substance of this clause shall be included in all subcontracts which cover or are likely to cover classified subject matter.

(End of clause)

7–104.7 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20–304.2(c)(ii) and at the option of the contracting officer, the following clause may be inserted.

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (1970 NOV)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column) and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains a "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to Technical Data.

(End of clause)

7–104.8 *Reporting and Refund of Royalties.*
(a) In accordance with 9–110(d), insert the following clause.

REPORTING OF ROYALTIES (FOREIGN) (1966 OCT)

(a) If this contract is in an amount which exceeds fifty thousand United States dollars ($50,000), the Contractor shall report in writing to the Contracting Officer, during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer, and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars ($50,000).

(b) The term "royalties" as used herein refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause)

(b) In accordance with 9–111, insert the following clause.

REFUND OF ROYALTIES (1968 FEB)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use or for rights in patents and patent applications in connection with the performance of this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with the performance of this contract and subcontracts hereunder together with the reasons therefor.

(d) The Contractor will be compensated for royalties reported under (c) above only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. Therefore, to the extent that any royalties which are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within three (3) years subsequent to final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor

shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds two hundred and fifty dollars ($250).

(End of clause)

7-104.9 *Rights in Data and Computer Software.*

(a) *Basic Data Clause.* In accordance with 9-203 and 9-603, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (1981 MAY)

(a) *Definitions.*

(1) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. *Technical data* does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer* - a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer Software* - computer programs and computer data bases.

(4) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(6) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for:

(i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes;

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(10) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items, components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, *e.g.*, specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii). The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

LIMITED RIGHTS LEGEND

Contract No. _____.

Contractor: _____

Explanation of Limited Rights Data Identification Method Used

_____ _____ _____ _____

_____ _____ _____ _____.

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in

the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights.*

(A) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____(*Name of Contractor*)_____.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(B) Notwithstanding (A) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause in DAR 7-104.9(a).

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(i) Title to and ownership of the software and documentation shall remain with the Contractor.

(ii) Use of the software and documentation shall be limited to the facility for which it is acquired.

(iii) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(iv) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *provided* that the unmodified portions shall remain subject to these restrictions.

(v) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above

Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the Contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this para-

(v) any contract under which construction and architectural drawings and specifications are the only deliverable items;

(vi) any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(vii) any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Material Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause in 7-104.98, and when such clause is included in the contract.

(o) *Technical Data Warranty.*

(1) In accordance with 1-324.6, the following clause may be inserted.

WARRANTY OF TECHNICAL DATA (1974 NOV)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part, or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty *provided* that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1) (i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(e) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

(2) In accordance with 1-324.6(b), the following provision may be inserted in firm fixed-price contracts as paragraph (d)(3) of the Warranty of Technical Data clause set forth above.

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(3) In accordance with 1-324.6(b), the following provision may be inserted in fixed-price-incentive contracts as paragraph (d)(3) of the Warranty of Technical Data clause in 7-104.9(o).

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(p) *Restrictive Markings on Technical Data.* In accordance with 9-202.3(c)(2), insert the following clause.

RESTRICTIVE MARKINGS ON TECHNICAL DATA (1975 MAR)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to (d)(ii) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

7-104.20 *Utilization of Labor Surplus Area Concerns.*
(a) In accordance with 1-805.3(a), insert the following clause.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1978 JUN)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business and Small Disadvantaged Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) labor surplus area concerns which are also small business concerns, (ii) other small business concerns, and (iii) other labor surplus area concerns.

(End of clause)

(b) In accordance with 1-805.3(b), insert the following clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1978 JUN)

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

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

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

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

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

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

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(End of clause)

7-104.21 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

LIMITATION ON WITHHOLDING OF PAYMENTS (1958 SEP)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided*, that this limitation shall not apply to—

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholdings not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or
(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-104.22 *Equal Opportunity Pre-Award Clearance of Subcontracts.* Insert the following clause in all contracts containing a "Subcontracts" clause prescribed by 23-201 (see also 23-201.4).

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1980 OCT)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to non-governmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1976 OCT)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments therestofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

(ii) for any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(C) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(3) or (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" not less than sixty (60) days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(iii) for any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(4) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(i), (ii), or (iii) above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraphs (a)(3), (a)(4), and (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices."

(d) When the subcontract is subject to either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices" so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices." In addition within thirty (30) days after award of such subcontract submit the following information to the Contractor's cognizant Contract Administration Office for transmittal to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subpontract number.
(2) Dollar amount and date of award.
(3) Name of Contractor making the award.
(4) A statement as to whether the subcontractor has made or proposes to make any changes to

accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause because of the award of this subcontract unless such changes have already been reported. If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time, this shall also be reported.

(f) For negotiated subcontracts containing the clause entitled "Cost Accounting Standards", require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data or date of award whichever is earlier.

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within thirty (30) days after receipt of the proposed subcontract adjustment, or such other date as may be mutually agreed to, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

(End of clause)

7-104.84 *Fast Payment Procedure.*

(a) In accordance with 3-606.3, the following clause shall be used in small purchases:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government

upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided* instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government. (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

(End of clause)

(b) In accordance with 3-606.2, the following clause shall be used in contracts and delivery orders for (1) brand name commissary resale subsistence and (2) commercial type medical supplies for direct shipment overseas:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment contract or order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the contract or order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided*, instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with the terms of this contract or order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement.

All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited contract or order.

(e) *Fast Pay Container Identification.* All outer shipping containers shall be marked "FAST PAY".

(End of clause)

7-104.85 *FOB Origin — Bills of Lading.* F.O.B. origin contracts shall include one of the following clauses in accordance with 19-403.3(b) and (c).

(a) *F.O.B. Origin — Government Bills of Lading and Prepaid Postage.* In accordance with 19-403.3(c), F.O.B. origin contracts, except those utilizing the Fast Payment Procedure clause, shall include the following clause:

F.O.B. ORIGIN — GOVERNMENT BILLS OF LADING AND PREPAID POSTAGE (1977 DEC)

F.O.B. origin shipments shall be made on Government bills of lading or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs will be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by contractors is not authorized. Quantities will not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation. In the absence of other arrangements, Government bills of lading can be obtained by completing and submitting DD Form 1659, "Application for United States Government Bill of Lading / Export Traffic Release". Unless otherwise directed, the Contractor shall address overseas parcel post to the ultimate consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use which will involve exposure to such hazardous material as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"). For safety precautions for ammunition and explosives, see 1-323.1.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (1977 OCT)

(a) As used in this clause, *hazardous material* shall be as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"), in effect on the date of this contract.

(b) The Contractor shall prepare and submit Material Safety Data Sheet (Form OSHA-20 (DoD)) in accordance with Federal Standard No. 313A for all hazardous material, whether or not listed in Appendix A of the Standard, delivered pursuant to this contract or for which performance of work, use, handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use after delivery to the Government designated destination will involve exposure to hazardous materials or items containing such materials. Material Safety Data Sheets shall be submitted five (5) days prior to delivery of the material.

(c) The requirements of this clause, or any act or failure to act by the Government in surveillance or enforcement of this clause, shall not affect or relieve the Contractor of any responsibility or liability for the safety of Government or Contractor personnel or property, or of any subcontractor or vendor personnel.

