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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 week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-91-226FR]

Avocados Grown in South Florida; Grade and Container Marketing Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a minimum grade requirement of U.S. No. 2 and container marking and sealing requirements for Florida avocados handled to points within the production area (South Florida). This action is expected to result in the shipment of better quality avocados to the fresh market within the production area and improve program compliance in the interest of growers, handlers, and consumers.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Department Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

This final rule changes current grade and container marking requirements for Florida avocados by revising paragraphs (a) and (b) of § 915.306 (7 CFR 915.306) to require that avocados handled in containers other than those authorized under section 915.305 grade at least U.S. No. 2. This action also requires that avocados packed in such containers be marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit removed without breaking the seal. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

Currently, all Florida avocados shipped to markets within and outside of the production area in containers authorized under § 915.306 must grade at least U.S. No. 2 and the containers must be marked with a FSIS lot stamp number. At the present time, avocados in containers other than those authorized under § 915.306 do not have to meet any grade requirements and the containers need not be marked with a FSIS lot stamp number. Avocados in containers not authorized under § 915.306 may only be shipped within the production area.

A proposed rule concerning this action was published in the **Federal Register** (56 FR 4953, February 7, 1991), with a 30-day comment period ending on March 11, 1991. Five comments were received and are discussed in detail in the attached final rule.

The committee recommended that all avocados handled within the production area be required to grade at least U.S. No. 2 to improve the quality of avocados shipped to markets within the production area. These requirements are designed to strengthen market conditions for shipments within South Florida in the interest of growers, handlers, and consumers. The committee reported that shipments of poor quality avocados to markets within the production area have depressed prices for better quality avocados and resulted in lower overall returns to producers.

Requiring avocados handled in containers other than those authorized under § 915.305 to be marked with a Federal-State Inspection Service lot stamp number applied to an adhesive tape seal affixed to the container is expected to help prevent unauthorized shipments of substandard avocados. These requirements are also expected to make it easier to determine if a particular avocado shipment was inspected and certified as meeting marketing order requirements and who handled the fruit. This should improve compliance with order requirements within South Florida, and help prevent violative shipments of substandard avocados within the production area.

About 12 percent of Florida's fresh avocado shipments in 1989–90 were to production area markets, of which slightly over one-half were inspected and certified as meeting both grade and maturity requirements, with the remainder meeting maturity requirements only.

Although compliance with these grade and lot stamping requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with better quality avocados.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in section 915.332. These requirements, based on minimum weights and diameters, remain in effect and unchanged by this rule. In addition, avocados imported into the United States are already required to grade U.S. No. 2 under 7 CFR 944.28. Therefore, the regulations concerning the grade of imported avocados remain unchanged.

Hank J. Foley, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, indicating that such requirements will help prevent the disposition of stolen fruit and eliminate poor quality fruit in the marketplace.

Geoffrey Byerly, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, indicating that such requirements will reduce fruit theft and will help make sure that only quality fruit is sold.

Harold E. Kendall, President, South Florida Growers Association, Inc., filed a comment opposing the proposed higher grade requirements, but favoring the container marking requirements for avocados marketed in the production area. This commenter expressed the opinion that there is a demand for lower quality fruit within the production area and that application of the U.S. No. 2 grade would be too high for avocados sold within the production area. Since the committee recommended this action to assure that fresh markets in the production area are supplied with good quality avocados to encourage demand, consistent with the objectives of the marketing order, the Department finds that the proposed grade and container marking requirements for avocados marketed in the production area are reasonable and should be issued. Thus, Mr. Kendall's comment is denied.

Craig Wheeling, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, because he believes that such requirements would help reduce the problem of stolen fruit and help ensure that only quality fruit is sold.

Craig Wheeling filed another comment on behalf of J.R. Brooks and Son, Inc., an avocado handler, recommending a modification to the proposed container marking requirements to require that the containers shipped within the production area be marked with a Federal-State Inspection Service (FSIS) seal number as well as a lot stamp number. This commenter indicated that this additional requirement would help prevent such containers from being reused to sell substandard or stolen fruit in the Miami market. This comment has merit. Such a requirement would be reasonable and consistent with the objectives of the marketing order. Therefore, § 915.306 is revised to require that avocados handled in containers other than those authorized under § 915.305, be packed in such containers marked with a FSIS lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit removed without breaking the seal. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements. This should help prevent such containers from being used to make violative shipments of avocados.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipment of the 1991–92 season Florida avocado crop began in May, and these requirements should apply to as much of the 1991–92 season Florida avocado crop as possible; (2) Florida avocado handlers are aware of this action which was recommended by the committee at a public meeting; and (3) the interim final rule provided a 30-day comment period and the comments received are fully addressed in this final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. Section 915.306 is amended by revising paragraphs (a) and (b) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S. No. 2.

(2) Such avocados are in containers authorized under § 915.305, when handled to points outside the production area.

(3) Such avocados are packed in accordance with standard pack, when handled in containers authorized under § 915.305.

(4) Such avocados are in containers marked with a Federal-State Inspection Service lot stamp number, when handled in containers authorized under § 915.305.

(5) Such avocados are in containers marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal, when handled in containers other than those authorized under § 915.305. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked with the grade of the fruit in letters and numbers at least one inch in height on the top and two sides of the lid of the container, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

(b) The provisions of paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of

this section shall not apply to individual packages of avocados weighing four pounds or less, net weight, in master containers.

* * * * *

Dated: July 25, 1991.

William J. Doyle,

Acting, Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-18088 Filed 7-30-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 50

RIN 3150-AA68

Criteria and Procedures for the Reporting of Defects and Conditions of Construction Permits

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations on the reporting of safety defects. The amendments are a result of the Commission efforts to apply the experience gained as a result of the Three Mile Island accident and also reflect Commission experience to date with the existing regulations. The amendments are applicable to Commission licensees, and to nonlicensees who construct facilities for, or supply basic components to facilities or activities licensed by the Commission. The amendments would reduce duplicate reporting of defects, clarify the criteria for reporting defects, and would establish uniform time periods for reporting and uniform requirements for the content of safety defect reports.

DATES: These amendments will be effective October 29, 1991.

FOR FURTHER INFORMATION CONTACT: W.R. Jones, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4442.

SUPPLEMENTARY INFORMATION: On November 4, 1988, the Nuclear Regulatory Commission ("NRC" or "Commission") published in the Federal Register (53 FR 44594) for public comment proposed amendments to 10 CFR Part 21 (part 21), "Reporting of Defects and Noncompliance" and § 50.55 "Conditions of Construction Permits." The purpose of these proposed amendments was to reduce duplicate evaluation and reporting, establish consistent time limits for reporting, establish a time limit for transfer of information from vendors to purchasers of basic components, more clearly define defects that must be reported, and establish consistent content for reporting. Other minor changes were proposed.

Public comments regarding the proposed amendments were received from thirty-five respondents. These comments were received from segments of the nuclear industry as follows: Twenty-three were received from utilities; five, from law firms representing members of the nuclear industry; three, from owners groups; two, from architect/engineers; and two were received from vendors. These comments have been evaluated and, where appropriate, incorporated into the final regulations. The public comments are discussed below in connection with the final regulations.

A detailed analysis of the public comments has been prepared and is available for public inspection in the NRC Public Document Room.

Background

The existing regulations contain several safety deficiency reporting requirements that apply to the construction and operation of nuclear power plants:

—Part 21 applies to all NRC licensees, as well as nonlicensees who construct facilities for or supply basic components or services associated with basic components to these licensees, and implements section 206 of the Energy Reorganization Act of 1974, as amended (ERA), (42 U.S.C. 5841 et seq.), which requires the reporting of defects that could create a "substantial safety hazard," and failures to comply related to a "substantial safety hazard" as defined in regulations.

—Section 50.55(e) applies solely to the holders of construction permits and currently requires the reporting of "significant deviations" or "significant deficiencies" which could have an adverse effect upon safety if they remain uncorrected.

—Sections 50.72 and 50.73 establish an event reporting system that applies uniformly to all operating nuclear power plants. These regulations require the licensee to make prompt telephone notification to NRC and to submit a written report for each operating event or adverse plant condition. As discussed below, changes to §§ 50.72 and 50.73 are not being made at this time.

—Section 73.71 applies to licensees and establishes a reporting system for safeguards events, including any security failure, degradation, or discovered vulnerability of a safeguards system. As stated in § 73.71, a report under § 73.71 satisfies reporting requirements in both §§ 50.72 and 50.73. Section 73.71 is not being changed at this time.

Task II J.4 of the TMI Action Plan directed the NRC staff to evaluate and revise, if necessary, the existing requirements of part 21 and § 50.55(e) to assure prompt and comprehensive reporting. Over several years, the need for revision of these regulations has become apparent. Accordingly, based upon the staff experience with part 21 and § 50.55(e), the final rule will:

1. Reduce duplicate evaluation and reporting;
2. Establish uniform time limits for reporting;
3. Establish a time limit for transfer of information to end users when a substantial safety hazard determination by vendors is not possible;
4. More clearly and uniformly define the defects that need to be reported under § 50.55(e);
5. Establish uniform content for reports submitted under § 50.55(e) and part 21;
6. Clarify the definition of "basic component;"
7. Clarify records retention requirements including the requirement for retention of records of evaluations of deviations that did not result in a finding of substantial safety hazard;
8. Establish time limits for evaluation of potential defects and failures to comply; and
9. Make other minor changes detailed below.

These revisions will reduce the amount of time and effort expended by industry in complying with existing reporting and evaluation requirements while still ensuring that safety deficiencies are identified and evaluated in a timely manner.

Part 21

Part 21 was intended to implement section 206 of the ERA. Section 206 requires directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, (AEA), (42 U.S.C. 2011 et seq.), to immediately report to the Commission the discovery of "defects" in "basic components" or failures to comply that could create a "substantial safety hazard." In addition to imposing obligations on the directors and responsible officers of NRC

licensees, section 206 of the ERA also imposes obligations on the directors and responsible officers of nonlicensees that construct facilities for or supply basic components to licensed facilities or activities. Any individual officer or director who knowingly fails to comply with the notification requirements is subject to civil penalties.

On March 3, 1975, the NRC published a proposed rule designed to implement section 206 (40 FR 8832), and on June 6, 1977, issued the final rule, adding part 21 to the Commission's regulations (42 FR 28893).

The regulations in part 21 impose reporting requirements on directors and responsible officers of firms which construct, own, operate, or supply basic components for any facility or activity licensed or otherwise regulated pursuant to the AEA or the ERA. Part 21 was amended on October 19, 1978 (43 FR 48721) to exempt "commercial grade items" from part 21 requirements until the items were "dedicated" for use as basic components in a nuclear facility.

Approximately 12,000 organizations, licensees, and nonlicensees, fall under the scope of part 21 reporting requirements. Part 21 covers licensees granted the following licenses: production and utilization facility licenses issued under part 50, including nuclear power plants and research and test reactors; byproduct material licenses issued under parts 30 through 35; well logging licenses issued under Part 39; source material licenses issued under Part 40; high-level radioactive waste disposal licenses issued under part 60; land disposal of radioactive waste licenses issued under part 61; special nuclear materials licenses issued under part 70; licenses for the packaging of radioactive materials for transport licenses issued under part 71; and spent fuel storage licenses issued under part 72.

The nonlicensee suppliers covered under part 21 are firms of many different sizes, supplying many different types of basic components and services associated with basic components to NRC licensees. For example, construction and operation of a nuclear power plant involves a many-level procurement chain. At the top of the chain is the electrical utility and the utility's major contractors such as the nuclear steam system supplier. The next level includes manufacturers who produce basic components specifically designed for nuclear use such as instrumentation, controls, major piping, pumps, and valves. These manufacturers in turn procure necessary parts, such as resistors, wiring, solid-state devices, and other hardware, from a multitude of sources. For nuclear power reactors, part 21 applies to all tiers of the supply chain for basic components and to all activities which could create a substantial safety hazard. In the case of fuel cycle licensees and organizations supplying components to them, responsibility for complying with part 21 does not extend past the first tier of suppliers.

Approximately 300 reports have been submitted to the NRC annually under part 21. These reports of potential safety problems have resulted in generic communications such as NRC bulletins, generic letters, and information notices, and have contributed to the overall improved safety of the nuclear industry.

Section 50.55(e)

Section 50.55(e) of part 50, originally published as a final rule on March 30, 1972 (37 FR 6459), establishes requirements for reporting deficiencies occurring during the design and construction of nuclear power plants. The rule was designed to enable the NRC to receive prompt notification of deficiencies and to have timely information on which to base an evaluation of the potential safety consequences of the deficiency and determine whether regulatory action was required. Therefore, the holder of a permit for the construction of a nuclear power plant is required to notify the Commission of each significant deficiency found in design and construction, which if it were to have remained uncorrected, could have adversely affected the safety of operations of the nuclear power plant at any time throughout the expected lifetime of the plant.

Approximately 750 reports were submitted annually in the past to the NRC under § 50.55(e). As with part 21, these § 50.55(e) reports have formed the basis for generic communications such as NRC bulletins, generic letters, and information notices and have also contributed to the overall improved safety of the nuclear industry.

Action Being Taken

1. Reducing Duplicate Evaluation and Reporting Requirements

As stated above, the Commission regulations contain four different safety deficiency reporting requirements. Although distinctions exist between these requirements, staff experience indicates a need to reduce duplication in reporting or evaluation among part 21, and §§ 50.55(e), 50.72, 50.73, and 73.71.

Duplicate reporting has been primarily a problem for part 21 and § 50.55(e).

A. Part 21 and § 50.55(e)

A number of instances have occurred where the same deficiency in a basic component was evaluated and reported by two different organizations, one attempting to satisfy the criteria of part 21, and the other attempting to meet the differently worded criteria of § 50.55(e). The fact that reporting criteria are different for each requirement and that there is a lack of any explicit framework in the regulations to preclude duplicate reporting have led to duplication of both licensee and NRC staff effort. The revised rule makes the relationship between these two regulations straightforward. Construction permit holders will perform evaluations, report as appropriate, and keep records under § 50.55(e). If deviations are evaluated under § 50.55(e) and result in either a negative reportability determination or reportable defect, then this satisfies requirements of part 21.

Additionally, the scope of § 50.55(e) is being expanded from covering only the construction of nuclear power plants to cover all construction permits issued under § 50.23 for any production or utilization facility. This action will provide uniform reporting of defects and failures to comply associated with a substantial safety hazard found during construction for all production and utilization facilities. In summary, construction permit holders will be required to report under § 50.55(e) rather than under part 21.

For research reactors, (non-power reactors), which are currently covered by part 21, such facilities for which future construction permits are issued will report defects and non-compliance found during construction under § 50.55(e). No expansion of current reporting requirements is taking place. The regulation under which research reactors would report is being shifted from part 21 to § 50.55(e).

Special consideration has been given to those holders of construction permits issued prior to the effective date of these amendments. Section 50.55(e)(10), allows these construction permit holders to continue to report and evaluate defects under part 21 if they so choose. This provision is intended to avoid requiring these construction permit holders to change reporting procedures.

B. Part 21 and §§ 50.72 and 50.73

In the Supplementary Information for the proposed amendments published for public comment in November, 1988, (53 FR 44594) a brief discussion was presented on duplicate reporting by operating license holders under § 50.73

[Licensee Event Reports (LERs)] and part 21. The statement was made that § 50.73 would not be changed at this time and that the duplication of reporting was minimal for these two regulations. Licensee Event Reports and reports made under part 21 were reviewed for 1988. The amount of duplication was small. Approximately 55 percent of the part 21 reports submitted in 1988 were submitted by licensees. Of these, only a few were submitted by an LER.

Most of the respondents commenting on the proposed amendments stated that in actual practice there is some duplication of evaluation and reporting effort between part 21 and §§ 50.72 and 50.73 and many respondents urged the Commission to adopt amendments to §§ 50.72 and 50.73 at the same time as those for part 21.

Amendment of §§ 50.72 and 50.73 has been reconsidered. Other changes to §§ 50.72 and 50.73 unrelated to these issues are also under consideration and broad changes cannot be accomplished on a schedule consistent with the present changes to part 21 and § 50.55(e). A piecemeal approach would be burdensome and confusing. Hence, changes to §§ 50.72 and 50.73 to eliminate duplicate evaluation and reporting are not being made at this time. They are currently being evaluated.

To eliminate possible confusion created by the brief discussion in the Supplementary Information for the proposed amendments, the following discussion addresses the concerns raised by numerous commentors to the proposed rule, and describes the relationship between §§ 50.72 and 50.73 and part 21.

The criterion for reporting a defect under part 21 for nuclear reactors is that a deviation in a basic component under reasonably expected operational circumstances, including expected normal operation, transients, and design basis accidents, could create a substantial safety hazard. Basic components are plant structures, systems, or components necessary to ensure the (i) integrity of the reactor coolant pressure boundary; (ii) capability to shut down the reactor and keep it in a safe shutdown condition; or (iii) prevent or mitigate the consequences of an accident which could result in potential offsite exposures comparable to those referred to in § 100.11.