(d) Nothing contained in this clause shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material in the performance of this contract.

(e) *Government's rights in data furnished under this contract with respect to hazardous material:*

(i) The Government shall have the right to use, duplicate and disclose any data to which this clause is applicable for the purposes of appraising personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials and for medical treatment of those affected by such material, and to have others use, duplicate, and disclose such data for the Government for such purposes.

(ii) Such data shall not be duplicated, or disclosed, or released outside the Government, in whole or in part for any procurement or manufacturing purpose, if the following legend is marked on each piece of data to which this clause is applicable:

"This is furnished under United States Government Contract No. _____ and shall not be used, duplicated or disclosed for any procurement or manufacturing purpose without the permission of _____. This legend shall be marked on any reproduction hereof."

(End of legend)

(iii) The Contractor shall not place the legend set forth above or any other restrictive legend on any data which the Contractor or any subcontractor previously delivered to the Government without limitations or which should be delivered without limitations under the conditions prescribed by the "*Rights in Technical Data and Computer Software*" clause of ASPR 7-104.9(a).

(iv) Notwithstanding any other provision of this contract providing for rights in data, the rights of the Government to use, duplicate, and disclose data furnished pursuant to the requirements of this clause shall be as provided by this clause. The Government is not precluded from using similar or identical data acquired from other sources.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in any subcontract of any tier (including purchase designations or purchase orders) hereunder which involves hazardous material.

(End of clause)

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7-104.99 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35 in all fixed-price incentive contracts and contracts providing for price redetermination.

7-104.100 *Certificate of Conformance.* In accordance with 14-306(c), insert the following clause.

CERTIFICATE OF CONFORMANCE (1979 MAR)

Unless required otherwise in the contract or by the CAO, the Contractor is required to deliver the supplies to be furnished hereunder with a "Certificate of Conformance." In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. The Contractor signed certificate shall be attached to or included on the top copy of the DD 250 or 1155 copies distributed to the payment office. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the DD 250, DD 1155, or other appropriate documents accompanying the shipment. This certificate shall read as follows: "I hereby certify that on _____ (Date) the _____ (Contractor's Name) provided the supplies called for by Contract No. _____ via _____ (Carrier) on _____ (Bill of Lading or Shipping Document) in accordance with all applicable requirements for shipment. I further certify that the supplies are of the quality specified and are in all respects in conformance with the contract requirements, including specifications and/or drawings, preservation, packaging, packing and marking requirements; physical item identification (part number), and in the quantity shown on this, or the attached acceptance document."
Date of Execution: _____
Signature _____
Title _____

(End of Clause)

7-104.101 Reserved.

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)

(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Reserved.*

7-204.55 *Cost/Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery.* Insert a clause in accordance with 7-104.92.

7-204.59 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

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Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-204.66 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-204.67 *Reserved.*

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-205.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved.*

7-205.6 *Stop Work Orders.* The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

Secretary and approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Reserved.*

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-304.1 *Changes.*

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth therein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth therein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in 7-105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty may be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth therein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

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(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-403.64 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Reserved.*

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications,

(ii) method of shipment or packing; and

(iii) place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both,

(ii) in the amount of any fixed fee to be paid to the Contractor; and

(iii) in such other provisions of the contract as may be affected, contract shall be modified in writing accordingly.

7-504.13 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-504.14 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-504.15 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-504.16 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-504.17 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-504.18 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-504.19 *Reserved.*

7-504.20 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-505 Additional Clause. The following clause shall be inserted in personal services contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-505.1 *Alterations in Contract.* In accordance with 7-105.1(a), insert the clause therein.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 6—Construction and Architect-Engineer Contracts

7-600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18-100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both.

7-601 General. As used throughout this Part, the term "construction contract" means any contract (other than one entered into on Standard Form 19 or DD Form 1155 (*see 16-401.2, 16-402.2, and 18-302*), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in 18-101.1.

7-602 Required Clauses for Fixed-Price Construction Contracts. The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this Part.

7-602.1 *Definitions.*

DEFINITIONS (1964 JUN)

(a) The term "Head of the Agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-602.2 *Specifications and Drawings.*

SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(End of clause)

7-602.3 *Changes.*

CHANGES (1968 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractors noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this clause shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this clause, the Director shall proceed in accordance with 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

7-603.61 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-603.62 *Reserved.*

7-604 Additional Clauses. The following clauses shall be inserted in contracts when it is desired to cover the subject matter thereof in such contracts.

7-604.1 *Alterations in Contract.* (See 16-401.1(viii).) The following clause may be used if applicable, in negotiated contracts when Standard Form 23 is not used:

ALTERATIONS (1961 JAN)

The following alterations were made in this contract before it was signed by the parties hereto.

(End of clause)

7-604.2 *Approval of Contract.* The contract clause in 7-105.2 may be inserted.

7-604.3 *Layout of Work.* The following clause is authorized for use in construction contracts when appropriate.

LAYOUT OF WORK (1965 JAN)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

(End of clause)

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause.

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-606.32 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-606.33 *Reserved.*

7-608.24 *Reserved.*

(i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or

(ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or

(iii) such other means as may be mutually agreed to.

(End of clause)

7-705.23 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-705.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-705.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-705.26 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-705.27 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-705.28 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-705.29 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-705.30 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-705.31 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-705.32 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-705.33 *Reserved.*

7-705.34 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-705.35 *Reserved.*

7-902.35 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Reserved.*

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 10—Stevedoring Contracts

7–1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22–401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7–1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22–404 shall normally be included in all stevedoring contracts.

7–1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at _____ upon the terms and conditions hereinafter set forth for the term of this contract, beginning _____ and ending _____; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(a) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(b) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(c) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(d) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7–1601.12 *Vans.*

VANS (1970 MAY)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be of the open type *provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

7–1601.13 *Drayage.*

DRAYAGE (1977 APR)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles, containerized shipments and empty Government containers within the area of performance as defined in the clause entitled "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

7–1601.14 *Liability.*

LIABILITY (1980 JUL)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss of or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) *Non-negligent Damage.* The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.

(ii) *Negligent Damage.* When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor will be presumed to be liable for loss or damage of which it is timely notified.

(End of clause)

7–1601.15 *Erroneous Shipments.*

ERRONEOUS SHIPMENTS (1977 APR)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

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(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

7-1601.16 *Additional Marking Instructions.*

ADDITIONAL MARKING INSTRUCTIONS (1970 MAY)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

7-1601.17 *Weight Certificates.*

WEIGHT CERTIFICATES (1970 MAY)

A weight certificate, in triplicate, from a certified scale or weighmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

7-1601.18 *Report of Lost/Damaged Material.*

REPORT OF LOST/DAMAGED MATERIAL (1977 APR)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

7-1601.19 *Subcontracting.*

SUBCONTRACTING (1970 MAY)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

7-1601.20 *Additional Services.*

ADDITIONAL SERVICES (1977 APR)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Reserved.*

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

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(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7-1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of contructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted herrunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7-1703.5 *Subcontracts.* In accordance with the requirements of 23-201, insert an appropriate clause entitled Subcontracts.