The criteria for determining the existence of a substantial safety hazard and, consequently, whether a defect is reportable under part 21 are given in NUREG–0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR part 21) for Reporting of Defects and Noncompliance, July 12–26, 1977," as:

—Moderate exposure to or release of licensed material. Moderate exposure is further clarified as exposure in excess of 25 rem to the whole body and exposure to an individual in an unrestricted area of 0.5 rem;

—Major degradation of essential safety-related equipment. This phrase is considered to represent a loss of redundancy if, in conjunction with a single failure, a required safety function could not be performed; or

—Major deficiencies involving design, construction, inspection, test, or use. "Major deficiency" means a condition or circumstance which under normal operating conditions, an anticipated transient, or postulated design basis accident could contribute to exceeding a safety limit or cause an accident or in the event of an accident due to other causes could, considering an independent single failure, result in a loss of safety function necessary to mitigate the consequences of the accident.

For operating nuclear plants, events or conditions are reported under §§ 50.72 and 50.73. Basic components or services associated with basic components which are installed in the plant which have deviations and, thus, could be potential defects (i.e., could create substantial safety hazards), should be evaluated under appropriate criteria of §§ 50.72 and 50.73 to determine if the deviations are a reportable event or condition. That is, where deviations in basic components do produce potentially reportable events or conditions, the deviations should be evaluated under the criteria of §§ 50.72 and 50.73. Several paragraphs of §§ 50.72 and 50.73 contain criteria on reporting of possible defects and are comparable to the criteria for part 21. Section 50.73(a)(2)(ii) and the companion § 50.72(b)(1)(ii) provide the criteria:

> Any event or condition that resulted in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded, or that resulted in the nuclear power plant being:
>
> (A) In an unanalyzed condition that significantly compromised plant safety;
>
> (B) In a condition that was outside the design basis of the plant; or
>
> (C) In a condition not covered by the plant's operating and emergency procedures.

Additionally, § 50.73(a)(2)(vii) provides the criteria:

> Any event where a single cause or condition caused at least one independent train or channel to become inoperable in multiple systems or two independent trains or channels to become inoperable in a single system designed to:
>
> (A) Shut down the reactor and maintain it in a safe shutdown condition;
>
> (B) Remove residual heat;
>
> (C) Control the release of radioactive material; or
>
> (D) Mitigate the consequences of an accident.

Substantial safety hazard evaluations of potential defects in basic components must consider failure of functionally redundant basic components in determining whether a loss of safety function could occur. A condition, circumstance, or deviation which could cause a failure of the functionally redundant component must be considered in evaluating potential losses of safety function or major reduction in the degree of protection provided the public health and safety.

This requirement is similar to § 50.72(b)(2)(iii) and § 50.73(a)(2)(v) and (vi):

> (v) Any event or condition that alone could have prevented the fulfillment of a safety function of structures or systems that are needed to:
>
> (A) Shut down the reactor and maintain it in a safe shutdown condition;
>
> (B) Remove residual heat;
>
> (C) Control the release of radioactive material; or
>
> (D) Mitigate the consequences of an accident.
>
> (vi) Events covered in paragraph (a)(2)(v) of this section may include one or more personnel errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

However, as discussed in NUREG–1022, "Licensee Event Report System", September, 1983, if a basic component contains a defect, and the defect could occur in the functionally redundant component, then this second failure must be considered in the evaluation of reportability. Thus, these two requirements, one in part 21 to include failure of the functionally redundant component in evaluation of a substantial safety hazard, and one in §§ 50.72 and 50.73 to include failure of the functionally redundant component, are compatible.

Operating license holders can reduce duplicate evaluation and reporting effort by evaluating deviations in basic components installed in operating plants which produce events which could meet the criteria of §§ 50.72 and 50.73. If the

evaluation of events using the criteria of §§ 50.72 or 50.73 results in a finding that the event is reportable and the event is reported via these sections, then as indicated in § 21.2(c), the evaluation, notification, recordkeeping, and reporting obligations of part 21 are met. If the event is determined not to be reportable under §§ 50.72 or 50.73, then the obligations of part 21 are met by the evaluation.

As indicated in the discussion of the substantial safety hazard criterion above, evaluation under the substantial safety hazard criteria requires evaluation of possibilities of events which, because of the defect in the basic component, would lead to a moderate exposure, a major degradation, or a major deficiency. This evaluation must include consideration of the defect in conjunction with the worst operational transient or design basis accident. This requirement is somewhat different than that in either § 50.72 or § 50.73. However, §§ 50.72 and 50.73, in the paragraphs discussed above, require explicit evaluation of loss of safety function. Such an evaluation would be adequate to determine if the safety function would be lost during the worst transient or accident.

As stated in § 21.2(c), the evaluation of the deviation in a basic component which causes an event which is evaluated using criteria of either §§ 50.72 or 50.73, satisfies the required evaluation and reporting requirements of part 21. Thus, to the extent possible by changing part 21, § 21.2(c) would explicitly relieve the officers and directors of holders of operating licensees under part 50 from the part 21 evaluation, notification, and reporting requirements if potential defects which produce events are evaluated and defects are reported under §§ 50.72 and 50.73. The reporting requirements associated with §§ 50.72 and 50.73 would be deemed to satisfy the corresponding requirements of part 21.

The defect reporting requirements of section 206 of the Energy Reorganization Act as amended would be met by part 50 operating licensees, for defects which produce reportable events, by reporting under appropriate paragraphs of §§ 50.72 and 50.73.

Even though the Commission need not be notified of defects more than once, where previously reported defects create reportable events as defined in §§ 50.72 and 50.73, these events must be reported pursuant to §§ 50.72 and 50.73 for each nuclear power plant facility licensed under part 50 where they occur. For licensees with more than one facility with an operating license, each containing the same defect, the Commission need only be notified once of the defect. However, §§ 50.72 and 50.73 requires reports of any events associated with the defect for any facility at which they occur. There is no intention to eliminate any reporting currently required under §§ 50.72 or 50.73.

For utilities with two facilities, one with a construction permit and one with an operating license, each having the same defect, the Commission can be notified via appropriate reporting under §§ 50.72 and 50.73 for the operating plant if the defect creates a reportable event. This reporting will satisfy the requirements of §§ 50.72 and 50.73 for the operating plant and § 50.55(e) for the facility with a construction permit.

It should be noted, as stated in NUREG–0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR part 21) for Reporting of Defects and Noncompliance, July 12–26, 1977," October 1977, on pages 21.3(d)–1 and 21.3(d)–2, that deviations or potential defects discovered during receipt inspection are not reportable by the purchaser if the purchaser returns the basic component to the vendor for evaluation. If the purchaser chooses to keep the basic component because of unavailability of another component, or for whatever reason, then the purchaser should evaluate the potential defect under part 21.

Thus, one category of defects which will still be reported by power plant operating license holders under part 21 rather than §§ 50.72 and 50.73 are those defects discovered by licensees in equipment which has never been installed or used in the nuclear plant. Defects in these basic components cannot create situations which are reportable under § 50.72 or § 50.73 since these components cannot create a reportable event or condition. Basic components which are delivered and accepted by the purchaser but are not installed in the plant should be evaluated under part 21 and reported under part 21 if found to be reportable.

As a final point regarding the relationship between part 21 and §§ 50.72 and 50.73, since these sections are not being changed at this time, failures to comply associated with a substantial safety hazard should still be reported under part 21 by licensees.

C. Part 21 and § 73.71

Section 21.2(c) will explicitly relieve the officers and directors of holders of operating licenses under part 50 from the part 21 evaluation, notification, and reporting requirements when defects associated with safeguards events are reported under § 73.71. The reporting requirements associated with § 73.71 would be deemed to satisfy the corresponding requirements of part 21.

D. Vendors

In addition to relief of licensees and construction permit holders, § 21.21(c)(2) relieves vendors subject to the reporting requirements of part 21 from reporting to the Commission, if the Commission has been previously notified of a defect under either part 21, §§ 50.73, 50.55(e), or § 73.71. That is, for any defect identified, evaluated, and for which the Commission has been notified by any entity under any of the four regulations, the related vendor will not be required to provide initial notification to the Commission. However, all entities covered by these regulations should be aware that the NRC will continue to evaluate notifications made to determine if additional information is required. If the Commission determines that additional information is required, the Commission will contact appropriate vendors, licensees, or construction permit holders under § 21.21(e), to obtain adequate information. Based on this information, the staff will then determine appropriate regulatory action. Such action may consist of direct contact or generic communication such as an Information Notice.

One commentor stated that the proposed amendments did not eliminate the requirement for contractors who perform evaluations for licensees or construction permit holders to report defects even though the defects were reported by licensees or construction permit holders. The following discussion is provided to clarify this issue. When a vendor (including architect-engineers or other service organizations) performs an evaluation of a deviation for a licensee or construction permit holder under the direction of the licensee and under contract, the reporting obligation lies with the licensee or construction permit holder. When the evaluation is complete, the evaluation satisfies the licensee's obligation under the regulations if either (1) the deviation is determined to be a defect and is reported or (2) the deviation is determined not to be reportable. Under the circumstances described here, the contractor has no reporting obligation provided the licensee fulfills its reporting obligation. If subsequent to the evaluation, the evaluating organization (vendor, architect-engineer, or service organization) discovers that the evaluation itself contained a defect, as opposed to the original deviation, then

the evaluating organization has the obligation to report the defect.

E. Enforcement

Responsible officers and directors of a part 50 construction permit or operating licensee would still be subject to the civil penalty provisions of section 206 (b) of the ERA as set forth in § 21.61 for the failure to notify the Commission of a defect or failure to comply. However, as noted above, notification under any one of these four regulations (part 21, §§ 50.55(e), 50.73, and 73.71) satisfies reporting obligations under section 206.

F. Relationship to Other Reporting Regulations

Several respondents commenting on the proposed amendments stated that the relationship of part 21 and § 50.55(e) to § 50.4, 50.9 and part 20 should be discussed in these amendments. Regarding § 50.9, the last sentence of § 50.9 states, "This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements."

Regarding § 50.4, which provides administrative details of written communications to the Commission, § 50.55(e) and part 21 contain their own written communication directions and reference to § 50.4 is not required. Review of part 20 indicates that no changes to the regulations are necessary.

Thus, based on the above discussions, §§ 50.72 and 50.73 will be used by operating license holders to report defects which create events or conditions reportable under these sections. Section 50.55(e) will be used by part 50 construction permit holders for reporting of defects and failures to comply associated with a substantial safety hazard discovered by construction permit holders or contractors hired by construction permit holders (or referred to construction permit holders by vendors who cannot evaluate the defect). Part 21 will be used by part 50 vendors and by materials licensees and their vendors covered under parts 30 through 35, 39, 40, 60, 61, 70, 71, and 72 to report defects and failures to comply associated with a substantial safety hazard. Part 50 non-power reactor operating license holders will use part 21 for reporting of defects and failures to comply associated with a substantial safety hazard. It should be noted that nuclear power plant operating license holders will still use 10 CFR part 21 to report failures to comply associated with a substantial safety hazard.

While no requirement is being placed in these regulations to require the notification of vendors of the existence of a defect by construction permit or operating license holders and no requirement is being placed in the regulations to require vendors to inform purchasers of a defect (unless the vendor cannot perform the evaluation of the potential defect), it is expected that licensees, construction permit holders, and vendors will continue to communicate about defects with each other. Entities covered by these regulations are encouraged to continue to communicate so that all appropriate entities will be aware of defects.

Research reactors with operating licenses will continue to report under part 21 since they are not subject to §§ 50.72 and 50.73.

2. Establishing Uniform Time Limits for Reporting

Both § 50.55(e) and part 21 currently require an initial notification and a follow-up written notification. In the case of part 21, if the initial notification was a written report, no followup notification is required. There are differences between the current part 21 and § 50.55(e) for the time limits for both these notifications. In order to improve consistency between the two regulations uniform time limits are being implemented.

Regarding the initial time limit, part 21 allows two days from the time the determination has been made that a defect exist. Currently § 50.55(e) requires the initial notification to be made in 24 hours. The final amendments to § 50.55(e) will extend the period for notification of the Commission under § 50.55(e) from one day to two days. In Petition for Rulemaking (PRM) 50–36, filed by the Nuclear Utility Backfitting and Reform Group (48 FR 28282), dated April 20, 1983, petitioners proposed revising § 50.55(e) reporting requirements to eliminate the 24 hour initial report (Issue III). Alternatively, the petition recommended adoption of a deadline of five days for an initial report. In addition to this PRM, four respondents commenting on the proposed amendments stated that the two-day notification was too short.

This final rule extends the initial reporting deadline under § 50.55(e) from 24 hours to two days. The Commission believes that the two-day requirement will provide industry with more flexibility while still allowing sufficient warning of safety problems and is consistent with the objective of establishing uniform reporting criteria. The Commission believes that the five-day recommendation proposed by PRM–50–36 and recommended by the commentors mentioned above is too long considering staff's need to be provided with early notification of potentially generic conditions at construction permit facilities which could affect operating facilities. This two-day time limit will be consistent with the current part 21 time limit. Accordingly, the two-day time limit in the final rule addresses and resolves Issue III of PRM 50–36.

Additionally, the use of the same initial notification period for both part 21 and § 50.55(e) is consistent with the objective of establishing uniform reporting time frames.

In the current part 21, submittal of the required written report within the five day time limit has been difficult to accomplish. In addition, the incremental information available during the subsequent three day interval following the initial report does not provide a meaningful addition to the information already available to the Commission. The extension to 30 days for the time limit for submittal of the written followup report would allow submittal of a complete report. Thus, the final rule will change the time limit for submission of the required followup written report from five days to 30 days. This time limit for the written report submittal is consistent with that in § 50.55(e) and § 50.73.

3. Establishing Time Limit for Transfer of Information

Currently, § 21.21(a)(1)(ii) does not explicitly address time limits for transfer of information in situations for which vendors of basic components are unable to evaluate whether deficiencies or failures to comply could create substantial safety hazards. This inability to evaluate may be due to the vendor's lack of knowledge of how the basic component is utilized by the end user or for other reasons. The change to § 21.21(b) will explicitly add a time limit provision to correct this problem.

Two commentors stated that the five working day time limit was too short and was arbitrary. The Commission believes that the five day time limit is not arbitrary. It begins after the formal evaluation process has reached the conclusion that the vendor cannot determine if a defect exists. Additionally, this time period is comparable to the two day initial reporting requirement when a defect is determined to exist.

Thus, the final rule requires that if, during the evaluation period, the supplier which discovers a deviation or failure to comply that could potentially

create a substantial safety hazard determines that it is unable, due to insufficient information or other reasons, to perform the evaluation, then that entity must inform the purchasers of the "basic component" within five days of this determination.

Transfer of information from vendors to purchasers or affected licensees is expected to be a formal process which should involve records retention discussed below and will trigger the start of the evaluation process by the purchasers or affected licensees.

4. Defining Defects To Be Reported

Section 206 of the ERA requires the reporting of "defects which could create a substantial safety hazard." Existing § 21.3(k) defines substantial safety hazard as "a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to parts 30, 40, 50, 60, 61, 70, 71, or 72 * * *." In addition, the supplementary information for the original part 21 final rulemaking, June 6, 1977 (42 FR 2889), contained the following guidance on what constitutes a "substantial safety hazard":

—Moderate exposure to, or release of, licensed material, or
—Major degradation of essential safety-related equipment, or
—Major deficiencies involving design, construction, inspection, test, or use.

Existing § 50.55(e) requires the reporting of deficiencies in design and construction which could adversely affect the safety of operations of a nuclear power plant and which represent the following:

—A significant breakdown in any portion of the quality assurance program, or
—A significant deficiency in a final design, or
—A significant deficiency in the construction of, or significant damage to a structure, system, or component requiring corrective action involving extensive effort, or
—A significant deviation from performance specifications requiring corrective action involving extensive effort.

NRC experience with § 50.55(e) reports has indicated that clarification of the type of deviation that is required to be reported would be advantageous. Accordingly, the reporting criteria in § 50.55(e) are amended to be the same as those contained in part 21.

As stated above, duplication of evaluation and reporting has primarily been a problem for § 50.55(e) and part 21. This increase in the reporting threshold and extension of § 50.55(e) application to all construction permit holders will allow the Commission to obtain the proper level of reporting with no loss of significant safety information, i.e., the amendment raising the § 50.55(e) threshold will facilitate eliminating duplicate reporting by making the definition of defects reported under § 50.55(e) identical to those reported under part 21. This reduction of duplication will be accomplished with no loss in critical safety information and will reduce unnecessary industry burden.

It should be pointed out that a slight difference exists between the current definition of "deviation" in part 21 and that in the amendments to § 50.55(e). In the current part 21, "procurement documents" are specifically referred to as determining the requirements of a basic component. However, in § 50.55(e), procurement documents are not mentioned as determining these requirements. The basis for this difference is that in applying § 50.55(e), basic components will have requirements imposed on them not only by their procurement documents, but also by other licensee documents. In the case of part 21, application of the regulation to vendors will require the use of procurement documents to determine the requirements which the purchaser placed on the basic component.

5. Reporting Content

The final revisions to § 50.55(e)(8) will require the content of the information reported under § 50.55(e) to be consistent with that required by current § 21.21(b)(3). These revisions will assure that the Commission obtains all the information necessary to evaluate and take corrective action, in reference to a particular defect.

6. Clarification of "Basic Component"

Current § 21.3(a)(3), which clarifies items which are to be considered as "basic components," includes:

> * * * design, inspection, testing, or consulting services important to safety that are associated with the component hardware whether these services are performed by the component supplier or others.

That paragraph is being modified to further clarify what is intended to be significant items. The terms "analysis," "fabrication," and "replacement parts," are being added to the definition of "basic component." The subsection is revised to read

> * * * safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

The proposed rule published November 4, 1988, for public comment contained the additional items "quality assurance," "training," and "maintenance" in the definition of basic component. These items have been eliminated from the definition based on public comment. Eleven commentors responding to the November 4, 1988 request for public comment stated that the additional items were not clarifications, but, actually expanded the scope of part 21 and § 50.55(e). One commentor stated that the addition of the items to the definition of basic component exceeded the legal authority granted the NRC by section 206 of the ERA. As discussed below, the legal authority provided in section 206 is not exceeded.

The Commission regards the additional items as clarification. The items "analysis," "fabrication," and "replacement parts" are clearly within the scope of the present part 21. They do not expand the scope of part 21.

The final amendments retain the coverage of significant quality assurance breakdowns in § 50.55(e). Such breakdowns in the quality assurance programs may not actually result in a defect being created in a basic component. However, such breakdowns may be severe enough or extensive enough to indicate that the overall program is deficient to the extent that the program itself represents a defect. In such cases, these programmatic breakdowns are reportable as defects because they could clearly have produced substantial safety hazards. Enforcement action resulting from reports of these quality assurance breakdowns will be consistent with ordinary enforcement policies.

Also, it should be noted that, as stated in the current definition of basic component in § 21.3(a)(1), "systems" are properly considered as "basic components." These systems are those systems which are safety-related. Examples are the auxiliary feedwater system for pressurized water reactors and the high pressure coolant injection system for boiling water reactors.

The Supplementary Information accompanying the proposed amendments discussed the reporting of the fire protection system and the security system defects under part 21. Seven commentors stated that fire and security systems were not safety related systems and that the components are purchased as commercial grade items.

Where fire and security systems are not basic components, defects are not reportable under part 21. However, to the extent that basic components are involved, defects in fire protection and security systems are reportable under part 21. In addition, a deficiency in either of these systems could produce a reportable event under § 50.72, 50.73 or § 73.71 even though a "basic component" is not involved.

In addition, vendors, construction permit holders, and licensees are encouraged to voluntarily report potential defects in components for these systems and in the systems themselves.

7. Clarifying Records Retention Requirements

Section 50.55(e)(9) in the final rule and final revisions to § 21.51 clarify the specific records that must be maintained and their retention period to assure compliance with the regulations. These include records of evaluations, including records of evaluations of deviations which were not judged to cause substantial safety hazards. These records are identical to records currently required to be retained under part 21 and § 50.55(e). Also, for vendors, notifications and a list of purchasers of basic components are required to be retained. Several commentors responding to the request for public comments stated that the requirement for vendors to retain a list of purchasers of basic components for the lifetime of the component was impractical. The main reason was that vendors did not know what happened to basic components in licensed facilities and, thus, did not know how long the lifetime would be. Additionally, since services are included in basic components, lifetime retention requirements for these components were difficult to implement because the lifetime of a service at a licensed facility was impossible for vendors to ascertain. The NRC has recent experience with records review performed as part of our regulatory function. Based on the above, the time period for retention of records of purchasers of basic components has been reduced to 10 years.

Some persons commenting on the proposed amendments also stated that the records requirements for evaluations and notifications should be discussed in more detail. The purpose of the requirement to retain evaluations for 5 years assures that vendors, licensees, and construction permit holders maintain records of evaluations of deviations which were found reportable and also those found not reportable. The records of notifications required to be maintained under § 21.51 are notifications which vendors have sent informing purchasers or licensees that a deviation has been found and the vendor is unable to complete the substantial safety hazard evaluation.

Also based on public comments, clarifying phrases have been added to the records retention requirements. The phrase, "after the date of the evaluation" has been added to § 21.51(a)(1) and § 50.55(e)(9)(ii) to clarify this requirement. The phrases "after the date of the notification" and "after delivery" have been added to §§ 21.51(a)(2) and 21.51(a)(3) respectively to clarify these requirements.

8. Evaluation Time Limit

Under existing § 21.21(b)(2), the initial notification of a defect or failure to comply must be made to the NRC within two days of the time a director or responsible officer obtains information on the existence of a reportable defect. However, the existing rule is silent concerning the time period between the discovery of a potential defect and the time when an evaluation of the potential defect should be completed. Similarly, no deadline is established prescribing when the director or responsible officer must be informed of a potentially reportable defect.

In the proposed amendments published for public comment in November, 1988, no amendment to part 21 was proposed to prescribe a specific length of time allowed for the evaluation. However, a time period of 30 days was discussed as a reasonable time to complete evaluations in the Supplementary Information accompanying the proposed amendments published in November, 1988.

The Commission is aware of a number of cases where an inordinate length of time passed between the initial discovery of a potential defect and when the Commission was informed of the existence of a defect. In addition, NRC discussions held with utility personnel indicate that they generally believe a time limit for evaluations is necessary to ensure that defects or failures to comply which create substantial safety hazards are brought to the attention of the Commission. Also, section 206 of the ERA indicates that the Commission should be notified immediately of defects and failures to comply associated with a substantial safety hazard. Thus, in order to ensure consistency in the evaluation of the less complex issues, the final amendments to § 21.21(a)(1) require that, except in certain instances discussed below, the evaluation of deviations be completed within 60 days after the date of discovery of the deviation. Instances of allowing long lapses in the evaluation process due to administrative problems or personnel absence must be avoided.

The final amendment to § 21.21(a)(3) also requires that a director or responsible officer be informed within 5 working days of completion of the evaluation identifying existence of a defect or failure to comply associated with a substantial safety hazard.

Over half of the persons responding to the proposed amendments published for public comment were concerned with the time limit for evaluation. Industry comments concerning the establishment of a specific time limit for evaluation were in general concerned that the 30 day period was insufficient to adequately evaluate more complex issues. The commentors stated that the time period would result in over-reporting of issues due to lack of adequate time for evaluation. Additionally, several commentors recommended that a reasonableness standard should be applied which was based on the complexity of the issue being evaluated.

In general, the Commission believes that most deviations should be evaluated within 60 days. However, the Commission agrees that there are deviations and failures to comply which require complex evaluations and, as such, an evaluation might not be completed within 60 days. When completion of the evaluation is not possible within the 60-day evaluation time limit, the amended § 21.21(b) would require that an "interim" written report be submitted within 60 days of the date of discovery. No telephonic (2 day) notification is required for interim reports.

The interim report must contain available information about the deviation or failure to comply describing it and contain a statement telling when the evaluation of the deviation or failure to comply will be completed.

Existing § 50.55(e) (2) and (3) establish time frames only for reporting. The final amendments to § 50.55(e)(1)(i) would require the holder of a construction permit to evaluate deviations within 60 days. As with final amendments to part 21, if completion of the evaluation is not possible within 60 days, the final amended § 50.55(e)(1)(ii) would require that an "interim" written report be submitted within 60 days of the date of discovery of the defect or failure to comply. The final amendment to § 50.55(e)(1)(iii) would require that a director or responsible officer be

informed within 5 working days after completion of the evaluation identifying a defect or failure to comply associated with a substantial safety hazard.

9. Other Changes

(a) For consistency with §§ 50.55(e) and 50.73, part 21 has been changed to direct correspondence to the Document Control Desk with appropriate copies. Also, telephone communications have been specifically directed to the NRC Operations Center. In addition, in part 21, the number of copies required to be submitted has been reduced by eliminating copies to specific NRC offices.

(b) Section 21.2, which sets forth the scope of part 21 coverage, has been revised to include part 60 facilities.

The existing rule already applies to part 60 licensees (as an entity licensed to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel) and to those entities that supply basic components for an activity licensed under part 60. The extension of part 21 to organizations that construct geologic repositories will complete the part 21 coverage by extending it to all the major activities or facilities licensed by the Commission.

(c) Additional changes to definitions in part 21 and § 50.2 for § 50.55(e) are being made in response to comments received. First, the definition of "construction" and "constructing" is being added to § 50.2. This definition was omitted from the previously published proposed amendment.

The definition of "discovery" is being added to the regulations. The time limit for evaluation of deviations and failures to comply begins on the date a deviation or failure to comply is discovered. Thus, in order to complete the documentation, some evaluation must take place to identify a deviation or failure to comply. Further, the discovery process is intended to be included in the procedures necessary to comply with part 21 or § 50.55(e).

The definition of "notification" is being added to part 21 and § 50.2 for § 50.55(e). The purpose of this addition is to clarify understanding that the Commission must be notified by vendors, construction permit holders and licensees by letter or telephone call. Second party information or word of mouth information to unspecified members of the NRC staff does not constitute notification.

(d) In response to public comment, § 50.55(e)(10)(iii) was added to ensure understanding that recordkeeping in accordance with § 50.55(e) satisfies the requirements of part 21.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion in § 51.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

The final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0011 and 3150–0035.

Public reporting burden for this collection of information is estimated to average 95 hours per part 21 response and 95 hours per § 50.55(e) response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011 and 3150–0035), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on the final regulation. The analysis identifies and examines the costs and benefits of the final regulation and its alternatives. The analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies may be obtained from William R. Jones, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–4442.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) et seq., the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. The revision to § 50.55(e) applies solely to the holders of construction permits issued under § 50.23, none of which can be considered small entities. Although the revision to Part 21 could potentially affect a substantial number of small entities (see NRC size standards published December 9, 1985, 50 FR 50241) who supply basic components to NRC licensees, the economic impact on these firms is expected to be slight. Approximately 80 percent of the 300 annual nuclear-power-plant-related 10 CFR part 21 reports have been submitted by licensees; the remaining 20 percent have been submitted by nonlicensee suppliers and vendors. Section 21.2 eliminates duplicate reporting for those organizations subject to the defect reporting requirements, and therefore should reduce the economic impact on these organizations, including small businesses.

Backfit Analysis

The Commission has determined that the final rule, when effective, does not impose new safety reporting requirements on part 50 licensees. Therefore, a Backfit Analysis is not required for this final rule pursuant to § 50.109.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Civil penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 21 and 50.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 86 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and

§§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Section 21.2 is revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in parts 31, 34, 35, 39, 40, 60, 61, 70, or part 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high level radioactive waste, or to construct, manufacture, possess, own, operate or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation pursuant to part 50 of this chapter, an ISFSI for the storage of spent fuel licensed pursuant to part 72 of this chapter, a MRS for the storage of spent fuel or high level radioactive waste pursuant to part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 60, 61, 70, 71, or part 72 of this chapter.

(b) For persons licensed to construct a facility under a construction permit issued under § 50.23 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73 or § 73.71 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(d) Nothing in these regulations should be deemed to preclude either an individual, a manufacturer, or a supplier of a commercial grade item (see § 21.3(a–1)) not subject to the regulations in this part from reporting to the Commission, a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure. NRC regional offices and headquarters will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers of the five regions (answered during regular working hours), are listed in appendix D to part 20 of this chapter. The telephone number of the NRC Operations Center (answered 24 hours a day—including holidays) is (301) 951–0550.

3. In § 21.3 paragraphs (h) through (l) are redesignated as paragraphs (j) through (n); paragraph (g) is redesignated as paragraph (h); new paragraphs (g) and (i) are added; and paragraphs (a)(3) and (c), and newly redesignated (h) and (j) are revised to read as follows:

§ 21.3 Definitions.

* * * * *

(a) * * *

(3) In all cases, *basic component* includes safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

* * * * *

(c) *Constructing* or *construction* means the analysis, design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

(g) *Discovery* means the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 21.21. (a).

(h) *Evaluation* means the process of determining whether a particular deviation could create a substantial hazard or determining whether a failure to comply is associated with a substantial safety hazard.

(i) *Notification* means the telephonic communication to the NRC Operations Center or written transmittal of information to the NRC Document Control Desk.

(j) *Operating or operation* means the operation of a facility or the conduct of a licensed activity which is subject to the regulations in this part and consulting services related to operations that are safety related.

* * * * *

4. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, all written communications and reports concerning the regulations in this part must be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In the case of a licensee, a copy must also be sent to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.

5. In § 21.21, paragraph (b)(1) is redesignated (c)(1); paragraphs (b)(2) through (b)(4) are redesignated (c)(3) through (c)(5); paragraph (c) is redesignated (d); new paragraphs (b) and(c)(2) are added; and the section heading and paragraphs (a), and newly designated (c)(1), (c)(3) and (d) are revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part must adopt appropriate procedures to—

(1) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (a)(2) of this section, in all cases within 60 days of discovery, in order to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected, and

(2) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or

responsible officer or designated person as discussed in § 21.21(c)(5). The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(3) Ensure that a director or responsible officer subject to the regulations of this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in § 21.21(a)(1) or § 21.21(a)(2) if the construction or operation of a facility or activity, or a basic component supplied for such facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect.

(b) If the deviation or failure to comply is discovered by a supplier of basic components, or services associated with basic components, and the supplier determines that it does not have the capability to perform the evaluation to determine if a defect exists, then the supplier must inform the purchasers or affected licensees within five working days of this determination so that the purchasers or affected licensees may evaluate the deviation or failure to comply, pursuant to § 21.21(a).

(c)(1) A director or responsible officer subject to the regulations of this part or a person designated under § 21.21(c)(5) must notify the Commission when he or she obtains information reasonably indicating a failure to comply or a defect affecting—

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter.

(2) The notification to NRC of a failure to comply or of a defect under paragraph (c)(1) of this section and the evaluation of a failure to comply or a defect under paragraphs (a)(1) and (a)(2) of this section, are not required if the director or responsible officer has actual knowledge that the Commission has been notified in writing of the defect or the failure to comply

(3) Notification required by paragraph (c)(1) of this section must be made as follows—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (a)(1) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in § 21.21(a)(2).

(ii) Written notification to the NRC at the address specified in § 21.5 within 30 days following receipt of information by the director or responsible corporate officer under paragraph (a)(3) of this section, on the identification of a defect or a failure to comply.

* * * * *

(d) Individuals subject to this part may be required by the Commission to supply additional information related to a defect or failure to comply. Commission action to obtain additional information may be based on reports of defects from other reporting entities.

6. Section 21.51 is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part must prepare and maintain records necessary to accomplish the purposes of this part, specifically—

(1) Retain evaluations of all deviations and failures to comply for a minimum of five years after the date of the evaluation;

(2) Suppliers of basic components must retain any notifications sent to purchasers and affected licensees for a minimum of five years after the date of the notification.

(3) Suppliers of basic components must retain a record of the purchasers of basic components for 10 years after delivery of the basic component or service associated with a basic component.

(b) Each individual, corporation, partnership, or other entity subject to the regulations in this part must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components that relate to the discovery, evaluation, and reporting of deviations, failures to comply and defects, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)), §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 50.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 50.2 Definitions

* * * * *

Basic component means, for the purposes of § 50.55(e) of this chapter:

(1) When applied to nuclear power reactors, any plant structure, system, component, or part thereof necessary to assure

(i) The integrity of the reactor coolant pressure boundary,

(ii) The capability to shut down the reactor and maintain it in a safe shutdown condition, or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(2) When applied to other types of facilities or portions of such facilities for which construction permits are issued under § 50.23, a component, structure, system or part thereof that is directly procured by the construction permit holder for the facility subject to the regulations of this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(3) In all cases, *basic component* includes safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware, whether these services are performed by the component supplier or other supplier.

* * * * *

Construction or *constructing* means, for the purposes of § 50.55(e), the analysis, design, manufacture, fabrication, quality assurance, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

Defect means, for the purposes of § 50.55(e) of this chapter:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or activity subject to a construction permit under this part, if on the basis of an evaluation, the deviation could create a substantial safety hazard; or

(2) The installation, use, or operation of a basic component containing, a defect as defined in paragraph (1) of this definition; or

(3) A deviation in a portion of a facility subject to the construction permit of this part provided the deviation could, on the basis of an evaluation, create a substantial safety hazard.

* * * * *

Deviation means, for the purposes of § 50.55(e) of this chapter, a departure from the technical or quality assurance requirements defined in procurement documents, safety analysis report, construction permit, or other documents provided for basic components installed in a facility subject to the regulations of this part.

Director means, for the purposes of § 50.55(e) of this chapter, an individual, appointed or elected according to law, who is authorized to manage and direct the affairs of a corporation, partnership or other entity.

Discovery means, for the purposes of § 50.55(e) of this chapter, the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 50.55(e)(1).

* * * * *

Evaluation means, for the purposes of § 50.55(e) of this chapter, the process of determining whether a particular deviation could create a substantial safety hazard or determining whether a failure to comply is associated with a substantial safety hazard.

* * * * *

Notification means the telephonic communication to the NRC Operations Center or written transmittal of information to the NRC Document Control Desk.

* * * * *

Procurement document means, for the purposes of § 50.55(e) of this chapter, a contract that defines the requirements which facilities or basic components must meet in order to be considered acceptable by the purchaser.

* * * * *

Responsible officer means, for the purposes of § 50.55(e) of this chapter, the president, vice-president, or other individual in the organization of a corporation, partnership, or other entity who is vested with executive authority over activities subject to this part.