7-1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1703.7 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to the work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

7-1903.42 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (e)(1) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Reserved.*

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-2003.80 *Woman-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 Recovered Material. The following certification shall be inserted in solicitations as required by 1-2500.5(b):

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 *Reserved.*

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

7-2102.5 *Misplaced Material.* If the contract involves work on or adjacent to a navigable stream, insert the clause in 7-603.32.

7-2102.6 *Signal Lights.* If the contract involves the use of marine equipment, insert the clause in 7-603.33.

7-2102.7 *Military Security.* In accordance with 7-104.12, insert the clause set forth therein in contracts involving classified facilities except in those contracts to be performed outside the United States, its possessions and Puerto Rico.

7-2102.8 *Identification of Employees.* In accordance with 7-603.34, insert the clause set forth therein where identification is required for security or other reasons.

7-2102.9 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-2102.10 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein in negotiated contracts in excess of $10,000.

7-2102.11 *Utilization of Small Business Concerns.* In accordance with 1-707.3(a), insert the clause in 7-104.14(a).

7-2102.12 *Small Business Subcontracting Program.* In contracts which may exceed $500,000 and which contain the clause in 7-104.14(a), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PROGRAM (1976 OCT)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Notwithstanding the instructions on DD Form 1140-1, prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a one-time completed DD Form 1140-1 to the Government addressees prescribed thereon. The DD Form 1140-1 shall show the prime contract number in lieu of identifying a quarterly report period. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "*Utilization of Small Business Concerns*" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding $500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1.

(End of clause)

7-2102.13 *Utilization of Minority Business Enterprises.* In accordance with 1-332.2, insert the clause in 7-104.36(a).

7-2102.14 *Minority Business Enterprises Subcontracting Program.* In accordance with 1-332.2, insert the clause in 7-104.36(b).

7-2102.15 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-2102.16 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-2102.17 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-2102.18 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-2102.19 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-2102.20 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-2102.21 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-2102.22 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-2102.23 *Reserved.*

Part 22—Reserved

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

Part 23—Automatic Data Processing (ADP) Contracting

7-2300 Scope of Part. In accordance with 4-1104.5, this Part sets forth additional uniform contract clauses for use in connection with automatic data processing (ADP) contracting when procurement authority is delegated by GSA. (See Section IV, Part 11.)

7-2301 Reserved.

7-2302 Clauses to Use When Applicable.

7-2302.1 *Limitation of Liability.* The following clause shall be used in all solicitations and contracts for ADPE, software, ADP maintenance services, ADP supplies, and certain other contractual ADP support services unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (1981 MAY)

Except as expressly set forth in writing in this agreement, or except as provided in the clause entitled "Commitments, Warranties, and Representations," if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the Contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

7-2302.2 *Contractor Representation.* The following clause shall be used in all solicitations and contracts for ADPE when the Government's requirement is set forth in the form of a data system specification and the value of the contract is expected to exceed $100,000.

CONTRACTOR REPRESENTATION (1981 MAY)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system proposed is capable of meeting those requirements. However, once the functions have been demonstrated or put to use on the delivered system, Contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specifications and the functional specification contained in the solicitation, the former will control.

(End of clause)

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

Payment in the amount of $_____approved.

8–213.2 *Final Payment.*

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

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

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

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7–104.82.

8–214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8–301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15–103(iii)).

8–215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

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

8–216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6–1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8–802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8–210 and 8–805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6–504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24–205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DACSR, Cleveland) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8–217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7–108.1

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7–108.1 and paragraph (k) of the clause in 7–108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

(1) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited Rights Technical Data.* Except as provided in (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights, provided that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause in 7-104.9(a). Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of data rights policy, nor its implementing paragraph (b)(1) and (2) of the clause in 7-104.9(a), establishes data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under (b)(1), (3), (4), (5) and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such data.)

(d) *Predetermination of Rights in Technical Data.*

(1)(a) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

(b) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to furnish, with unlimited rights, data which he is entitled to furnish with limited rights under the policy in (c) above. The contracting officer shall consult his counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with limited rights pursuant to (c) above. The contracting officer may, however, review the data asserted to be limited rights data to determine whether to invoke the procedures of (f) below to negotiate to purchase unlimited rights in any of the data, or adopt some alternative such as to:

(i) delete or modify the requirement for the data in which the Government would need unlimited rights if it were ordered, or

(ii) modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data, or

(iii) include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in data procedure is to be used, include the provision in 7-2003.61 in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award, or if contractual requirements relating to design or data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that data listed in the solicitation for which predetermination was proposed, or to identify limited rights data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific Acquisition of Unlimited Rights in Technical Data.*

(1) Notwithstanding (c) above or any other provision of this Part, the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that:

(i) there is a clear need for reprocurement of the item, component or process to which the technical data pertains;

(c) *Marking of Technical Data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided in 9-605(b), and the name of the contractor and any subcontractor who generated the data. Each piece of data submitted with limited rights shall also be marked with:

(i) the authorized restrictive legend,

(ii) an indication (for example, by circling, underscoring, or a note) of that portion of the piece of data to which the legend is applicable, and

(iii) an explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to (c)(2), (d)(3) or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause in 7-104.9(a). Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings." When the clause in 7-104.9(a) is required by 9-203(a), the "Restrictive Markings on Technical Data" clause in 7-104.9(p) shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause in 7-104.9(p), the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings," of the clause in 7-104.9(a) may be invoked if the contractor fails to follow procedures required by the clause in 7-104.9(p) or fails to correct deficiencies within a specified time.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to 14-406 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive markings on Technical Data" clause.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to Section I, Part 18.

(d) *Unmarked or Improperly Marked Technical Data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

Part 6—Rights in Computer Software Acquired Under Contract

9-600 Scope of Part

(a) This Part sets forth the policies, instructions, and procedures pertaining to the acquisition of rights to use, duplicate, and disclose computer software. For the purpose of this Part, computer software consists of computer programs and computer data bases. This Part 6 shall apply to computer programs and computer data bases exclusively. Computer software documentation relating to a computer program or a computer data base is "*technical data*" to which Part 2 is applicable.

(b) This Part relates only to the rights to be acquired in software and not to the establishment of requirements. For information concerning requirements for and the acquisition of computer software, see Part 5 and the following:

DoD Directive 4105.55, "*Selection and Acquisition of Automatic Data Processing Resources*," May 19, 1972.

DoD Directive 5000.19-L, Volume II, "*Acquisition Management Systems and Data Requirements Control List.*"

DoD Instruction 4105.65, "*Acquisition of Automatic Data Processing Computer Programs and Related Services*," June 29, 1970.

(c) Rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts are governed by the terms of those contracts.

9-601 Definitions. For the purpose of this Part, the following terms have the meanings indicated:

(a) *Data* - See 9-201(a).

(b) *Technical Data* - See 9-201(b).

(c) *Computer* - A data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(d) *Computer Software* - Computer programs and computer data bases.

(e) *Computer Program* - A series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(f) *Computer Data Base* - A collection of data in a form capable of being processed and operated on by a computer.

(g) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(h) *Unlimited Rights* - See 9-201(d).

(i) *Limited Rights* - See 9-201(c).

(j) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes; and

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights;

and in addition, any other specific rights not inconsistent therewith listed or described in the contract or described in a license or agreement made a part of the contract.

(k) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

9-602 Policy.