* * * * *

Substantial safety hazard means, for the purposes of § 50.55(e) of this chapter, a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity authorized by the construction permit issued under this part.

* * * * *

9. In § 50.55, paragraph (e) is revised to read as follows:

§ 50.55 Conditions of construction permits.

* * * * *

(e)(1) Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part must adopt appropriate procedures to—

(i) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (e)(1)(ii) of this section, in all cases within 60 days of discovery, in order to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.

(ii) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section. The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(iii) Ensure that a director or responsible officer of the holder of a facility construction permit subject to this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraph (e)(1)(i) or (e)(1)(ii) of this section, if the construction of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard,

(B) Contains a defect, or

(C) Undergoes any significant breakdown in any portion of the quality assurance program conducted pursuant to the requirements of appendix B to 10 CFR part 50 which could have produced a defect in a basic component. Such breakdowns in the quality assurance program are reportable whether or not the breakdown actually resulted in a defect in a design approved and released for construction or installation.

(2) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the facility fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard must notify the Commission of the failure to comply through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(3) The holder of a facility construction permit subject to this part who obtains information reasonably indicating the existence of any defect found in construction or any defect found in the final design of a facility as approved and released for construction must notify the Commission of the defect through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(4) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the quality assurance program has undergone any significant breakdown discussed in paragraph (e)(1)(ii)(C) of this section must notify the Commission of the breakdown in the quality assurance program through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(5) The notification requirements of paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to all defects and failures to comply associated with a substantial safety hazard regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report or construction permit. Evaluation of potential defects and failures to comply and reporting of defects and failures to comply under this section satisfies the construction permit holder's evaluation and notification obligations under part 21 of this chapter and, satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23 of this chapter to report defects, and failures to comply associated with substantial safety hazards under section 206 of the Energy Reorganization Act of 1974.

(6) The notification required by paragraphs (e)(2), (e)(3), and (e)(4) of this section must consist of—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(iii) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in paragraph (e)(1)(ii).

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter and a copy to the appropriate NRC resident inspector within 30 days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(iii) of this section, on the identification of a defect or failure to comply.

(7) The director or responsible officer may authorize an individual to provide the notification required by this section, provided that this must not relieve the director or responsible officer of his or her responsibility under this section.

(8) The written notification required by paragraph (e)(6)(ii) of this section must clearly indicate that the written notification is being submitted under § 50.55(e) and include the following information, to the extent known—

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for the facility or the activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by such defect or failure to comply.

(v) The date on which the information of such defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all the components in use at the facility subject to the regulations in this part.

(vii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(viii) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(9) The holder of a construction permit must prepare and maintain records necessary to accomplish the purposes of this section, specifically —

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the basic component.

(ii) Retain evaluations of all deviations and failures to comply for a minimum of five years.

(iii) Maintaining records in accordance with this section satisfies the construction permit holders recordkeeping obligations under part 21 of this chapter. The recordkeeping obligations of responsible officers and directors under part 21 of this chapter are met by recordkeeping in accordance with this section.

(10) The requirements of this § 50.55(e) are satisfied when the defect or failure to comply associated with a substantial safety hazard has been previously reported under Part 21 of this chapter or under § 73.71 of this chapter under § 50.55(e) or § 50.73 of this part. For holders of construction permits issued prior to October 29, 1991. Evaluation, reporting and recordkeeping requirements of § 50.55(e) may be met by complying with the comparable requirements of Part 21 of this chapter.

* * * * *

Dated at Rockville, Md, this 24th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17994 Filed 7–30–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–53; Special Conditions No. 25–ANM–45]

Special Conditions: British Aerospace Public Limited Company Model 4100 Airplane, Main Cabin Aisle Arrangement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the British Aerospace, Public Limited Company (BAe), Model 4100 airplane. This airplane will have a novel or unusual design feature associated with the main cabin aisle arrangement. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR)

EFFECTIVE DATE: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, BAe Public Limited Company applied for a type certificate for the Model 4100 series airplane in the transport airplane category. The Model 4100 is a derivative of the Model 3100, which is a small airplane and is certificated under the provisions of part 23 of the FAR. The Model 4100 is a low wing, twin engine turbo-prop airplane configured to seat 29 passengers in a 3-abreast arrangement. The Model 4100 airplane, which has the same fuselage cross section as the Model 3100 airplane does not have a traditional main cabin aisle arrangement.

The FAR specifies, in § 25.815, the minimum aisle width dimensions for transport category airplanes based on the passenger capacity. For airplanes with 20 or more passengers, a minimum 15-inch width at heights 25 inches or less above the main aisle floor and a minimum 20-inch width at heights greater than 25 inches above the floor must be maintained. Aisle width is measured at any point along the aisle, normal to the centerline of the aisle. The main aisle envisioned by the regulations would run in a straight line from one end of the passenger cabin to the other and would satisfy these width criteria. Long standing FAA policy has permitted slight deviation from a straight line where there is a transition from one cabin section to another, or where there are interior features which dictate that the aisle move laterally. For example, from tourist class to first class there may be a change from 5-abreast seating to 4-abreast seating which moves the aisle centerline laterally. This has been accepted provided the required widths are maintained at all heights normal to the path that an individual would take. This type of offset normally occurs at one or two points in a main cabin aisle. In addition, there is no offset permitted in the aisle vertically; that is, the required 15-inch dimension must lie completely below the projected 20-inch dimension at all points along the aisle.

British Aerospace has presented a main cabin aisle arrangement which utilizes an offset at each seat row. The left and right seat assemblies are offset from one another longitudinally such that the seatbacks are not opposite each other across the aisle. This arrangement permits a 20-inch measurement between seatbacks (at an angle to the airplane centerline) and the required 15-inch dimension is maintained within the projected 20-inch dimension vertically. Thus the "required aisle" is not a straight line from one end of the cabin to the other, but a series of alternating angular segments from seatback to seatback. It is important to note that there is a straight path along the cabin length, and the aisle floor does not deviate from side to side at all; however, the projected aisle width along this straight path does not reach 20 inches until a height of approximately 48 inches above the floor.

Other significant features of the cabin aisle include the height of the seatbacks above the aisle floor. A "typical" transport airplane cabin has the seatback height approximately 43 inches above the floor, with the space above that essentially open from one sidewall to the other. On the Model 4100, the aisle floor is below the level of the seat mountings such that the seatback height above the aisle floor is almost 50 inches. The overall cabin height is approximately 69 inches. Another feature of the design includes the use of overwing exits which are offset longitudinally, corresponding to the seat positions on the left and right of the airplane.

These special conditions for a staggered main cabin aisle, utilize the existing regulations to develop appropriate design criteria, and make mandatory certain favorable design features in the Model 4100.

Type Certification Basis

Under the provisions of § 21.17 and an existing bilateral agreement between the United States and the United Kingdom, BAe must show that the Model 4100 complies with the regulations established in the certification basis. The certification basis for the Model 4100 is as follows:

The certification basis for the Model 4100 will be established in accordance with § 21.29, using the Joint Aviation Regulations (JAR) as a reference point, with appropriate additional requirements incorporated to provide an equivalent certification basis to the FAR requirements for U.S. certification.

British Aerospace and British Civil Aviation Authority (CAA) have elected to have the TC basis be the following:

—JAR 25 as amended through Change 12 dated May 10, 1988;
—JAR 25 Orange Paper Amendment 88–1 effective October 18, 1988;
—JAR 1, definitions as amended through Change 4 dated June 1, 1987; and
—Any additional part 25 paragraphs necessary to provide a composite TC basis equal to the required Part 25 certification basis.

Based on §§ 21.29 and 21.17 of the FAR and the TC application date, the applicable U.S. TC basis would be as follows:

—Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25–1 through 25–66;
—Any applicable special conditions issued;
—Any applicable exemptions granted;
—Any equivalent safety findings made;
—The fuel venting and exhaust emission requirements of Part 34 of the FAR, and
—Part 36 of the FAR, including Amendments 36–1 through the latest amendment in effect on the date of TC.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 4100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 4100 will incorporate the following novel or unusual design features:

The required main cabin aisle widths will be established using measurements taken between seatbacks, which form a path in angular segments. The aisle width measured normal to the fuselage centerline above 25 inches from the floor, will extend from the seatback to the opposite cabin sidewall. Thus, while the required 15-inch dimension at cabin heights below 25 inches from the floor is completely within the projected 20-inch width vertically, the 20-inch portion is not centered over the 15-inch portion. (See Figure 1).

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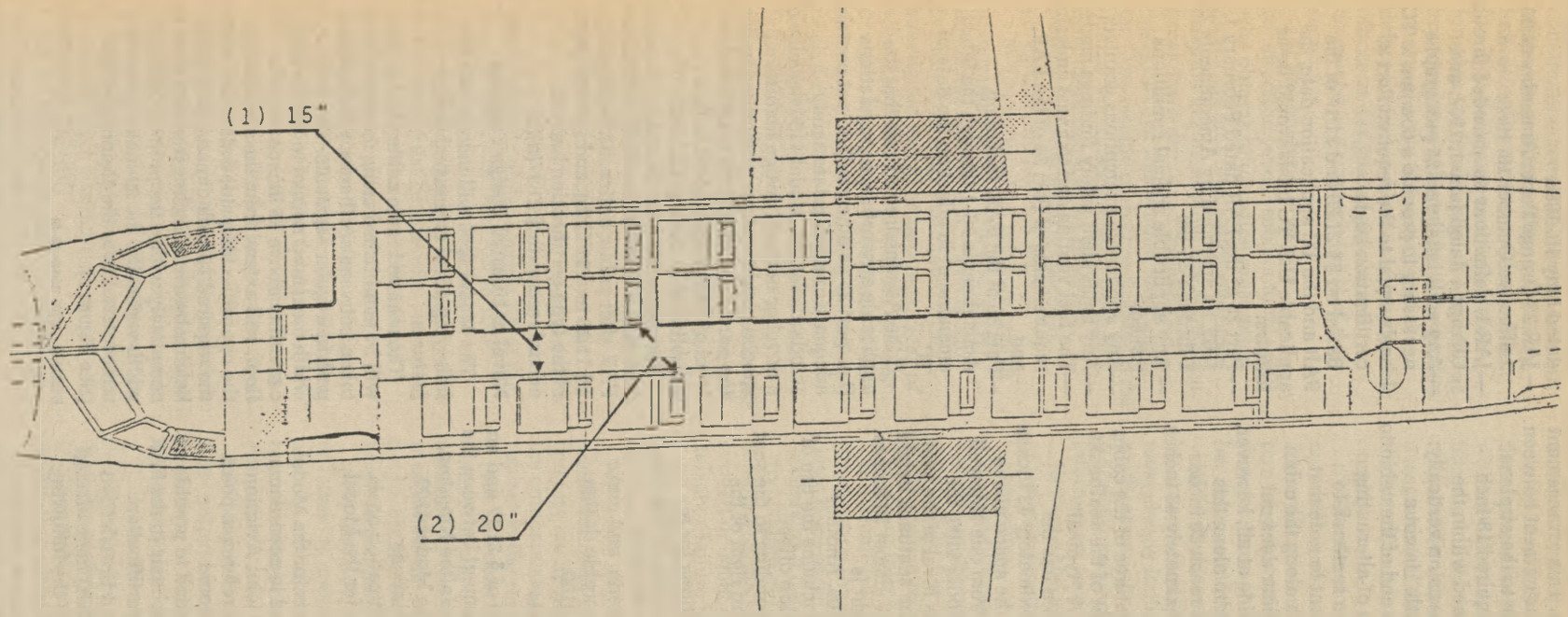

(1) AT HEIGHTS ABOVE THE FLOOR 25" AND BELOW

(2) AT HEIGHTS ABOVE THE FLOOR ABOVE 25"

FIGURE 1

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The FAA has carefully evaluated the relevant design parameters of the BAe Model 4100 and determined that the proposed main aisle configuration is clearly not what was envisioned by the regulations. The regulations do not specifically prohibit the arrangement proposed; however, they were predicated on a largely straight aisle which has only one or two lateral deviations; in other words, a traditional cabin arrangement. Therefore, special conditions are herewith issued to develop design criteria which will result in a level of safety equivalent to configurations on which the regulations are based.

The BAe Model 4100 incorporates several favorable features from a cabin safety standpoint. These include a good exit to passenger ratio for the number of passengers requested; i.e., one pair of Type II exits and one pair of Type III exits for 29 passengers. The regulations would allow up to 39 passengers with this exit arrangement. A second feature is a good exit distribution. Most passenger seats are only 3 seat rows from an exit. A third feature is a low total passenger count. Finally, Type III exits which are offset longitudinally, enable flow to the exits from opposite directions simultaneously without interference. Features of the cabin which are not favorable with respect to a standard configuration include the higher than normal seatback height and the low overall headroom, and the aisle stagger.

The FAA has addressed each of these points in developing these special conditions to preserve the level of safety inherent in the existing fleet. The higher than normal seatback height is not specifically addressed by regulations. Nonetheless, the additional 6–7 inches of restriction vertically will constrict the available space in the aisle for certain individuals and in certain evacuation scenarios. This is a factor that is inherently accounted for in the typical aisle configuration and provides an unquantified but real margin of safety. The FAA has attempted to retain this margin of safety by proposing to achieve a projected 20-inch aisle width at a more typical height above the aisle floor. Due to the very strict design constraints necessary to achieve the aisle configuration proposed for the Model 4100, it is considered mandatory that seat location and specific part number be the subject of FAA approval when any change is made.

Transport category airplanes with a passenger capacity of more than 44 are required to demonstrate by a full scale test that the maximum number of occupants can be evacuated in 90 seconds or less. Airplanes with passenger capacities of 44 or less are not required to meet this specific requirement since it is considered that the other regulations governing passenger safety will obviate the need for a specific evacuation demonstration. For example, the ratio of exits to passengers is much higher for very small passenger capacities than it is for larger capacities. In this case however, the FAA believes that the interior design of the Model 4100 differs sufficiently from the norm that a special evacuation demonstration is necessary to retain the same level of confidence as is provided for in typical designs. The form this demonstration should take has not been decided and will be discussed with the manufacturer and the CAA.

These special conditions provide requirements which result in a cabin aisle that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional aisle arrangements.

Accordingly, in addition to the requirements of § 25.815, these special conditions are issued for the BAe Model 4100 airplane with a staggered main aisle. Other conditions may be developed as needed based on further FAA review and discussions with the manufacturer and the Civil Aviation Authority (CAA).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–91–4–NM for the British Aerospace Model BAe 4100 airplane was published in the **Federal Register** on April 18, 1991 (56 FR 15847). Comments were received from a labor organization and an airframe manufacturer.

The first commenter proposed that seatbacks be required to breakover (except at overwing exits) to assist passengers moving through the cabin in an emergency. The FAA does not feel that it is appropriate to mandate seatback breakover, since the effect on the aisle will essentially be to compound the reduced width at all seat rows. Breakover may be a desirable feature from a crash dynamics standpoint, but this will be dependent on other factors and will be self-evident based on testing.

The commenter also expresses concern with the access to the aft exit, particularly with respect to the lavatory door shown on the accompanying figure. The commenter states that the door obstructs the flight attendant direct view and represents a major impediment to egress should it be distorted in an emergency landing. The FAA agrees that the lavatory door must not impede rapid egress. The position of the door in the figure is not representative however, of the position required for takeoff and landing. For takeoff and landing, the door will be fastened such that it does not block flight attendant direct view, or impede evacuation. The commenter also contends that the emergency exit arrangement is poor and suggests that an additional Type II exit be installed opposite the existing forward entry door. The commenter also feels the proposed standards contained in Notice of Proposed Rulemaking (NPRM) 91–11 be made applicable to this arrangement. The FAA disagrees that the exit arrangement is poor. In fact, for this size airplane, the FAA considers this type of exit arrangement to have advantages over diametrically located exits, since there is good exit distribution front to back, as well as left to right. The special conditions are based on the requirements of the existing regulations, and not those that might be enacted. Should other more stringent standards be adopted as future operating requirements, the Model 4100 would have to comply with those standards in order to be eligible for operation after a specified date in this country.

Finally, the commenter supports the requirement for an evacuation demonstration and proposes that the demonstration to be required be realistic. The commenter suggests that as an example, both exits of a given type be made inoperative for the test. As noted in the proposed special conditions, the FAA has not yet determined what kind of evacuation demonstration is appropriate. In any case, the purpose of the demonstration would be to show that the overall evacuation capability of the airplane is not degraded by the novel aisle arrangement.

The second commenter contends that there are insufficient grounds for issuance of special conditions and that the proposed aisle arrangement is, in fact, a non-compliance with § 25.815 of the FAR. The commenter bases this contention on the FAA policy on cabin aisles as described in the notice, as well as the content of the regulation. The FAA disagrees. To the contrary, existing FAA policy is based on the fact that the regulations do not prohibit an offset aisle, and therefore such an installation is permissible under the current requirements. Prior to the BAe 4100, offset aisles were an infrequent occurrence in a cabin, and seldom were

configured with the regulatory minimum dimensions on either side of the transition point. This situation was addressed by the FAA and was considered acceptable. The arrangement of the BAe 4100 is clearly a different situation that was not envisioned by the regulations. Nonetheless, the regulations do not prohibit such an installation. For this reason, the FAA is issuing special conditions that will address all of the special features needed to retain the level of safety intended by the existing regulations.