(a) The Government shall have unlimited rights in:

(1) computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government, (ii) information in which the Government has unlimited rights, or (iii) information which is in the public domain;

(4) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer

data bases developed at private expense. As a minimum, however, the Government shall have the rights in 9-601(j)(i) through (v).

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see 9-411.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in Part 2 of this Section, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (b)(3)(B) of the clause in 7-104.9(a).

9-603 Procedures.

(a) Except as provided in 7-104.9(n)(2), any computer program or computer data base to be purchased under a contract shall be listed on the *Contract Data Requirements List* (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs or data bases, the writing of implementation programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(b) The "*Rights in Technical Data and Computer Software*" clause in 7-104.9(a) shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause in 7-104.9(a) is required, the provision in 7-2003.76 shall be included in the solicitation.

(c) Contracts under which computer software developed at private expense is procured or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being procured. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights of 9-602(c) are provided in the *Rights in Technical Data and Computer Software* clause, and need not be included in the recital.

(d) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(e) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

9-604 Deviations. All requests for deviations from this Part 6 shall be submitted to the ASPR Committee in accordance with the procedures in 1-109.3.

9-605 Computer Software Subject to Restricted Rights.

(a) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in 9-602(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(b) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No..... with ..... (*Name of Contractor*).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause in DAR 7-104.9(a)", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 9-606.

(c) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(d) Except as provided in (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(e) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(f) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

9-606 Unmarked or Improperly Marked Computer Software.

(a) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(b) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at his own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(c) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

9-607 Contracts With Foreign Sources to be Performed Outside the United States. (See 9-206.)

12-1005.10 *Termination.* See paragraph (i) of 7-1903.41(a).

12-1005.11 *Cooperation With the Department of Labor.* The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1006 Hearings. A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 Procedures for Evaluating Professional Employee Compensation for Service Contracts.

12-1007.1 *Purpose.* The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This subpart provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 *Policy.* It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated.

12-1007.3 *Applicability.* The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;
(ii) the proposed contract will be negotiated;
(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and
(iv) the proposed contract will be in excess of $250,000.

12-1007.4 *Definition of Professional Employee.* The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

(h) The proposed acquisition of automatic data processing equipment as defined in 1-201.29 shall be: (i) submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, in accordance with DOD Manual 4160.19; and (ii) approved in accordance with 4-1104.13(a)(2).

13-302 Securing Approval for Facilities Projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(i) the facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during 1 fiscal year;

(ii) it is a research and development-funded project that will not exceed $1 million; or

property may be agreed upon and allowed (but see 15-107). In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, effect of any increased maintenance charges or decreased efficiency due to age and the amount of depreciation, if any, previously charged to Government contracts or subcontracts.

(j) Cost Accounting Standard (CAS) 404 *Capitalization of Tangible Assets* is applicable to those assets which are acquired by means of a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS-13 requires that such leased assets (captial lease) be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, both for financial and cost accounting purposes. Therefore, any leased assets whether leased prior to, on, or after 1 January 1977, which are capitalized prior to, on, or after 1 January 1977 under the provisions of FAS-13, are subject to the provisions on depreciation for tangible capital assets enunciated in this cost principle (15-205.9) — they are not subject to the provisions on rental costs set forth in 15-205.34. Existing leases entered into prior to 1 January 1977, which the contractor elects not to capitalize until 1 January 1981 as provided in FAS-13 will be subject to the provisions of rental costs set forth in 15-205.34 (1 July 1976) until such date as they are capitalized. The provisions of this paragraph (15-205.9(j)) apply whether or not the contractor is subject to CAS 404. The standards of Financial Accounting and Reporting set forth in FAS-13 are incorporated into this cost principle and shall govern in the application of this principle except when the provisions of subparagraphs (1), (2), and (3) set forth below conflict with the standards in FAS-13. In this event, the provisions of subparagraphs (1), (2), and (3) below shall govern.

(1) *Sales and Leaseback.* Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the property.

(2) *Leases Between Related Parties.* Capital leases for all real and personal property which is leased from any division, subsidiary, or affiliate of the contractor under common control shall be subject to the provisions of this paragraph 15-205.9(j). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, the depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases which the contractor must capitalize in accordance with FAS-13 shall not be treated as purchased assets for contract costing purposes if the leases are covered by the provisions of 15-205.34(f).

15–205.10 *Employee Morale, Health, Welfare and Food Service and Dormitory Costs and Credits.* (CWAS)

(a) Employee morale, health and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph 15–205.10, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at price or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the contractor can demonstrate that unusual circumstances exist (*e.g.*, (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plan, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see (e)).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the contractor directly.

15–205.11 *Entertainment Costs.* (CWAS-NA) Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging,

lowable to the extent that such costs are incurred pursuant to a well managed recruitment program. When the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Cost of help-wanted advertising is unallowable if the advertising:

(1) is for other than for personnel required for the performance of obligations under a defense contract (see 15–205.1); (CWAS-NA)

(2) does not describe specific positions or classes of positions; (CWAS-NA)

(3) is excessive in relation to the number and importance of the positions, or in relation to the practices of the industry; (CWAS)

(4) includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities; (CWAS-NA)

(5) is designed to "pirate" personnel from another defense contractor; (CWAS-NA) and

(6) includes color (in publications). (CWAS)

(c) (CWAS-NA) Costs of excessive salaries, fringe benefits and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another defense contractor, or in excess of the standard practices in the industry, are unallowable.

(d) (CWAS-NA) Relocation costs incurred incident to recruitment of new employees are subject to 15–205.25. When such costs have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government. However, costs of travel to an overseas location shall be considered travel costs in accordance with 15–205.46 and not relocation costs for the purpose of this subparagraph, if (i) dependents are not permitted at that location for any reason, and (ii) such costs do not include costs of transporting household goods.

15–205.34 *Rental Costs (Including Sale and Leaseback of Property).* (CWAS)

(a) This paragraph 15–205.34 is applicable to the cost of renting or leasing property, real and personal, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS–13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB), except automatic data processing equipment (ADPE). (See 15–205.48.) Compliance with 15–205.9(j) requires that assets acquired by means of "capital leases" as defined in the aforementioned (FAS–13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges (but see (f) below).

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(b) Rental costs under operating leases are allowable to the extent that the rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement.

(c) Rental costs under a sale and leaseback arrangement shall be allowable only up to that amount the contractor would be allowed had he retained title to the property.

(d) Charges in the nature of rent between any divisions, subsidiaries, or organization under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Section XV); *provided* that no part of such costs shall duplicate any other allowed costs. However, rental cost of personal property, which is leased from any division, subsidiary, or affiliate of the contractor under common control, which has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with (b) above.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in 15-205.42(e).

(f) Rental costs under leases entered into prior to March 1, 1970, are allowable for the remaining term of the lease (excluding options not exercised prior to March 1, 1970) to the extent they would have been allowable under 15-205.34 dated January 1, 1969.

15-205.35 *Independent Research and Development Costs.*

(a) *Definitions.* A contractor's independent research and development effort (IR&D) is that technical effort which is not sponsored by, or required in performance of, a contract or grant and which consists of projects falling within the following three areas: (i) basic and applied research, (ii) development, and (iii) systems and other concept formulation studies. IR&D effort shall not include technical effort expended in the development and preparation of technical data specifically to support the submission of a bid or proposal. For the purposes of this paragraph:

(c) DD Form 783 (Royalty Report (Foreign and Domestic)) is approved for use as the separate schedule required by DD Form 633.