The commenter also addresses the seat back height on the 4100 and states that this will pose a "barrier" to the flow of passengers. The FAA agrees that seat back height is a factor in the overall effectiveness of the evacuation capability of the airplane and it is for this reason that the special conditions address the seat backs. The FAA considers that the special conditions adequately mitigate that effect of increased seat back height. The commenter contends that approval of this arrangement is a reversal of continuous FAA rulemaking efforts to improve human factors associated with passenger safety, and cites several examples; the commenter also references NPRM 91–11. As noted above, the special conditions are based on the applicable regulations currently in effect. It should also be noted that the special conditions are in addition to the existing regulations, which are still applicable.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the British Aerospace, Public Limited Company, Model BAe 4100 airplane.

1. The BAe Model 4100 may be approved with an offset main aisle provided:

a. There are no more than 29 passenger seats with no more than ten seat rows on either side of the aisle;

b. The interior arrangement includes one pair of Type II and one pair of Type III passenger emergency exits;

c. In addition to the requirements of § 25.815, the projected aisle width is at least 20 inches measured at height of 43 inches above the aisle floor; and

d. The Type III exits and adjacent seat rows are offset longitudinally such that persons approaching an exit from one end of the cabin may use the exit without interfering with those approaching the other exit from the other end of the cabin.

2. The location and part number of each passenger seat is defined by a drawing approved by the FAA or foreign civil airworthiness authority. The seat arrangement may not be configured without FAA approval.

3. An evacuation demonstration is conducted to demonstrate the efficacy of the aisle arrangement. The results of this demonstration must be found to be acceptable by the Administrator.

Issued in Renton, Washington, on July 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18075 Filed 7–30–91; 8:45 am]

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14 CFR Part 97

[Docket No. 26602; Amdt. No. 1457]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reasons, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on July 19, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * September 19, 1991*

Hawthorne, CA—Hawthorne Muni, LOC RWY 25, Amdt. 9
San Jose, CA—San Jose Intl, ILS RWY 30L, Amdt. 20
Akron, CO—Akron-Washington Co, VOR RWY 27, Amdt. 6, Cancelled
Washington, DC—Washington Dulles International, Converging ILS RWY 12, Amdt. 2
Washington, DC—Washington Dulles International, Converging ILS RWY 19L Amdt. 2
Washington, DC—Washington Dulles International, Converging ILS RWY 19R Amdt. 3
Mason City, IA—Mason City Muni, VOR RWY 35, Amdt. 5
Mason City, IA—Mason City Muni, VOR/DME RWY 17, Amdt. 3
Mason City, IA—Mason City Muni, LOC/DME BC RWY 17, Amdt. 5
Mason City, IA—Mason City Muni, ILS RWY 35, Amdt. 5
Ashland, KY—Ashland-Boyd County, VOR RWY 10, Amdt. 8
Ashland, KY—Ashland-Boyd County, SDF RWY 10, Amdt. 4
Bemidji, MN—Bemidji-Beltrami County, VOR RWY 13, Amdt. 16
Bemidji, MN—Bemidji-Beltrami County, VOR/DME or TACAN RWY 31, Amdt. 12
Bemidji, MN—Bemidji-Beltrami County, NDB RWY 31, Amdt. 5
Bemidji, MN—Bemidji-Beltrami County, ILS RWY 31, Amdt. 3
Willmar, MN—Willmar Muni-John L. Rice Field, VOR RWY 10, Amdt. 1
Willmar, MN—Willmar Muni-John L. Rice Field, VOR RWY 28, Amdt. 1
Newark, NJ—Newark Intl, ILS RWY 4R, Amdt. 8
Newark, NJ—Newark Intl, ILS RWY 22L, Amdt. 7
McAllen, TX—Miller Intl, VOR RWY 13, Amdt. 14
McAllen, TX—Miller Intl, VOR-A, Amdt. 13
McAllen, TX—Miller Intl, LOC BC RWY 31, Amdt. 7
McAllen, TX—Miller Intl, NDB RWY 13, Amdt. 6
McAllen, TX—Miller Intl, ILS RWY 13, Amdt. 7
Muleshoe, TX—Muleshoe Municipal, VOR/DME-A, Orig.
Wakefield, VA—Wakefield Muni, NDB RWY 20, Amdt. 4
Seattle, WA—Boeing Field/King County Intl, LOC BC RWY 31, Amdt. 10
Seattle, WA—Boeing Field/King County Intl, NDB-B, Amdt. 5, Cancelled
Seattle, WA—Boeing Field/King County Intl, ILS RWY 13R, Amdt. 24
Seattle, WA—Seattle-Tacoma Intl, VOR RWY 34L/R, Amdt. 7

** * * Effective August 22, 1991*

South Haven, MI—South Haven Area Regional, VOR RWY 22, Amdt. 8
North Kingstown, RI—Quonset State, NDB RWY 16, Orig., Cancelled
Brookings, SD—Brookings Muni, VOR RWY 12, Amdt. 10
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 8
Mitchell, SD—Mitchell Muni, VOR RWY 12, Amdt. 8
Mitchell, SD—Mitchell Muni, VOR RWY 30, Amdt. 1
Yankton, SD—Chan Gurney Muni, VOR RWY 13, Amdt. 2
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 2
Yankton, SD—Chan Gurney Muni, NDB RWY 31, Amdt. 2
Yankton, SD—Chan Gurney Muni, ILS RWY 31, Amdt. 3

** * * Effective July 25, 1991*

Eveleth, MN—Eveleth-Virginia Muni, VOR RWY 27, Amdt. 10
Eveleth, MN—Eveleth-Virginia Muni, VOR/DME RNAV RWY 27, Amdt. 1

** * * Effective July 16, 1991*

Nenana, AK—Nenana Muni, NDB RWY 3L, Amdt. 1
Cartersville, GA—Cartersville, VOR/DME-A, Amdt. 1

* * * *Effective June 12, 1991*

Aniak, AK—Aniak, LOC/DME RWY 10, Amdt. 1

[FR Doc. 91–18077 Filed 7–30–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 87P–0256/CP]

Performance Standards for Ionizing Radiation Emitting Products: Diagnostic X-Ray Systems and Their Major Components; Computed Tomography Equipment; Removal of a Requirement; Citizen Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to remove a requirement in the performance standard for diagnostic X-ray systems and their major components regarding computed tomography (CT) equipment.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On July 31, 1987, the National Electrical Manufacturers Association (NEMA) filed a petition requesting that FDA remove § 1020.33(f)(2)(ii) (21 CFR 1020.33(f)(2)(ii)), a paragraph of the performance standard for diagnostic X-ray systems and their major components regarding CT equipment. The requirement that the petition requested be removed is as follows:

> (ii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when X-ray transmission data are being collected for use in image production or technique factor selection.

On April 14, 1987, FDA sent a letter to all CT system manufacturers setting forth the agency's interpretation of § 1020.33(f)(2)(ii) and requesting additional information from the manufacturers as to how they had designed their systems to comply with § 1020.33(f)(2)(ii).

On June 24, 1987, FDA and manufacturers of CT systems through NEMA met to discuss the interpretation of § 1020.33(f)(2)(ii) and its impact on manufacturers. The manufacturers stated that a large number of currently marketed CT systems failed to comply with the agency's interpretation of § 1020.33(f)(2)(ii). Their problem in meeting the agency's interpretation was claimed to be due to the manufacturers' misinterpretation of the regulations.

Subsequently, FDA received a citizen petition from NEMA. The petition requested and stated arguments for the removal of the requirement in § 1020.33(f)(2)(ii).

In the **Federal Register** of January 16, 1991 (56 FR 1589), FDA issued a proposed rule to revoke § 1020.33(f)(2)(ii). Interested persons were given until March 18, 1991 to comment. Only one comment, which supported the proposal, was received. Therefore, FDA is issuing a final rule based upon the proposal.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

After considering the economic consequences of removing § 1020.33(f)(2)(ii), FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Performance standards for ionizing radiation emitting products, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act as amended by the Safe Medical Devices Act of 1990 and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR part 1020 is revised to read as follows:

Authority: Secs. 501, 502, 515–520, 530–542, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360gg–360ss, 360e–360j, 371, 381).

§ 1020.33 [Amended]

2. Section 1020.33 *Computed tomography (CT) equipment* is amended by removing paragraph (f)(2)(ii) and by redesignating paragraph (f)(2)(iii) as paragraph (f)(2)(ii).

Dated: July 11, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–18071 Filed 7–30–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–91–28]

Drawbridge Operation Regulations; New River, Jacksonville, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule—Removal.

SUMMARY: This amendment removes the regulations for the railroad bridge across New River, mile 21.1, in Jacksonville, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates all need for regulation.

EFFECTIVE DATE: This rule becomes effective on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704 (804) 398–6222.

DRAFTING INFORMATION: The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica Lombardi, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists. Consequently, this action is not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). Nevertheless, the Coast Guard certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.827 [Removed]

2. Section 117.827 is removed.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 91–18060 Filed 7–30–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN No. 0596–AA33

Sale and Disposal of National Forest Timber; Downpayment and Periodic Payments

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will increase and revise downpayment requirements and implement periodic payment requirements pursuant to the Federal Timber Contract Payment Modification Act (the Act). The intended effect is to fully implement the Act and thereby encourage orderly harvest of National Forest timber sales, reduce speculation, and increase security. This final rule also clarifies the Department's position on modification of existing contracts to take advantage of this rule's companion provision on market-related contract term additions which was published as a final rule in conjunction with the proposed rule on December 7, 1990 (55 FR 50643).

EFFECTIVE DATE: This rule is effective July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Walk, Timber Management Staff (202) 205–0858.

SUPPLEMENTARY INFORMATION: Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618(d)), requires that "(I)n any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash downpayment at the time the contract is executed and periodic payments to be made over the remaining period of the contract."

To implement these payment requirements as well as to implement the bid monitoring provisions of the Act, the Department of Agriculture published a proposed rule in the **Federal Register** of January 17, 1985 (50 FR 2591).

Substantial opposition was received on the proposal for periodic payments, primarily due to the requirement that they be made annually. Timber purchasers felt the annual payment would reduce flexibility in operations which, in turn, could increase operational costs and could result in environmental damage. Others felt that periodic payments would add to the complexity of purchasing National Forest timber.

After the initial public comments were analyzed, the Department of Agriculture published a final rule on October 11, 1985 (50 FR 41498), implementing only those provisions of the Federal Timber Contract Payment Modification Act that require: (1) Purchasers to make a downpayment for the sale of National Forest timber (36 CFR 223.49); and (2) the Secretary of Agriculture to monitor bidding patterns on timber sale contracts and to take action to discourage speculative bidding (36 CFR 223.51). The rule also required a midpoint payment on sales with contract periods exceeding 1 year (36 CFR 223.50) as an interim step to deter speculation under section 2(c) of the Act until a new rule on periodic payments could be developed.

In publishing the final rule of October 11, 1985, the Department also stated that it would offer a revised proposed rule implementing periodic payments in timber sale contracts. A new proposed rule was published on November 6, 1987 (52 FR 43020) to establish procedures for periodic payments as well as to add to the length of the contract terms in response to adverse conditions in the timber market. In addition, the Forest Service proposed to make clarifying amendments to the downpayment requirement (36 CFR 223.49) in order to minimize possible inconsistencies in the implementation of that requirement. On January 8, 1988, the comment period was extended to February 19, 1988 (53 FR 519). As a result of the input received, the Forest Service proposed a new rule concerning downpayment and periodic payment requirements to fulfill the requirement for periodic payments as specified in the Federal Timber Contract Payment Modification Act of 1984. That proposed rule was published on December 7, 1990 (55 FR 50647).

On April 24, 1991, the General Accounting Office (GAO) testified before the House Appropriations Subcommittee on Interior and Related Agencies regarding Forest Service collection efforts on defaulted contracts. GAO's testimony was directed at its work on the status of Forest Service collection efforts on defaulted contracts and on Forest Service actions to reduce future timber sale contract defaults.

GAO testified that the Forest Service's key contracting measures such as downpayments, periodic payments, performance bonds, and calculations of damages were similar to those of other timber sellers, with the exception that the Forest Service returns or credits the downpayment before the contract is substantially complete. GAO testified that, by crediting or returning the downpayment, the Forest Service has less security, in terms of access to funds in the event of a default, to protect the government's interest. GAO's testimony included a recommendation that the Secretary of Agriculture direct the Chief of the Forest Service to retain the downpayment until the contract is substantially complete.

Based on GAO's testimony and the recommendation GAO has made to the Secretary of Agriculture, the Forest Service will develop and publish for comment as soon as possible a proposed rule that would eliminate transfer or refund of the downpayment and that would respond to GAO's concern that the downpayment be retained until the contract is substantially complete. Pending evaluation of comments on such a proposed rule, the Forest Service will continue to allow refund or transfer of downpayments. This final rule does change the point of release from the 25 percent volume criteria to a 25 percent value criteria.

Response to Public Comments

The comment period on the new proposed rule closed January 7, 1991. Twenty-one respondents submitted comments. The comments came from private citizens (3), timber purchasers (12), timber purchaser associations (4),

the USDA Office of Inspector General (1), and a preservation association (1). Of the 20 public comments received, 18 came from the West and 2 from the East.

Fifty-seven percent of the respondents expressed support for the downpayment and periodic payment proposals either in their entirety or with suggested modification. The remaining 43 percent did not support the proposal because of perceived increases in the cost of doing business.

The following summarizes the major comments and suggestions received on specific provisions of the proposed rule and the Department's response to these in the final rule.

Downpayment Requirements

The proposed revisions to 36 CFR 223.49 would have changed the downpayment requirements to 10 percent of the advertised value plus 20 percent of the bid premium, deleted all references to bid ratio, not allowed use of the downpayment to cover other charges until 25 percent of the total bid value had been charged and paid for or shown on the timber sale statement of account to have been cut, removed, and paid for, authorized the Chief to increase the period of retention of the downpayment to deter speculation, and provided that the downpayment could be released on lump sum sales to apply toward the single payment unit payment. It is not the intent of the Act to require payments exceeding the total bid value for lump sum sales.

Comment. Thirteen respondents objected to the language that allows the Chief of the Forest Service to increase the period of retention for the downpayment amount to deter speculative bidding. These respondents thought the requirement was too vague and should be supported by additional criteria defining speculative bidding.

Response. The Department agrees that additional criteria are needed and will require the Agency to develop and propose specific criteria for determining speculative bidding. These proposed criteria will be published in the **Federal Register** for public comment prior to implementation of the final policy. Therefore, the final rule retains the provision authorizing the Chief of the Forest Service to extend the period of retention for the downpayment to deter speculative bidding. This provision was included as part of § 223.49(d) in the proposed rule and is found at § 223.49(j) in the final rule. The authority to retain the downpayment for a longer period is an appropriate complement to the existing authority at 36 CPA 223.49(c)(1) which allows the Chief to increase the amount of the downpayment to deter speculation.

Comment. Six respondents objected to changing the downpayment amount to 10 percent of the advertised value plus 20 percent of the bid premium because this would increase cash requirements for timber sale contracts, which would be adverse to their ability to buy timber sales.

Response. Section 223.49(c) of the proposed rule contained a mistake on how the minimum downpayment should be calculated. The preamble stated that the minimum downpayment would be equivalent to 10 percent of the "advertised value" plus 20 percent of the bid premium. However, the rule itself referred to 10 percent of the "total bid value." The final rule has been corrected to refer to "total advertised value".

The Department recognizes that in instances where timber purchasers are presently being required to deposit only the minimum 10 percent of total bid value, the rule will result in an increased deposit. Nevertheless, the Department believes that all purchasers should be treated equally. Accordingly, the calculation for the amount of the downpayment will be uniform and equal for all sales under the final rule. The Department is of the opinion that the amount calculated using 10 percent of the advertised rate and 20 percent of the bid premium is the amount needed to provide the minimum amount of financial security to protect the Government in the event of contract default.

Comment. Four respondents opposed any change in the criteria for releasing the downpayment. The proposed rule would have changed the release basis from 25 percent of volume removed to 25 percent of the value removed.

Response. Under § 223.49(d) of the proposed rule, a purchaser could not apply the amount deposited as a downpayment to cover other payments due on that sale until stumpage value representing 25 percent of the total bid value had been charged and paid for on scaled sales or until stumpage value representing 25 percent of the total bid value is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales. The Department thinks that the value criteria for release of the downpayment is more equitable due to the variability in species rates. The value criteria also provides greater security for the Government because purchasers will be required to pay at least 25 percent of the sale value before the downpayment deposit is released. Therefore, this provision has been retained in the final rule.

Periodic Payments

The current regulation requires a midpoint payment of 25 percent of the total contract value calculated at the bid date, including required deposits, or 50 percent of the bid premium, whichever is greater. Under the current regulation, this 25 percent payment is due at the midpoint between bid date and termination date. The proposed rule abolished the midpoint payment and included an initial periodic payment of 35 percent of total contract value calculated at the bid date, exclusive of other required deposits, or 50 percent of bid premium, whichever is greater (36 CFR 223.50(b)(1)). This 35 percent payment would be due at the midpoint between the scheduled road completion date or award date (if there is no road construction) and the termination date to more closely reflect the true operating season. The proposed rule also included the requirement for an additional periodic payment of 75 percent of the total contract value, calculated at the award date, for contracts exceeding two full operating seasons. The final rule has changed this calculation date from award to bid date to be consistent with the calculation for the initial periodic payment. The proposed rule provided that the additional periodic payment would be due either 1 year after the initial periodic payment or at the midpoint of the last normal operating season whichever occurs first.