16-206.2 *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

16-207 Reserved.

16-208 Weighted Guidelines Profit/Fee Objective (DD Form 1547).

16-208.1 *General.* Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate calculation of the Weighted Guidelines Profit/Fee Objective (see 3-808.2).

16-208.2 *Conditions for Use.* DD Form 1547 may be used in conjunction with the Record of Price Negotiation required by 3-811(b), *provided* that the rationale used in assigning the various rates is fully documented.

PROCUREMENT FORMS

Part 3—Purchase and Delivery Order Forms

16–300 Scope of Part. This Part prescribes forms for use (i) when purchases are authorized or required to be made by the purchase order or imprest fund method, (ii) as delivery orders, and (iii) as order against basic ordering agreements.

16–301 Receipt for Cash—Subvoucher (Standard Form 1165). Standard Form 1165 may be used in connection with procurements by the imprest fund (petty cash) method in accordance with 3–607.

16–302 Purchase Order — Invoice — Voucher (Standard Form 44). Standard Form 44 is authorized for use to accomplish small purchases in accordance with 3–608.9.

16–303 Order for Supplies or Services/Request for Quotations, (DD Forms 1155, 1155r, 1155r–1, and 1155c–1). Order for Supplies or Services/Request for Quotations, DD Form 1155 series, shall be used to accomplish small purchases in accordance with 3–608 and 16–402 and Blanket Purchase Agreements in accordance with 3–605, and may be used to place calls against Blanket Purchase Agreements in accordance with 3–605.5 and orders against basic ordering agreements in accordance with 3–410.2(a). Pending revision of the 1 MAR 1978 edition of DD Form 1155r, the *Fast Payment Procedure* clause in 7–104.84 shall be substituted for paragraph 15 of the form.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21–108 Item 2, Contract Number. Enter only Department of Defense contract numbers in Subitem A; contract numbers for all other Federal agencies shall be entered in Subitem B. For orders under contracts awarded by other Federal Agencies (*i.e.*, GSA Federal Supply Schedule, Government Printing Office, and Veterans Administration contracts), enter the Federal Agencies' contract number in Subitem B. For orders covering direct purchases from other Federal agencies, such as Federal Prison Industries, Tennessee Valley Authority, Veterans Administration, Treasury, etc., enter the Defense delivery order number in Subitem A, *e.g.*, DAAH01–78–F0260. If entry is in Subitem A, then Subitem B must be blank, and vice versa.

(a) Subitem A(1). Activity - Enter the first six characters of the contract number which identify the activity listed in Appendix N. Activity symbols assigned prior to the initiation of Section XX, Part 2, shall be expressed as a six character symbol. For Army, the five digit fiscal station code shall be prefixed by the letter A, thus 01–002 for Anniston Army Depot shall be reported as A01002. Navy symbols of less than five digits shall be prefixed by zeros, *e.g.*, 383 for ASO shall be reported as N00383.

(b) Subitem A(2). FY - Enter the last two digits of the fiscal year in which the basic contract number was initially assigned (not the fiscal year of the immediate action); *e.g.*, 78 for fiscal year 1978. If the fiscal year is not known for contract numbers assigned prior to the initiation of Section XX, Part 2, or cannot be ascertained after a reasonable search, enter "XX".

(c) Subitem A(3). Serial No. - Enter as a five–position entry, the serial number assigned to the contract. For serial numbers assigned in accordance with Section XX, Part 2, the first character shall be type of instrument as described in 20–203.1(iii). The remaining four characters shall be the serial number assigned in accordance with 20–203.1(iv). For other contract numbers, *i.e.*, those numbered under exceptions permitted by 20–201, the serial number also shall consist of five characters, *e.g.*, 00001, 00124, 01356, 71284, etc. If a serial number has not been assigned, enter five zeros. Do not enter other supplementary procurement instrument identification numbers in Subitem A(3); such numbers shall be entered in Item 4.

(d) Subitem B. Other - For orders under contracts awarded by other Federal agencies, enter the contract number of the Federal Agency as it appears in the contractual instrument; *e.g.*, GS–00S–27773, GP–16251A, V979P–2048A, etc.

21–109 Item 3, Correction of Previously Reported DD Form 350.

(a) If it is necessary to correct an error on a previously reported DD Form 350, two DD Forms 350 are required.

(1) *Code 1 Corrected Entry.* Enter the correct data in all items. Entries in Item 1A and Item 24 shall be the same as those reported on the report being corrected, except when such items are the subject of the corrections being made.

(2) *Code 2 Reversing Entry.* Enter data in all items exactly as in the incorrect report except that the dollar amount shown in item 25 shall be the reverse of the amount originally reported; that is, if the amount of the incorrect report was a debit, the amount of the reversing entry shall be a credit and vice versa. Entries in Item 1A and Item 24 shall always be the same as those reported on the report being corrected.

(b) The item numbers being corrected will be noted on both the reversing and correcting reports in the spaces provided.

21-110 Item 4, Modification Number and Other Identification. Enter the supplementary procurement instrument identification numbers assigned in accordance with 20-204 for letter contract modifications, orders against indefinite delivery type contracts and basic ordering agreements, contract change notifications, change orders, supplemental agreements, and other modifying actions. For those numbered under exceptions permitted by 20-201, enter the identification and number such as Mod 35, C.O. No. 2, *etc.*

21-111 Item 5, Purchasing Office. Enter sufficient detail to establish the identity of the purchasing office submitting the report. Enter in the Item 5 code space, the number or symbol assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

21-111.1 *Item 5A, Small Disadvantaged Business Concern* (see 1-701.2).

(a) Enter Code A if the award was made to a small disadvantaged business concern in accordance with the representation required in 1-707.3(f).

NOTE: If Code A is entered, the contractor designated in Item 6 must be small business.

(b) Enter one of Codes B through F for all other awards.

(i) Enter Code B if there is no known small disadvantaged source. Also enter Code B for orders under contracts awarded by other Federal Agencies for which data are not readily available.

(ii) Enter Code C if there was a known small disadvantaged business concern but it was not solicited for a bid or proposal.

(iii) Enter Code D if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iv) Enter Code E if a small disadvantaged business concern was solicited but the low bid or proposal was not from such firm.

(v) Enter Code F if a small disadvantaged business concern was solicited, but was not awarded the contract for reasons other than those coded B, C, D, or E.

(i) all contracts negotiated under the authority of 10 U.S.C. 2304(a)(11), Experimental, Development, or Research Work;

(ii) most but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;

(iii) all contracts funded by Research, Development, Test and Evaluation appropriations; and

(iv) all contracts where the purpose is for research and development even though not authorized under 10 U.S.C. 2304 (a) (5) or (11), or funded by RDT & E appropriations.

However, do not assign RDTE codes for the procurement (including rental or lease) of equipment or housekeeping supplies/services separately purchased in support of RDTE work. This exception refers to the purchase of equipment upon which RDTE work will be performed, test equipment, office equipment, structural steel plates, etc., or services such as construction, maintenance of facilities or equipment, utilities, rental of ADP equipment, guard services, etc. Generally procurement of services or supplies that are incidental to the fulfillment of RDTE work, *but does not require contractor RDTE performance*, shall be coded in accordance with Parts B and C, Section I of the coding manual, even though such purchases are in support of RDTE work and RDTE funds are cited. In no case shall RDTE codes be assigned for orders under GSA Federal Supply Schedule contracts. The purchase request, as prepared by the research and development technical sections, will provide the necessary information to enable personnel preparing the DD Form 350 to properly identify the RDTE code.

(b) *Services.* All services, except RDTE actions, shall be coded in accordance with Part B, Section I of the coding manual. Each category is assigned a series of four-digit codes for specific types of services and construction.

(c) *Supply.* Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) code from Part C, Section I of Volume I of the Department of Defense Procurement Coding Manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2 -1, H2-2, and H2-3 also may be used as a reference in identifying the correct four-digit code.

21-117 Item 10B, System or Equipment Code.

(a) Enter the code for weapons system or equipment in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section II). If a weapons system or equipment code is not applicable, enter three zeros, *i.e.*, 000.

(b) Codes in Section II are not applicable to construction, subsistence, clothing/textiles, or petroleum, and generally have been assigned to all production end items whose annual programmed procurement is $2,000,000 or more. Accordingly, if a code cannot be found for a DD Form 350 action of $2,000,000 or more, which is for an end item or a component identifiable to an end item, a specific request for a code together with the applicable DD Form 350 should be addressed to the appropriate organization specified in 21-103(b). Submission of the DD Form 350 will not be delayed pending resolution of the inquiry. This reporting requirement is not applicable to the Defense Logistics Agency.

21-118 Item 10C, DD Claimant Program Number. Enter the appropriate DDCP number that identifies the commodity described in Item 11. Claimant Program Numbers are defined in Volume I of the Department of Defense Procurement Coding Manual (Section III). If the description in Item 11 is for research and development, the objective of the research and development shall control the DDCP number to be entered; *e.g.*, if the objective of the research and development is a guided missile, enter Code A-2. If the description in Item 11 is for research that cannot be identified with a particular claimant program, enter Code S-1. Contracts for ship repair, IRAN and modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automatic data processing equipment (as defined at 4-1102.1)) and utility services shall be coded S-1. If a particular claimant program cannot be identified, enter Code S-1 for services and C9E for supplies or equipment.

21-119 Item 11, Description of Commodity or Service.

(a) Enter brief description of commodity or service. Specify end use of item and model numbers where possible, *e.g.*, M-16 Rifle; B-52 Aircraft; A-4E Aircraft, Radio Set AN/FRT-51. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Typhon, Jupiter, etc., or an identifying program number, *e.g.*, WS-107A, can be used without classifying the report.

(b) When an increase or decrease in funds is the result of price redetermination, change in fixed-fee, contract termination, engineering change, overrun, accelerated amortization, or continuation of research and development, specify the equipment or service acquired under the basic contract, such as "Price Redeter-

forth as 10-1 through 10-18 representing (i) through (xviii). However, Negotiation Exception 10-18 pertains to purchases under Foreign Military Sales arrangement which for reporting purposes does not require an entry in Item 17; therefore, codes 10-18 will not be used. Codes 10-19 through 10-25 may be used for those procurement circumstances which are authorized in Departmental instructions and for additional procurement circumstances later approved and published in the DAR. Enter Code 10-26 if none of the procurement circumstances set forth in 3-210.2 or Departmental instructions is applicable.

(h) Enter Code 17A when reporting Joint Small Business Set-Asides pursuant to 15 U.S.C. 644 (P.L. 85-536), *i.e.*, set-asides agreed to jointly by the Small Business Administration representative and the Department of Defense contracting officer. (See definition of set-aside for Code 1B above.) Enter Code 17B when any other public law authorized the negotiation, and in the space provided specify the number of the public law or U.S. Code citation. For repurchase actions following default, where no other negotiation authority is utilized, enter Code 17B and specify the words "Repurchase Action".

21-126 Item 18, Extent of Competition in Negotiation.

(a) The purpose of this item is to provide statistics reflecting the extent and kind of competition obtained under contracts executed pursuant to the negotiation authorities of the DAR. Detailed information with respect to the presence or absence of competition in negotiated procurement is of vital importance to the Department of Defense. Information obtained from these reports is used throughout the Department for internal management purposes. Additionally, this information is provided to various Committees of the Congress on a continuing basis. It is critically important that this item receive careful attention by reporting activities to ensure its completeness and accuracy.

(b) Provision is made to record the extent of competition as follows:

(i) price competition;
(ii) design, technical, or other competition;
(iii) follow-on actions after price competition;
(iv) follow-on actions after technical or other competition;
(v) other noncompetitive actions;
(vi) catalog or market price actions; and
(vii) not considered for competition.

(c) The following contract actions are exempt from reporting the extent of competition and shall be entered as Code 7:

(i) awards for brand name items for commissary resale;
(ii) awards to nonprofit institutions;
(iii) awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation; and
(iv) awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(d) (1) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices. However, a contract may also be reported as "price competition" even though only one offer is received when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(2) Procurements shall not be reported as "price competition" where only one responsive offer was received and the solicitation was restricted to a prime contractor and his vendor for that item.

(3) Multiple awards in such areas as subsistence, clothing and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(4) Transactions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the responses to solicitations, the procurement history of the items procured, and other relevant information, and shall exercise sound judgment in the reporting of transactions as "price competition."

(e) Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts, and many initial contracts for new military weapons fall into the category of design or technical competition. If some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above, the contract should be reported as a "design, technical, or other competition" award.

(f) A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. Incremental yearly buys under multi-year contracts and exercise of options shall not be included in this category, except as provided in (h) below. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (*i.e.*, price or design or technical) will be reported as Code 3 or 4 as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis will be reported as Code 5. Nothing in the foregoing should be construed as providing authorization for noncompetitive procurement. DAR provisions requiring either normal advertising or competitive negotiation shall be complied with.

(g) Codes 1 through 7 shall be entered as follows:

(vii) are for purchase of land, or rental or lease of real property.

21-202 Due Date and Distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) *Army* contracting offices shall distribute DD Form 1057 as follows.

(1) The original (except from Engineer Civil Functions contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Engineer Civil Functions contracting offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy field contracting offices shall forward the original DD Form 1057 to the Head of the Contracting Activity from which contracting authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC). ASO and SPCC shall forward their reports to the Naval Supply System Command Headquarters. Heads of Contracting Activities shall review and correct the feeder reports, prepare a consolidated DD Form 1057 and submit the consolidated report to Headquarters, Naval Material Command, Washington, D.C. 20360, Attn: MAT 08C14.

(d) *Air Force* contracting offices shall forward the original DD Form 1057 to AFLC/ACOCS, Wright-Patterson AFB, Ohio 45433. Separate reports shall be submitted by each activity which has been determined to be a separate reporting office. Air Force contracting offices, except those under AFLC and AFSC shall forward one copy to the appropriate major command headquarters staff contracting office or division.

(e) *Defense Logistics Agency* contracting offices shall forward the original DD Form 1057 to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Alexandria, VA, 22314, ATTN: DLA-PA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(g) Procurement actions of $10,000 or less which are reportable in accordance with 21-201 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

21-203 Terms Used. The terms used in DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. (See Section XXI, Part I.)