Comment. Six respondents objected to the increased payment requirements.

Response. The Department is compelled to increase the payment requirements to meet statutory requirements of the Federal Timber Contract Payment Modification Act which requires that periodic payments be included in timber sale contracts. The Department's opinion is that payment amounts and frequency as stated in the proposed rule are the minimum requirements necessary to comply with the statute. Therefore, the final rule retains the additional payment requirements with the changes discussed herein.

Comment. Two respondents suggested that more stringent payment requirements than those proposed in the rule are appropriate. One of these respondents proposed an alternative payment procedure requiring the entire sale value be paid at the beginning of the sale. The other respondent suggested a series of payments at regular intervals, with the additional requirement that cash deposit value be maintained equal to one unit ahead of the actual value of the cutting.

Response. The Department disagrees with these suggested proposals. Requiring full payment would severely restrict competition for sales and substantially increase the cost of buying National Forest timber. The additional payment proposal would increase the cost of holding timber sale contracts and complicate the administration of the contracts.

Comment. One respondent indicated that the proposed rule changed the date on which the initial periodic payment will be due in comparison with the due date of the current midpoint payment.

Response. The Department agrees that a change was made and supports the change. The criteria used for the current midpoint payment focuses on the bid date. The current midpoint payment is included in contracts when the term of the contract from bid date to termination date is greater than 1 year. The criteria in the proposed rule for requiring an initial periodic payment is the number of full operating seasons from road completion date or award date if no roads are required. The use of the operating season criteria recognizes the actual period being allowed for harvest operations and, therefore, is a more equitable basis for representing the time available for scheduling timber harvest. This is retained in the final rule.

The proposed rule required that purchasers initiate a written request to have periodic payment determination dates adjusted where the contract qualified for contract term adjustment or market-related contract term addition. The final rule deletes this requirement. The agency will automatically adjust periodic payment determination dates when contract term adjustment or market-related contract term addition is granted. The agency will not adjust periodic payment determination dates that have already passed. The final rule provides that periodic payment determination dates shall not be adjusted when contract term extension is granted under 36 CFR 223.115.

Comment. Five respondents expressed concern about the discretion given the Contracting officer to develop, prior to timber sale advertisement, an alternative periodic payment schedule to provide for harvest early in the contract period for salvage or other types of timber sales, where another periodic payment would better meet sale objectives. These respondents thought that early harvest could be accomplished by cutting unit completion requirements or by positive incentives such as those provided under urgent removal procedures or price discounting.

Response. After further review of the requirement, the Department agrees that the alternative periodic payment schedule is not needed. Accordingly, the provision appearing at 36 CFR 223.50(f) of the proposed rule is not adopted.

Comment. The Department also received comments objecting to delaying implementation of market-related contract term addition.

Response. The Department has decided that the final rule must clarify the linkage between periodic payment requirements of this rule and requirements adopted in the companion market-related contract term addition rule published December 7, 1990 (55 FR 50643). The market-related contract term addition rule required that a contract clause implementing the rule be added to all contracts that contain "periodic payment requirements" (36 CFR 223.52(a)). No contracts will contain "periodic payment requirements" until this rule becomes effective. Due to the interrelation of these two rules, market-related contract term addition cannot be made available until this final rule becomes effective.

The existing midpoint payment is not considered a "periodic payment" for purposes of the market-related contract term addition rule. The preamble to the final rule establishing the midpoint payment (50 FR 41493, October 11, 1985) expressly noted that the midpoint payment was an interim step to deter speculation under section 2(c) of the Federal Timber Contract Payment Modification Act and that the periodic payment requirement of section 2(d) would be implemented by a future rule. Thus, the midpoint payment was not considered to satisfy the "periodic payment" requirement of section 2(d) of the Act.

The Department sought to implement the periodic payment requirements of section 2(d) through a proposed rule published November 6, 1987 (52 FR 43020). In that rule, the Department sought to allay concerns that periodic payments would be too onerous by including a market-related contract term addition provision that would grant additional time to complete contracts if severe market conditions occur. The Department's position is that the market-related contract term addition rule and this rule on periodic payments have clearly been companion provisions from the inception of the market-related rule. The final rule on market-related contract term addition was adopted December 7, 1990 (55 FR 50643). On the same date, at 55 FR 50647, a new proposed rule on downpayment and periodic payment was published and a chart showing the relationship of the two rules was published at 55 FR 50642.

Comment. One respondent questioned whether purchasers would be able to apply for market-related contract term addition immediately after the January 7, 1991, effective date of the rule or whether they would have to wait until two "down" quarters occurred after this date.

Response. While delay in implementing the market-related contract term addition rule is inevitable due to the relationship of the two rules, the Department intends for the periodic payment and market-related contract term addition rules to have retroactive effect so that holders of contracts executed prior to July 31, 1991, may qualify for a market-related contract term addition based upon two consecutive qualifying quarters that may have occurred after the contract was awarded. This is the Department's intent even where these qualifying quarters occurred prior to the January 7, 1991, effective date of the market-related contract term addition final rule or prior to the date on which the purchaser may choose to modify its contract to include contract provisions allowing a market-related contract term addition and requiring periodic payments pursuant to this final rule on periodic payments. The Department notes that such retroactive application of the periodic payment and market-related contract term addition rules is consistent with the Department's implementation of earlier contract term extension programs such as the Multi-Sale Extension Policy. These earlier extension programs were also based upon recognition of a pre-existing market downturn.

Comment. One respondent objected to providing market-related contract term addition to holders of existing contracts.

Response. The final rule, at § 223.50(f) clarifies that a market-related contract term addition is only available to holders of existing contracts through contract modification. The purchaser must consent to a simultaneous modification implementing the periodic payment provisions of this final rule. This requirement is consistent with the historical development of the two rules and with the Comptroller General's longstanding rule that no officer or agent of the Government has the authority to waive contractual rights which have accrued to the United States or to modify existing contracts to the detriment of the Government without legal consideration (44 Comp. Gen. 746, 749 (1965); 5 Comp. Gen. 605 (1926)).

Modification of existing contracts is consistent with the history of the market-related contract term addition and periodic payment rules and

beneficial in encouraging the orderly harvest of existing sales. The proposed rule on periodic payments and the final rule on market-related contract term addition were published together in separate part on December 7, 1990. While the proposed rule on periodic payments made no mention of modifying existing contracts, the final rule on market-related contract term addition clearly contemplated that holders of existing contracts would be allowed to participate in the combined periodic payment and market-related contract term addition program (55 FR 50643). That rule recognized that some existing contracts would qualify for the program by specifically excluding contracts that were previously extended under the Multi-Sale Extension Policy.

While the Department intends to make the periodic payment and market-related contract term addition provisions available to existing contract holders, some limits must be established on when purchasers can choose to modify existing contracts. Without some limit on time, purchasers could wait until near the contract termination date to request contract modification. In this way, purchasers would know that their contracts qualified for market-related contract term addition but could avoid the obligation to make additional periodic payment(s) during the unextended contract term. This would be inequitable to holders of most contracts prepared after the effective date of this final rule because those contracts will contain both the market-related contract term addition and periodic payment provisions from their inception. Moreover, allowing holders of existing contracts to avoid immediate implementation of the periodic payment provision would also seriously prejudice the primary purpose of the regulatory initiatives which were to implement the Act and encourage orderly harvest of timber sales.

For these reasons, the final rule, at § 223.50(f), provides that contracts executed before July 31, 1991, shall not be modified to include contract provisions allowing for market-related contract term addition unless the purchaser makes a written request by September 16, 1991, to the Contracting Officer for a simultaneous modification implementing the periodic payment requirements of this final rule. This is 45 days from the effective date of this rule. The Department considered several alternative time limits and concluded that allowing more than 45 days would encroach upon the approaching normal operating season of many existing sales. The Department believes that, where purchasers request modification, it is advantageous to have periodic payment and market-related contract term addition provisions fully implemented into existing contracts before the beginning of the normal operating season. The Department concludes that the 45-day period is more than adequate for purchasers to familiarize themselves with the regulatory program and decide whether to participate. Accordingly, any request to modify an existing contract to incorporate the periodic payment and market-related contract term addition provisions received after the 45-day period has expired will be denied as prejudicial to the effective implementation and administration of the combined periodic payment and market-related contract term addition rulemaking.

Comment. One respondent was concerned that the proposed rule left the amount of the periodic payment to the discretion of the Agency by requiring at, 36 CFR 223.50 (c) and (d), that the stumpage payments equal "at least" 35 or 75 percent, respectively, of the total contract value. This respondent thought that this language would allow the Agency to set the percentage at any level above 35 or 75 percent.

Response. The Department does not intend to allow a sale-by-sale determination of the percentage of the periodic payment amounts and has modified the language of the final rule to clarify this intent. The final rule sets the periodic payments at 35 and 75 percent respectively and provides no discretion to increase that percentage. The contract will specify an exact figure rather than a percentage, and this figure need not precisely reflect the percentage but should be rounded up to the next $100. This is consistent with the proposed changes suggested in the predecessor to this rule at 52 FR 43020 (November 6, 1987).

The Department has made several other changes in the final rule to clarify that the Forest Service will compare stumpage payments made by the purchaser at the periodic payment determination date with the periodic payment required in the contract. If the purchaser's stumpage payments are less than the periodic payment due, the purchaser will have to make a payment equal to the difference between the stumpage payments made and the periodic payment required. If the purchaser's stumpage payments equal or exceed the scheduled periodic payment then the periodic payment requirement is satisfied and no additional payment is necessary.

In discussing § 223.50(d) in the preamble of the proposed rule, the Forest Service specified that the additional periodic payment would be 75 percent of the "bid value" and that the Forest Service would reduce the periodic payment amount due if the payment would result in a purchaser's credit balance for timber charges exceeding the current contract value. The reference to "bid value" in this discussion was ambiguous. Accordingly, the final rule modifies the definition for "total contract value" in § 223.50(a) to clarify the ambiguity and adds a new term and definition for "current contract value." Under the final rule, "current contract value" is defined as the sum of the products of current contract rates, and, in a scaled sale, estimated remaining unscaled volume or, in a tree measurement sale, estimated remaining quantities by species of included timber meeting utilization standards. The revised definitions in the final rule also make clear that both the initial periodic payment and the additional periodic payment will be based on the total contract value at bid date, excluding required deposits, not on "bid value."

Summary

Having fully considered the comments on the proposed rule, the Department is adopting a final rule to amend the downpayment requirements in timber sale contracts, to establish periodic payment requirements and to coordinate implementation of this final rule with its companion provision on market-related contract term additions which was adopted December 7, 1990 (55 FR 50643).

This rule strengthens the current downpayment requirement by increasing both the amount and the period of retention for certain sales. The rule will also fully implement the periodic payment requirement of the Federal Timber Contract Payment Modification Act. The periodic payment requirements are structured to reflect the progression of normal harvest operation. The payment period considers the fact that, in many contracts, purchasers must build roads before harvest can begin. Therefore, the initial periodic payment is halfway through the harvest period. Setting this initial payment at 35 percent of total contract value similarly recognizes normal harvest scheduling. The Department will not require the use of periodic payments on sales having less than one operating season. The Department has determined that requirements for a downpayment, immediate harvest, and advance deposits made the periodic payment

redundant for sales of such short duration.

The Department considered the total effects of both the downpayment and the periodic payment in this rule. The rule combines various financial requirements to meet the intent of the Act. In so doing, the Department believes this rule will also encourage the prompt and orderly harvest of timber, ensure an orderly flow of revenues from timber sales, and increase financial security during the contract period.

This final rule is effective upon publication. The requirement of the Administrative Procedure Act (APA) for a 30-day waiting period (5 U.S.C. 553(d)) does not apply. The APA specifically exempts rules concerning Agency management, public property or contracts from notice and comment requirements or the 30-day waiting period (5 U.S.C. 553(a)(2)). The Secretary of Agriculture has waived this statutory exemption for USDA agencies solely as to the notice and comment provisions of the APA (36 FR 13804, July 24, 1971); the waiver does not affect the statutory exemption from the waiting period requirement of 5 U.S.C. 553(d). Accordingly, this rule may be made effective upon publication. The Department chooses to make the rule effective upon publication because the companion provision on market-related contract term addition became final on January 7, 1991, and contracts cannot be modified under that rule until this rule takes effect.

The Department notes that the final rule contains several changes from the proposed rule. The Department concludes that these changes from the proposed rule are a logical outgrowth of the proposed rule and comments received and do not require further notice and comment.

Regulatory Impact

This action has been reviewed pursuant to Executive Order 12291 and Department of Agriculture procedures, and it has been determined that this regulation is not a major rule. It implements the requirement of the Federal Timber Contract Payment Modification Act requiring the Secretary of Agriculture to provide for downpayments and periodic payments for Forest Service timber sale contracts. While the final rule would change when certain purchasers would pay for timber, the final rule would not change the total amount of money that purchasers would pay for their sales. Exclusive of the statutory requirements, this rule would not have an annual effect on the economy of $100 million or more and would not result in a major increase in costs for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. The rule also would not result in 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. The final rule should strengthen the United States forest products industry by implementing Congressional direction to promote orderly harvest and payment for National Forest timber and to deter speculation on Forest Service timber sales and, thereby, should help to preserve the structure of the industry and the employment generated by it.

Moreover, this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 605(b)). The downpayment and periodic payments are required by statute and will not adversely affect those small entities who harvest their National Forest timber sales in a timely manner.

The provisions of this rule are limited to administrative and business practices related to contract administration and, therefore, have no effect on forest resources. Each timber sale is subject to analysis of its environmental effects before it is sold. This rule is intended to have a positive economic and social effect by averting defaults, maintaining Treasury receipts, and helping stabilize industry and timber-dependent communities. As such, this rule is strictly procedural and would have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of an analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Furthermore, the final rule would not result in additional procedures, paperwork, or other information collection not already required by law and approved for use. Under this rule, only purchasers who wish to modify existing contracts to take advantage of the periodic payment and market-related contract term addition program are required to make a written request. This requirement is a simple election which does not require the purchaser to produce "facts" or "opinions". Therefore, the Department concludes that this requirement does not constitute a "collection of information" (under 5 CFR 1320.7(c) or 44 U.S.C. 3507(a)) and review pursuant to the Paperwork Reduction Act is not required.

Lists of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, subpart B of part 223 of chapter II of title 36 of the Code of Federal Regulations, is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; unless otherwise noted.

Subpart B—Timber Sale Contracts [Amended]

2. Amend § 223.49 by revising paragraph (a) introductory text and paragraphs (a) (1) through (4), (c), (d), and adding a new paragraph (j) to read as follows:

§ 223.49 Downpayment.

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) *Ineffective purchaser credit* is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) *Bid premium* is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) *Lump sum timber sales* are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

* * * * *

(c) The minimum downpayment shall be equivalent to 10 percent of the total advertised value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation. To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using

appropriate conversion factors with any necessary adjustment.

(d) On scaled sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for. On tree measurement sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale is shown on the timber sale statement of account to have been cut, removed, and paid for. For lump sum sales, the downpayment amount may be applied to payment for release of the single payment unit.

* * * * *

(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

3. Revise § 223.50 to read as follows:

§ 223.50 Periodic payments.

(a) For the purposes of this section, the following terms have the meaning given:

(1) *Total contract value* is the product of the estimated volume of the sale multiplied by the rates bid by the purchaser. Total contract value excludes required deposits and is determined at bid date.

(2) *Current contract value* is the sum of the products of the current contract rates and, in a scaled sale, estimated remaining unscaled volume or, in a tree measurement sale, the estimated remaining quantities by species of included timber meeting utilization standards.

(3) *Normal operating season* is the period so specified in a timber sale contract.

(4) *Periodic payment(s)* is/are amount(s) specified in a timber sale contract that a purchaser must pay by the periodic payment determination date(s) unless reduced by amounts paid as stumpage for volume removed.

(5) *A periodic payment determination date* is a date specified in a timber sale contract upon which the Forest Service will compare the payments made by the timber sale purchaser for timber charges (stumpage), exclusive of required deposits, with the periodic payment amount required as of that date in the contract.

(b) Except for lump sum sales, each timber sale contract of more than one full normal operating season shall provide for periodic payments. The number of periodic payments required will be dependent upon the number of normal operating seasons within the contract, but shall not exceed two such payments during the course of the contract. Periodic payments must be made by the periodic payment determination date, except that the amount of the periodic payment shall be reduced to the extent that timber has been removed and paid for by the periodic payment determination date. Should the payment fall due on a date other than normal billing dates, the contract shall provide that the payment date will be extended to coincide with the next timber sale statement of account billing date.

(1) At a minimum, each such contract shall require an initial periodic payment at the midpoint between the specified road completion date and the termination date. If there is no road construction requirement, payment shall be due at the midpoint between award date and the termination date.