21-204 Heading.

(a) *Reserved.*

(b) *Month Ending*—Enter the year, month and day indicating the ending date of the month reported.

(c) *Contracting Office and Mailing Address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(d) *Reporting Office Code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item 5 of DD Form 350.

21-204.1 *Number of Actions.*

(a) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (b) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(b) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $10,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(i) meals and lodging,

(ii) automatic deliveries, such as, bread, milk, and ice cream,

(iii) utilities, such as, electricity, gas, and telephone.

(Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

21-204.2 *Dollar Value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.-. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes.

21-205 Section A, All Procurement Actions of $10,000 or less.

(a) Enter on Lines 1 through 4 the number and value of actions of $10,000 or less according to type of contractor (*i.e.*, small business, large business, educational and nonprofit institutions), and for work outside the U.S., according to whether the actions were advertised or negotiated.

(b) Report on Line 5*a* orders under GSA Federal Supply Schedules. Orders under Veterans Administration contracts published in GSA Federal Supply Schedules shall be reported on Line 5*b*.

22-601.2 *Additional Services and Excess Requirements.*

(a) *Excess Requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see Section III, Part 6).

(b) *Additional Services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residence outside area of performance, extra long carry, carrying of pianos or organs, reweighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) inclusion as items within the contract; *provided*, they are not used in the evaluation of bids (see 22-602(b)); and

(ii) using small purchase procedures (see Section III, Part 6).

Prices for additional services may be predetermined with the contractor or negotiated on a case by case basis.

(c) *Ordering of Additional Services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

22-601.3 *Contract Distribution.* In addition to the distribution requirements of 20-401, one copy of each contract will be furnished as follows:

(a) CONUS Personal Property Shipping Activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE-PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Commander, Western Area, ATTN: MTW-PP, Oakland, California 94626.

(b) Personal Property Shipping Activities in the European and Pacific areas forward to the appropriate Military Traffic Management Commander Field Office. Other overseas personal property shipping activities forward to Commander, Military Traffic Management Command, ATTN: MT-PPQ, Washington, D.C. 20315.

22-602 Schedule Formats.

(a) The following schedules shall be inserted in all solicitations for the preparation of personal property for shipment or storage and performing intracity or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added.

(b) Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regula-

tions. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than (c) below, of schedule format will be processed as a request for deviation in accordance with 1-109.

(c) When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format.

22-602.1 *Schedule of Items.*

(NOTE: Wherever FED SPEC PPP-B-580 containers are specified in this Schedule, containers listed in MTMC Pamphlet 55-12, dated 12 October 1978, may be substituted.)

SCHEDULE 1
OUTBOUND SERVICES

Item 1. *Complete Service—Outbound (HHGs).* Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipping containers (*Shipping Container FED SPEC PPP-B-580 or Air Cargo*) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old markings, marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipments on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any one lot, loose articles shall be packed in the said containers. Before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under *Item 3*.
Area _____.

	Est Annual Qty	Unit	Unit Price	Total
a. At owner's residence:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____
b. At Contractor's Facility:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____

(*Repeat a. and b. above for additional areas as needed.*)

Item 2. *Outbound (HHGs From Non-Temporary Storage).* Service shall be the same as *Item 1* except that: (i) household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under *Item 3*.
Area _____

	Est Annual Qty	Unit	Unit Price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____
b. Delivered to Contractor:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____

(*Repeat a. and b. above for additional areas as needed.*)

Item 3. *Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Than PPP-B-580 or Air Cargo Containers).* Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.
Area _____

24-204 Scrap.

24-204.1 *General.* Scrap need not be itemized on inventory schedules if (i) the material is physically segregated in the contractor's plant, and (ii) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the plant clearance officer to determine whether the property is scrap. Promptly after the submission of inventory schedules, by the contractor, the plant clearance officer shall review, or cause to be reviewed the contractor's treatment of any items of contractor inventory as scrap. The review shall include a careful examination of the inventory schedules and, in appropriate cases, physical inspection of the property involved. Prior to authorizing disposal of items as scrap, the plant clearance officer shall obtain such approval as may be required.

24-204.2 *Pre-Inventory Scrap Determinations.* The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

24-204.3 *Segregation.* Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work and, in such cases, the scrap warranty required by 24-204.5 may be waived at the discretion of the plant clearance officer.

24-204.4 *Contractor's Approved Scrap Procedure.*

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this Section. Production scrap, as defined in 24-101.20, and production spoilage, may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government- owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of this Section.

(e)(1) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Precious Metals Recovery Office (DPDM-R), NWS Earle, Colts Neck, New Jersey, 07722, for disposition instructions.

(2) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall *not* be used.) Grindings or sweepings shall not be packaged in paper or wooden containers as loss occurs due to adhesion of particles. Containers shall be marked to show the type of precious metals contained therein.

(3) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

(4) When the determination is made that precious metal recovery is not feasible, the material in (e)(1) above shall be disposed of through normal procedures. The sales return shall not be less than the scrap value of the precious metal(s) contained therein.

24-204.5 *Scrap Warranty.*

(a) If contractor inventory is sold as scrap, including sale to the holding contractor, a scrap warranty in the form outlined in DD Form 1639, Scrap Warranty, shall be included as a special condition of sale, unless the requirement is waived pursuant to (d) below.

screening requirements (see 24-205.1(d)), subject to departmental screening only (see 24-205.1(f)), or contractor inventory which is residual to other required screening, may be subjected to local screening for a period of 15 days prior to the donation screening period provided in 24-207(d) and prior to disposition by sale or abandonment. If duplicate requirements are received, Government activities will have precedence. The feasibility or extent of local area screening shall be determined by the plant clearance officer, based on considerations of quantity, condition and value of the property, and the estimated cost of effecting transfer.

24-205.7 *Packing, Crating, and Handling Services.* The contract administration office shall be responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, appropriate data must be furnished by the transferee and shall be cited in the transfer or shipping document. The document shall not be forwarded to the contract administration office unless the required packing, crating, and handling funding data are furnished, except that funds for movement of IPE under the direction and control of DIPEC will be furnished directly by that Center (see 24-205.1(a)). Funding data for termination inventory shall not be cited since costs for such inventory are included in the contractor's settlement proposal.

24-205.8 *Procedures for Automatic Data Processing Equipment (ADPE).*

(a) Those items of ADPE as defined in 1-201.29 (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. To preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release

date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(i) a complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(ii) a separate attachment, showing the time in service for each component, average utilization (hours per month) and average downtime per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(iii) a list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(iv) in the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense ADP Resource Office (DARO) shall control ADPE reported excess. Shipments shall be made upon receipt of requests approved by DARO.

24-206 Sale of Surplus Contractor Inventory.

24-206.1 *General.*

(a) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this Section. The contractor is required to use his best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(b) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under 24-205, or retained at cost pursuant to 24-202, shall be sold in accordance with 24-206.2 at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer.