(2) Contracts exceeding 2 full operating seasons shall require an additional periodic payment to be due no later than the midpoint of the last normal operating season or 12 months from the initial periodic payment whichever date is first.

(c) Each timber sale contract shall require the initial periodic payment to equal 35 percent of the total contract value or 50 percent of the bid premium, whichever is greater. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(d) Where an additional periodic payment is required by the timber sale contract, this payment will equal 75 percent of the total contract value. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(e) Periodic payment determination dates that have not been reached shall be adjusted when contract term adjustments are granted under 36 CFR 223.46 or market-related contract term additions are granted under 36 CFR 223.52. Periodic payment determination dates shall not be adjusted when contract term extension is granted under the general authority of 36 CFR 223.115.

(f) In accordance with 36 CFR 223.52(a), no contract executed before July 31, 1991, shall be modified to include contract provisions allowing for market-related contract term additions unless the purchaser makes a written request to the Contracting Officer by September 16, 1991, for a simultaneous modification implementing the periodic payment requirements of this section. The midpoint payment clause in contracts executed before July 31, 1991, is not the "periodic payment requirement" mandated by 36 CFR 223.52(a).

Dated: July 24, 1991.

John H. Beuter,

Acting Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-18015 Filed 7-30-91; 8:45 am]

BILLING CODE 3410-11-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1105, 1106, 1150, 1152, and 1180

[Ex Parte No. 55 (Sub-No. 22A)]

RIN 3120-AB53

Implementation of Environmental Laws

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: We are revising our regulations at 49 CFR parts 1105 et seq. (Guidelines for Implementation of the National Environmental Policy Act of 1929) and 49 CFR 1106 et seq. (Implementation of the Energy Policy and Conservation Act of 1975) [1] to (1) combine the two sets of regulations; (2) revise and clarify the content requirements for environmental and historic reports; (3) provide for service of environmental reports on various state, federal and local agencies; (4) eliminate unnecessary requirements; and (5) reclassify and clarify the types of actions for which environmental and/or historic reports and analyses are required. We are also revising our regulations at 49 CFR parts 1150, 1152, and 1180 with respect to the Commission's implementation of various environmental and energy laws. We published proposed rules in the Federal Register on March 30, 1990 at 55 FR 11973. Twenty parties filed comments. Having carefully considered all the comments, we now adopt regulations to enable us to meet our responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–43, and related laws, including the Energy Policy

[1] These regulations were issued in Revision of Natl. Envi. Policy Act Guidelines, 363 I.C.C. 653 (1980), and Implementation of the Energy Policy and Conservation Act, 357 I.C.C. 599 (1978), respectively.

and Conservation Act of 1975, 42 U.S.C. 6362(b), National Historic Preservation Act, 16 U.S.C. 470f, Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Endangered Species Act, 16 U.S.C. 1531, as set forth below.

EFFECTIVE DATE: These rules will become effective on September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Elaine Kaiser, (202) 275–0804, or Harold Johnson, (202) 275–7316. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275–1721.]

This action will improve our ability to assess whether our decisions will significantly affect either the quality of the human environment or the conservation of energy resources. It will not have a significant overall impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1106

Energy conservation, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: July 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, parts 1011, 1105, 1106, 1150, 1152, and 1180 of the Code of Federal Regulations are amended as follows.

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. In § 1011.8, a new paragraph (c)(9) is added to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(9) To issue a decision making a finding of no significant impact in exemption proceedings.

3. Part 1105 is revised to read as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

Sec.

1105.1 Purpose.
1105.2 Responsibility for administration of these rules.
1105.3 Information and assistance.
1105.4 Definitions.
1105.5 Determinative criteria.
1105.6 Classification of actions.
1105.7 Environmental reports.
1105.8 Historic reports.
1105.9 Coastal Zone Management Act requirements.
1105.10 Commission procedures.
1105.11 Transmittal letter for applicant's report.
1105.12 Sample newspaper notices for abandonment exemption cases.

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

§ 1105.1 Purpose.

These rules are designed to assure adequate consideration of environmental and energy factors in the Commission's decisionmaking process pursuant to the National Environmental Policy Act, 42 U.S.C. 4332; the Energy Policy and Conservation Act, 42 U.S.C. 6362(b); and related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, and the Endangered Species Act, 16 U.S.C. 1531.

§ 1105.2 Responsibility for administration of these rules.

The Director of the Office of Economics shall have general responsibility for the overall management and functioning of the Section of Energy and Environment. The Director is delegated the authority to sign, on behalf of the Commission, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Chief of the Section of Energy and Environment is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Commission's NEPA process, to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Commission policy. The Director may further delegate procedural authority to the Chief of the Section of Energy and Environment as appropriate. Appeals to the Commission will be available as a matter of right.

§ 1105.3 Information and assistance.

Information and assistance regarding the rules and the Commission's environmental and historic review process is available from the Section of Energy and Environment, Interstate Commerce Commission, 12th & Constitution Ave. NW., Washington, DC 20423, Telephone: 202–275–7684.

§ 1105.4 Definitions.

In addition to the definitions contained in the regulations of the Council on Environmental Quality (40 CFR Part 1508), the following definitions apply to these regulations:

(a) *Act* means the Interstate Commerce Act, Subtitle IV of Title 49, U.S. Code, as amended.

(b) *Applicant* means any person or entity seeking Commission action, whether by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

(c) *Commission* means the Interstate Commerce Commission.

(d) *Environmental Assessment* or "EA" means a concise public document for which the Commission is responsible that contains sufficient information for determining whether to prepare an Environmental Impact Statement or to

make a finding of no significant environmental impact.

(e) *Environmental documentation* means either an Environmental Impact Statement or an Environmental Assessment.

(f) *Environmental Impact Statement* or "EIS" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action significantly affecting the quality of the human environment.

(g) *Environmental Report* means a document filed by the applicant(s) that:

(1) provides notice of the proposed action; and

(2) evaluates its environmental impacts and any reasonable alternatives to the action. An environmental report may be in the form of a proposed draft Environmental Assessment or proposed draft Environmental Impact Statement.

(h) *Filing* means any request for ICC authority, whether by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

(i) *Section of Energy and Environment* or "SEE" means the Section that prepares the Commission's environmental documents and analyses.

(j) *Third-Party Consultant* means an independent contractor, utilized by the applicant, who works with SEE's approval and under SEE's direction to prepare any necessary environmental documentation. The third party consultant must act on behalf of the Commission. The railroad may participate in the selection process, as well as in the subsequent preparation of environmental documents. However, to avoid any impermissible conflict of interest (*i.e.* essentially any financial or other interest in the outcome of the railroad-sponsored project), the railroad may not be responsible for the selection or control of independent contractors.

§ 1105.5 Determinative criteria.

(a) In determining whether a "major Federal action" (as that term is defined by the Council on Environmental Quality in 40 CFR 1508.18) has the potential to affect significantly the quality of the human environment, the Commission is guided by the definition of "significantly" at 40 CFR 1508.27.

(b) A finding that a service or transaction is not within the ICC's jurisdiction does not require an environmental analysis under the National Environmental Policy Act or historic review under the National Historic Preservation Act.

(c) The environmental laws are not triggered where the ICC's action is nothing more than a ministerial act, as in:

(1) The processing of abandonments proposed under the Northeast Rail Services Act (45 U.S.C. 744(b)(3));

(2) Statutorily-authorized interim trail use arrangements under 16 U.S.C. 1247(d) [*see*, 49 CFR 1152.29]; or

(3) Financial assistance arrangements under 49 U.S.C. 10905 (*see* 49 CFR 1152.27).

Finally, no environmental analysis is necessary for abandonments are authorized by a bankruptcy court, or transfers of rail lines under plans of reorganization, where our function is merely advisory under 11 U.S.C. 1166, 1170, and 1172.

§ 1105.6 Classification of actions.

(a) Environmental Impact Statements will normally be prepared for rail construction proposals other than those described in paragraph (b)(1) of this section.

(b) Environmental Assessments will normally be prepared for the following proposed actions:

(1) Construction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroads;

(2) Abandonment of a rail line (unless proposed under the Northeast Rail Services Act or the Bankruptcy Act);

(3) Discontinuance of passenger train service or freight service (except for discontinuances of freight service under modified certificates issued under 49 CFR 1150.21 and discontinuances of trackage rights where the affected line will continue to be operated);

(4) An acquisition, lease or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger or acquisition of control under 49 U.S.C. 11343, if it will result in either

(i) operational changes that would exceed any of the thresholds established in § 1105.7(e) (4) or (5); or

(ii) an action that would normally require environmental documentation (such as a construction or abandonment);

(5) A rulemaking, policy statement, or legislative proposal that has the potential for significant environmental impacts;

(6) Water carrier licensing under 49 U.S.C. 10922 that:

(i) involves a new operation (*i.e.*, one that adds a significant number of barges to the inland waterway system requiring the addition of towing capacity, or otherwise significantly alters an existing operation, or introduces service to a new waterway that has had no previous traffic, or involves the commencement of a new service that is not statutorily exempt); or

(ii) involves the transportation of hazardous materials; and

(7) Any other proceeding not listed in paragraphs (a) or (c) of this section.

(c) No environmental documentation will normally be prepared (although a Historic Report may be required under section 1105.8) for the following actions:

(1) Motor carrier, broker, or freight forwarder licensing and water carrier licensing not included in section 1105.6(b)(6);

(2) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), including (but not limited to) all of the following actions that meet this criterion:

(i) An acquisition, lease, or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger, or acquisition of control under 49 U.S.C. 11343 that does not come within subsection (b)(4) of this section.

(ii) Transactions involving corporate changes (such as a change in the ownership or the operator, or the issuance of securities or reorganization) including grants of authority to hold position as an officer or director;

(iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;

(iv) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity;

(v) Approval of motor vehicle rental contracts, and self insurance;

(vi) Determinations of the fact of competition;

(3) Rate, fare, and tariff actions;

(4) Common use of rail terminals and trackage rights;

(5) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

(6) Discontinuance of trackage rights where the affected line will continue to be operated; and

(7) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.

(d) The Commission may reclassify or modify these requirements for individual proceedings. For actions that generally require no environmental documentation, the Commission may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and either an EA or an EIS will be prepared. For actions generally requiring an EA, the Commission may prepare a full EIS

where the probability of significant impacts from the particular proposal is high enough to warrant an EIS. Alternatively, in a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of § 1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact. Any request for reclassification must be in writing and, in a rail construction, should be presented with the prefiling notice required by § 1105.10(a)(1) (or a request to waive that prefiling notice period).

(e) The classifications in this section apply without regard to whether the action is proposed by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

§ 1105.7 Environmental reports.

(a) *Filing.* An applicant for an action identified in § 1105.6 (a) or (b) must submit (with or prior to its application, petition or notice of exemption) an Environmental Report on the proposed action containing the information set forth in paragraph (e) of this section.

(b) *Distribution.* The applicant must serve copies of the Environmental Report on:

(1) the State Clearinghouse of each State involved (unless the State has no clearinghouse);

(2) the State Environmental Protection Agency of each State involved;

(3) the State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;

(4) the head of each county (or comparable political entity including any Indian reservation) through which the line goes;

(5) the appropriate regional offices of the Environmental Protection Agency;

(6) the U.S. Fish and Wildlife Service;

(7) the U.S. Army Corps of Engineers;

(8) the National Park Service;

(9) the U.S. Soil Conservation Service; and

(10) any other agencies that have been consulted in preparing the report.

For information regarding the names and addresses of the agencies to be contacted, interested parties may contact SEE at the address and telephone number indicated in § 1105.3. Applicants filing a notice of exempt abandonment under 49 CFR 1152.50 must file the information required by paragraph (e)(1) of this section with the appropriate State clearinghouses at least 20 days prior to filing the notice of exemption.

(c) *Certification.* In its Environmental Report, the applicant must certify that it has sent copies of the Environmental Report to the agencies listed in paragraph (b) of this section and that it has consulted with all appropriate agencies in preparing the report. These consultations should be made far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input. In a notice of exempt abandonment, applicant shall also certify that it has notified the appropriate State clearinghouses at least 20 days prior to filing the notice. Finally, in every abandonment exemption case, applicant shall certify that it has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives, and to how it may participate in the ICC proceeding.

(d) *Documentation.* Any written responses received from agencies that were contacted in preparing the Environmental Report shall be attached to the report. Oral responses from such agencies shall be briefly summarized in the report and the names, titles, and telephone numbers of the persons contacted shall be supplied. A copy of, or appropriate citation to, any reference materials relied upon also shall be provided.

(e) *Content.* The Environmental Report shall include all of the information specified in this paragraph, except to the extent that applicant explains why any portion(s) are inapplicable. If an historic report is required under § 1105.8, the Environmental Report should also include the Historic Report required by that section.

(1) *Proposed action and alternatives.* Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

(2) *Transportation system.* Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

(3) *Land use.* (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencie

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

(4) *Energy.* (i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.

(5) *Air.* (i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least

three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(6) *Noise.* If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (*e.g.,* schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

(7) *Safety.* (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(8) *Biological resources.* (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(9) *Water.* (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

(10) *Proposed Mitigation.* Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

(11) *Additional Information for Rail Constructions.* The following additional information should be included for rail construction proposals (including connecting track construction):

(i) Describe the proposed route(s) by State, county, and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.

(ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.

(iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, the anticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force, and proposed maintenance-of-way practices.

(v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.

(vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.

(vii) Discuss societal impacts, including expected change in employment during and after construction.

(f) *Additional Information.* The Commission may require applicants to submit additional information regarding the environmental or energy effects of the proposed action.

(g) *Waivers.* The Commission may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Commission to evaluate the environmental impacts of the proposed action.

§ 1105.8 Historic Reports.

(a) *Filing.* An applicant proposing an action identified in § 1105.6 (a) or (b), or an action in § 1105.6(c) that will result in the lease, transfer, or sale of a railroad's line, sites or structures, must submit (with its application, petition or notice) the Historic Report described in paragraph (d) of this section, unless excepted under paragraph (b) of this section. This report should be combined with the Environmental Report where one is required. The purpose of the Historic Report is to provide the Commission with sufficient information to conduct the consultation process required by the National Historic Preservation Act.

(b) *Exceptions.* The following proposals do not require an historic report:

(1) A sale, lease or transfer of a rail line for the purpose of continued rail operations where further ICC approval is required to abandon any service and there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older.

(2) A sale, lease, or transfer of property between corporate affiliates where there will be no significant change in operations.

(3) Trackage rights, common use of rail terminals, common control through

stock ownership or similar action which will not substantially change the level of maintenance of railroad property.

(4) A rulemaking, policy statement, petition for declaratory order, petition for waiver of procedural requirements, or proceeding involving transportation rates or classifications.

(c) *Distribution.* The applicant must send the Historic Report to the appropriate State Historic Preservation Officer(s), preferably at least 60 days in advance of filing the application, petition, or notice, but, at the latest, with the filing.

(d) *Content.* The Historic Report should contain the information required by § 1105.7(e)(1) and the following additional historic information:

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (*i.e.*, prehistoric or native American).

(e) Any of these requirements may be waived or modified when the information is not necessary to determine the presence of historic properties and the effect of the proposed action on them.

(f) Historic preservation conditions imposed by the Commission in rail abandonment cases generally will not extend beyond the 330-day statutory time period in 49 U.S.C. 10904 for abandonment proceedings.

§ 1105.9 Coastal Zone Management Act Requirements.

(a) If the proposed action affects land or water uses within a State coastal zone designated pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) applicant must comply with the following procedures:

(1) If the proposed action is listed as subject to review in the State's coastal zone management plan, applicant (with, or prior to its filing) must certify (pursuant to 15 CFR 930.57 and 930.58) that the proposed action is consistent with the coastal zone management plan.

(2) If the activity is not listed, applicant (with, or prior to its filing) must certify that actual notice of the proposal was given to the State coastal zone manager at least 40 days before the effective date of the requested action.

(b) If there is consistency review under 15 CFR 930.54, the Commission and the applicant will comply with the consistency certification procedures of 15 CFR 930. Also, the Commission will withhold a decision, stay the effective date of a decision, or impose a condition delaying consummation of the action, until the applicant has submitted a consistency certification and either the state has concurred in the consistency certification, or an appeal to the Secretary of Commerce (under 15 CFR 930.64(e)) is successful.

§ 1105.10 Commission procedures.

(a) *Environmental Impact Statements.* (1) *Prefiling Notice.* Where an environmental impact statement is required or contemplated, the prospective applicant must provide the Section of Energy and Environment with written notice of its forthcoming proposal at least 6 months prior to filing its application.

(2) *Notice and Scope of EIS.* When an Environmental Impact Statement is prepared for a proposed action, the Commission will publish in the **Federal Register** a notice of its intent to prepare an EIS, with a description of the proposed action and a request for written comments on the scope of the EIS. Where appropriate, the scoping process may include a meeting open to interested parties and the public. After considering the comments, the Commission will publish a notice of the final scope of the EIS. If the Environmental Impact Statement is to be prepared in cooperation with other agencies, this notice will also indicate which agencies will be responsible for the various parts of the Statement.

(3) *Notice of Availability.* The Commission will serve copies of both the draft Environmental Impact Statement (or an appropriate summary) and the full final Environmental Impact Statement (or an appropriate summary) on all parties to the proceeding and on appropriate Federal, State, and local agencies. A notice that these documents are available to the public will be published (normally by the Environmental Protection Agency) in the **Federal Register.** (Interested persons may obtain copies of the documents by contacting the Section of Energy and Environment.)