(c) *Description of Property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(d) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, *i.e.*, "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because

E-610.7 *Assignments — Provision Against Set-Off — Limitations.* When a contract contains a clause permitting assignment, with provision against reduction or set-off as set out in the last sentence of paragraph (a) of the clause in 7-103.8, and the contractor's claims under the contract have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, and the assignment has not been released by the assignee, the effect to the statute mentioned is ordinarily to prevent application of payments due under the assigned contract to liquidate or reduce indebtedness of the contractor to the Government arising independently of the assigned contract. However, it is sometimes proper to effect collection despite such an assignment, as for example, when there is no loan outstanding in connection with the assignment and the arrangements between the contractor and the assignee are such that no loan is contemplated, or when there is no firm commitment for financing or when the amount of the loan secured and expected to be secured by the assignment pursuant to a firm commitment of the financing institution is less than the amount due and payable on the contract. Diligent effort should be made to ascertain the pertinent facts, from the assignee, the debtor, or otherwise. When appropriate, there should be withholding and application in reduction of the debt, to the extent that the assigned payments are not necessary to cover the loans or advances secured by the assignment, or to be secured incident to projected need for borrowings, and pursuant to a firm commitment of the financing institution. In doubtful cases the question as to the amount, if any, to be withheld should be referred to higher authority, or to the General Accounting Office when appropriate.

E-610.8 *Assignments — Absence of Provision Against Set-Off.* In some cases the contractor's claims have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, but without the contract provision against reduction or setoff set out in paragraph (a) of the clause in 7-103.8, or equivalent provision. In such cases despite the assignment, net amounts due under the assigned contract should be withheld and applied to liquidate indebtedness of the contractor to the Government even though arising independently of the assigned contract, to the extent that such other indebtedness existed at the time written notice of the assignment was received by the Government, even though such debt was not matured so as to be due and payable at the time of such notice.

E-611 Transfer to Contract Financing Office. Transfer of the debt case will be made to the contract financing office (i) upon receipt of a contractor's deferment request or (ii) upon the expiration of 45 days without full collection after the date of initial demand whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department (E-212). Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility (E-602). All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's Department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant

memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and if applicable the assignee, date of filing of appeal, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. For those debt cases transferred upon expiration of 45 days without full collection action, minimum supporting information and documentation will be provided in accordance with E-603.3.

E-611.1 *Small Amounts.* The transfers required by E-611 above, will not be made for amounts less than $200.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable. (See E-603.)

E-612 Deferment Request Data — Appeal Pending. The information to support a request for deferment of payment when the debt is disputed and timely appeal has been filed pursuant to the "Disputes" clause may be confined to material sufficient to provide understanding of the contractor's financial condition.

E-613 Deferment Request Data — No Appeal Pending. The information to support a request for deferment of payment when there is no appeal pending pursuant to the "Disputes" clause should be sufficient to provide understanding of the contractor's financial condition, and should also cover the contractor's contract backlog, projected cash receipts and requirements, the feasibility of immediate payment, and the probable effect of enforcement of full immediate payment on the contractor's operations.

E-614 Deferment Standards — Appeals. Appeals by contractors will not suspend or delay collection action. However, pending the resolution of appeals, deferments will be governed exclusively by the special standards set out in this paragraph E-614. In order to minimize the possibility of overcollections, requested deferments pending the outcome of appeals may be granted by the contract financing office (E-212), when the contractor enters into agreement acceptable to the contract financing office as reasonably assuring diligent prosecution of the appeal and full payment of any amount determined due upon decision of the appeal or upon further negotiations without such decision, with interest on such amount at the rate and for the period mentioned in E-608(2) above. Agreement on interest may include the adjustment provisions authorized by E-618, below. Collateral security, or other provisions to assure payment, shall be consistent with the circumstances of each case. To avoid possible undue hardship to small business concerns or those contractors who are financially weak, deferments pending the outcome of appeals may be granted on such terms and conditions as may be deemed reasonable by the contract financing office, notwithstanding financial weakness of the contractor and notwithstanding its inability to furnish good collateral security. These deferments shall provide for termination of the deferment by the contract financing office upon violation of the agreement or upon failure of the contractor diligently to pursue its appeal.

E-615 Deferment Standards — No Appeal Pending. When appeal is not pending, or has been resolved, the contract financing office (E-212) may make arrangements for deferral of payments when the contractor cannot pay at once in full, or when full immediate collection would seriously impair the contractor's ability to continue operations or to perform contracts or subcontracts for the national defense. Such agreements shall include such covenants and security as may be prudent and feasible under the circumstances, shall be limited to the shortest

TABLE 1

STANDARD DISTRIBUTION

With Shipment * 4
Consignee (*via mail*) 2
(*For Navy procurement, copies will be priced*)
(For Grant Aid/Foreign Military Sales, consignee copies are not required).
Contract Administration Office 1
(Forward direct to address in Block 10 except when addressee is a DCASR, DCASD, or DCASO, and a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternate Release Procedures (see I-301, Block 21(c)A(2)) is involved, and acceptance is at origin; then, forward through the Authorized Government Representative.)
Purchasing Office 1
Payment Office ** 4
(Forward direct to addressee in Block 12 except (i) when addressee in Block 10 is a DCASR, DCASD, or DCASO and Payment Office in Block 12 is a DCASR do not make distribution; (ii) when addressee in Block 12 is HQ AFCMD attach only one copy to the required number of copies of the contractor's invoice; (iii) when acceptance is at destination and a Navy Finance Office will make payment, forward to destination; and (iv) when a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternative Release Procedures (see I-301, Block 21(c)A(2)) is involved and acceptance is at origin, forward the copies through the Authorized Government Representative.)
ADP Point for CAO (*Applicable to Air Force only*) 1
(When an AFPRO is specified as the administering activity in Block 10, or HQ AFCMD is cited as Payment Office in Block 12, send *one* copy to HQ AFCMD immediately upon signature. If submission of delivery data is being made by mechanical means, distribution of this hard copy need not be made to HQ AFCMD.)

*Attach as follows:

Type of Shipment	*Location*
Carload or truckload:	Affix to the shipment where it will be readily visible and available upon receipt.
Less-than-carload or truckload:	Affix to container number one, or container bearing lowest number.
Mail, including parcel post:	Attach to outside or include in the package. Include a copy in each additional package of multipackage shipments.
Pipeline or tank car:	Forward with consignee copies.

**Payment by DCASRs will be based on the source acceptance copies of DD Forms 250 forwarded to the Contract Administration Office except in those rare instances where distribution will be made to DCASR Payment Offices in accordance with the above distribution schedule.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2

SPECIAL DISTRIBUTION

As Required	Address	Number of Copies
Each: Navy Status Control Activity, Army, Air Force, DSA Inventory Control Manager.	Address specified in the contract.	1 Each addressee
Quality Assurance Representative	Address specified by the assigned Quality Assurance Representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract.	1
Foreign Military Sales Representative.	Address specified in the contract.	8
Military Assistance Advisory Group (Grant Aid Shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army Foreign Military Sales/ Military Assistance Program (Grant Aid)	Commander US Army Security Assistance Center ATTN: DRSAC-OP 3rd Street and "M" Avenue, Bldg 54 New Cumberland Army Depot New Cumberland, PA 17070	1
Air Force On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command Aerospace Vehicle Distribution Office (MCNAPV) Wright-Patterson AFB, Ohio 45433	1
When above items are delivered to aircraft modification centers.	A. F. Plant Representative Office	1
Foreign Military Sales/ Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters Ottawa, Ontario Canada K1A OK4 Attn: DPSUPS3	1
Other Than Canada	Address specified in the contract.	1

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