(4) *Comments.* The notice of availability of the draft Environmental Impact Statement will establish the time for submitting written comments, which will normally be 45 days following service of the document. When the Commission decides to hold an oral hearing on the merits of a proposal, the draft Environmental Impact Statement will be made available to the public in advance, normally at least 15 days prior to the portion of the hearing relating to the environmental issues. The draft EIS will discuss relevant environmental and historic preservation issues. The final Environmental Impact Statement will discuss the comments received and any changes made in response to them.

(5) *Supplements.* An Environmental Impact Statement may be supplemented

where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information. If so, the notice and comment procedures outlined above will be followed to the extent practicable.

(b) *Environmental Assessments.* In preparing an Environmental Assessment, the Section of Energy and Environment will verify and independently analyze the Environmental Report and/or Historic Report and related material submitted by an applicant pursuant to sections 1105.7 and 1105.8. The Environmental Assessment will discuss relevant environmental and historic preservation issues. SEE will serve copies of the Environmental Assessment on all parties to the proceeding and appropriate federal, state, and local agencies, and will announce its availability to the public through a notice in the **Federal Register**. In the case of abandonment applications processed under 49 U.S.C. 10903, the availability of the Environmental Assessment must be announced in the applicant's Notice of Intent filed under 49 CFR 1152.21. The deadline for submission of comments on the Environmental Assessment will generally be within 30 days of its service (15 days in the case of a notice of abandonment under 49 CFR 1152.50). The comments received will be addressed in the Commission's decision. A supplemental Environmental Assessment may be issued where appropriate.

(c) *Waivers.* (1) The provisions of paragraphs (a)(1) or (a)(4) of this section or any ICC-established time frames in paragraph (b) of this section may be waived or modified where appropriate.

(2) Requests for waiver of § 1105.10(a)(1) must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six month lead period is not appropriate.

(d) *Third-Party Consultants.* Applicants may utilize independent third-party consultants to prepare any necessary environmental documentation, if approved by SEE. The environmental reporting requirements that would otherwise apply will be waived if a railroad hires a consultant, SEE approves the scope of the consultant's work, and the consultant works under SEE's supervision. In such a case, the consultant acts on behalf of the Commission, working under SEE's direction to collect the needed environmental information and compile it into a draft EA or draft EIS, which is then submitted to SEE for its review, verification, and approval. We encourage the use of third-party consultants.

(e) *Service of Environmental Pleadings.* Agencies and interested parties sending material on environmental and historic preservation issues directly to the Commission should send copies to the applicant. Copies of Commission communications to third-parties involving environmental and historic preservation issues also will be sent to the applicant where appropriate.

(f) *Consideration in Decisionmaking.* The environmental documentation (generally an EA or an EIS) and the comments and responses thereto concerning environmental, historic preservation, CZMA, and endangered species issues will be part of the record considered by the Commission in the proceeding involved. The Commission will decide what, if any, environmental or historic preservation conditions to impose upon the authority it issues based on the environmental record and its substantive responsibilities under the Interstate Commerce Act. The Commission will withhold a decision, stay the effective date of an exemption, or impose appropriate conditions upon any authority granted, when an environmental or historic preservation issue has not yet been resolved.

(g) *Finding of No Significant Impact.* In all exemption cases, if no environmental or historic preservation issues are raised by any party or identified by SEE in its independent investigation, the Commission will issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record.

§ 1105.11 Transmittal Letter for Applicant's Report.

A carrier shall send a copy of its Environmental and/or Historic Report to the agencies identified in section 1105.7(b) and/or the appropriate State Historic Preservation Officer(s) and certify to the Commission that it has done this. The form letter contained in the Appendix to this section should be used in transmitting the Environmental and/or Historic Reports.

Appendix to § 1105.11—Transmittal Letter for Applicant's Report

(Carrier Letterhead)
(Addresses)
Re: (Brief description of proposed action with ICC docket number, if available)
(Date)

On (date), we are (or expect to be) filing with the Interstate Commerce Commission a (type of proceeding) seeking authority to ( ) located in (state) (city or town) and (mileposts, if applicable). Attached is an Environmental Report (and/or Historic Report) describing the proposed action and any expected environmental (and/or historic) effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the ICC's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Commission's environmental review process, please contact the Section of Energy and Environment (SEE), room 3219, Interstate Commerce Commission, Washington, DC 20423, Telephone (202) 275–7684 and refer to the above *Docket No.* (if available). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEE (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Commission in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is (name) who may be contacted by telephone at (telephone number) or by mail at (address).

(Complimentary close)
(Name and title of author of letter)

§ 1105.12 Sample Newspaper Notices for Abandonment Exemption Cases.

In every abandonment exemption case, the applicant shall publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Commission that it has done this by the date its notice of (or petition for) exemption is filed. The notice shall alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may participate in a Commission proceeding. Sample newspaper notices are provided in the Appendix to this section for guidance to the railroads.

Appendix to § 1105.12—Sample Newspaper Notices Sample Local Newspaper Notice For Out-Of-Service Abandonment Exemptions Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Interstate Commerce Commission), it intends to file with the Interstate Commerce Commission, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* permitting the (abandonment of or discontinuance of service on) a _____ mile line of railroad between railroad milepost _____, near (station name), and railroad milepost _____, near (station name) in _____ County(ies), (State). The proceeding will be docketed as No. AB _____ (Sub-No. _____ X).

The Commission's Section of Energy and Environment (SEE) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Commission decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Energy and Environment, Interstate Commerce Commission, Washington, DC 20423 or by calling that office at 202–275–7684.

Appropriate offers of financial assistance to continue rail service can be filed with the Commission. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Commission. Questions regarding offers of financial assistance, public use or trails use may be directed to the Commission's Office of Public Assistance at 202–275–7597. Copies of any comments or requests for conditions should be served on the applicant's representative: (name, address and phone number).

Sample Local Newspaper Notice for Petitions for Abandonment Exemptions Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date petition for abandonment exemption will be filed with the Interstate Commerce Commission) it intends to file with the Interstate Commerce Commission, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the (abandonment of or discontinuance of service on) a _____ mile line of railroad between railroad milepost, near (station name), and railroad milepost, near (station name) in County(ies), (State). The proceeding has been docketed as No. AB (Sub-No. X).

The Commission's Section of Energy and Environment (SEE) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Commission decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEE, Interstate Commerce Commission, Washington, DC 20423 or by calling SEE at 202–275–7684.

Appropriate offers of financial assistance to continue rail service can be filed with the Commission. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Commission. Questions regarding offers of financial assistance, public use or trails use may be directed to the Commission's Office of Public Assistance at 202–275–7597. Copies of any comments or requests for conditions should be served on the applicant's representative (name and address).

PART 1106—[REMOVED]

4. Part 1106 is removed.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

5. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

§ 1150.33 [Amended]

6. In § 1150.33, paragraph (g) is removed and paragraph (h) is redesignated paragraph (g).

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

7. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505 and 10903 et seq., 11161 and 11163.

§ 1152.20 [Amended]

8. In § 1152.20, paragraph (d) is removed.

9. In § 1152.21, the next to last paragraph is revised and a new paragraph is added to the end of the section.

§ 1152.21 Form of notice.

* * * * *

Persons seeking further information concerning abandonment procedures may contact the Interstate Commerce Commission's Office of Proceedings or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Commission's Section of Energy and Environment.

* * * * *

An environmental assessment (or environmental impact statement, if necessary) prepared by the Section of Energy and Environment will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Energy and Environment. EA's in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Commission's decision. A supplemental EA may be issued where appropriate.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

10. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

11. In § 1180.4, paragraph (g)(3) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(3) Some transactions may be subject to environmental review pursuant to the Commission's environmental rules at 49 CFR part 1105.

* * * * *

[FR Doc. 91–18006 Filed 7–30–91; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces modified possession and landing limits for the two commercial salmon fisheries opening in August 1991 in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director) has determined that the preseason possession and landing limits of 10 chinook salmon per opening should be removed in the commercial fisheries scheduled to open in the subarea from the U.S.-Canada border to Carroll Island, Washington, on the earlier of August 16, 1991, or a date recommended by the Pacific Salmon Commission, and in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, on August 10, 1991. The preseason possession and landing limits for coho salmon remain in effect in both fisheries. These modified limits are intended to maximize the harvest of chinook salmon in these subareas without exceeding the ocean share of

salmon allocated to the commercial fishery.

DATES: *Effective:* Removal of the possession and landing limits for chinook salmon in the August commercial fisheries from the U.S.-Canada border to Carroll Island, Washington, and from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective July 26, 1991. *Comments:* Public comments are invited until August 12, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In an emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 commercial fishery for all salmon species in the subarea from the U.S.-Canada border to Carroll Island, Washington, would open the earlier of August 16 or a date recommended by the Pacific Salmon Commission, and that each vessel participating in this fishery could possess, land, and deliver no more than 80 coho salmon and 10 chinook salmon per open period. NOAA also announced that the 1991 commercial fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would open August 10, and that each vessel participating in this fishery could possess, land, and deliver no more than 150 coho salmon and 10 chinook salmon per open period. Commercial fisheries north of Cape Falcon, Oregon, are limited by overall quotas of 87,000 coho salmon and 40,000 chinook salmon.

Based on the best available information, the catch during the May 1-June 15, 1991, commercial fishery for all salmon species except coho salmon in the subarea from the U.S.-Canada border to Cape Falcon, Oregon totaled about 27,200 chinook salmon, leaving 4,000 fish of the guideline of 31,200 chinook salmon unharvested. Therefore, these fish are being transferred to the two commercial fisheries opening in August described above.

With these increased chinook guidelines governing the two commercial fisheries opening in August, there is no longer the need for possession and landing limits to restrict chinook salmon harvest. Therefore, the Regional Director has determined that when these two fisheries open as regularly scheduled, their possession and landing limits of 10 chinook salmon per opening should be removed. All other preseason restrictions, including possession and landing limits for coho salmon, remain in effect. Inseason modification of limited retention regulations is authorized by regulations at § 661.21(b)(1)(ii).

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this action affecting the commercial fisheries from the U.S.-Canada border to Cape Falcon, Oregon. The States of Washington and Oregon will manage the commercial fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 12, 1991.

Other Matters

This action is authorized by 50 CFR §§ 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18054 Filed 7–26–91; 10:38 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 25

RIN 3150-AD86

NRC Licensee Reinvestigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to require a reinvestigation program for NRC licensee personnel with "Q" and "L" access authorizations and to amend the fee schedule to cover investigative costs. The proposed reinvestigation program is consistent with the Department of Energy's program for its contractors and is consistent with NRC's policy of reinvestigating its own employees, consultants, contractors, experts and panel members. This amendment is necessary to achieve a higher level of assurance that licensee personnel with access to Restricted Data or National Security Information remain eligible for such access.

DATES: Comment period expires September 13, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis and comments received may be examined at: room LL6, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4127.

SUPPLEMENTARY INFORMATION: The NRC currently requires a reinvestigation every five years for its employees, consultants, contractors, experts, and panel members with "Q" or "L" access authorization but does not require a reinvestigation for licensee personnel with the same level of access authorizations. A recommendation was made in the 1988 GAO Report "NRC's Security Clearance Program Can be Strengthened" and amplified in 1989 hearings before Congressman Synar that NRC have a reinvestigation program for its "L" cleared employees, consultants, contractors, experts, and panel members to assure their continued reliability, integrity, and trustworthiness. The rationale behind that recommendation applies equally to licensee personnel with "L" and "Q" access authorizations. The proposed rule will establish the requirement that licensee personnel would be subject to a reinvestigation every five years similar in scope to that required for NRC employees and contractors and consistent with that required by the Department of Energy for its contractors who have access to Restricted Data or National Security Information. The proposed rule would also amend appendix A "Fees for NRC Access Authorization" to recover the costs of the reinvestigations required by these changes. The proposed amendments, however, allow for recognition of other agency's, principally the Department of Energy's, reinvestigations. In cases where NRC can verify an appropriate reinvestigation by another Federal agency, there would be no charge to the licensee or other organization. Where there was no other reinvestigation, or the reinvestigation did not meet NRC requirements, the fee would be assessed. However, the fee would most often be nominal, as reflected in appendix A.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 0.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0046), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street NW. (lower level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4127.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking only applies to those licensees and others who generate, receive, safeguard and store National Security Information or Restricted Data (as defined in 10 CFR part 25). Approximately 31 NRC licensee and other license related interests would be affected under the provisions of 10 CFR part 25. Because these licensees are not classified as small entities as defined by

the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does apply to this rulemaking initiative because it falls within the criteria of 10 CFR part 50.109(a)(l), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 50.109(a)(4)(iii) that reads "That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate."

List of Subjects in 10 CFR Part 25

Classified information, Criminal penalty, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 25.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 25.17, paragraph (e) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(e) Applications for access authorization or access authorization renewal processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q," "L," access authorization, or renewal request. Access authorization and access authorization renewal fees will be published each time the Office of Personnel Management notifies NRC of a change in the rates it charges NRC for the conduct of investigations. Any such changed access authorization or access authorization renewal fees will be applicable to each access authorization or access authorization renewal request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, since the Commission may accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

3. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for access authorization or access authorization renewal, together with its accompanying fee, must be submitted to the NRC Division of Security. If necessary, the NRC Division of Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

4. In § 25.21, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

(a) Following receipt by the NRC Division of Security of the reports of the personnel security investigations, the record will be reviewed to determine that granting an access authorization or renewal of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. If such a determination is made, access authorization will be granted or renewed. Questions as to initial or continuing eligibility will be determined in accordance with part 10 of chapter I.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, NRC "Q" and "L" access authorizations expire five years from the date of issuance. If continued "Q" or "L" access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in expiration of access authorization. Access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) An exception to the access authorization expiration date and the time for submission of renewal applications is provided for:

(i) Those individuals whose original access authorization date of issuance is more than five years old as of the effective date of this rule amendment. For those individuals an application for renewal must be submitted (within 180 days of the effective date of this rule); and,

(ii) Those individuals who have a current and active access authorization from another federal agency, and are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements), and for which the licensee or other person has notified NRC of their intention to use this exception at least 120 days prior to the original expiration date of the access authorization. For those individuals, the licensee or other person may submit to NRC, concurrent with its next submission to the other government agency after (the effective date of this rule) (provided that period is no longer than seven years from the date of original issuance or last renewal), a copy of the SF–86 that is dated and bears an original signature, together with a request form (NRC Form 237) signed by a licensee or other official as the supporting documentation for an NRC access authorization renewal application. Any NRC access authorization continued in response to a renewal application submitted pursuant to this paragraph will, thereafter, not expire until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program provided that period is no longer than seven years from the date of the NRC renewal. At that time (and at the time of each subsequent reinvestigation of the individual), the licensee or other person may again submit, concurrent with its

submission to the other government agency, a copy of the SF–86 that is dated and bears an original signature together with a request form (NRC Form 237) signed by a licensee or other contractor official as the supporting documentation for an NRC access authorization renewal application. Failure to file a renewal application concurrent with the submission of an individual's SF–86 to the other government agency pursuant to their reinvestigation requirements will result in the expiration of the individual's NRC access authorization.

5. Section § 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant or renew access authorization will be furnished in writing to the licensee or other person that initiated the request. Upon receipt of the notification of original grant of access authorization, the licensee or other person shall obtain, as a condition for grant of access authorization and access to classified information, an executed "Classified Information Nondisclosure Agreement" SF 312) from the affected individual. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. The signed SF 312 must be promptly forwarded to the NRC Division of Security. Records of access authorization grant and renewal notification must be maintained by the licensee or other organization for three years after the access authorization has been terminated by the NRC Division of Security. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners, or

(b) When the individual also is the official designated by the licensee to whom written NRC notifications are forwarded.

6. Section § 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of access authorization is withdrawn or cancelled, the requestor shall notify the NRC Division of Security immediately by telephone so that the full field investigation, National Agency Check with Credit Investigation or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization ("Q" or "L") or access authorization renewal originally requested. The requestor shall confirm each telephone notification promptly in writing.

7. In 25.27, paragraph (a) is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are cancelled.

(a) In conjunction with a new request for access authorization or renewal of access authorization for individuals whose cases were previously cancelled, new fingerprint cards in duplicate and a new Security Acknowledgment (for cases where no final access authorization was previously issued) must be furnished to the NRC Division of Security along with the request.

* * * * *

8. In § 25.31, a new paragraph (d) is added to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

* * * * *

(d) The date of an extension or transfer of access authorization may not be used to determine when a request for renewal of access authorization is required. Access authorization renewal requests must be timely submitted in accordance with § 25.21(c).

9. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" access authorization	[1] $45
Reinstatement of "L" access authorization	[1] 45
Extension or transfer of "L" access authorization	[1] 45
Renewal of "L" access authorization	[1] 45
Initial "Q" access authorization	2,600
Initial "Q" access authorization (expedited processing)	3,000
Reinstatement of "Q" access authorization	[2] 2,600
Reinstatement of "Q" access authorization (expedited processing)	[2] 3,000
Extension or transfer of "Q"	[2] 2,600
Extension or transfer of "Q" (expedited processing)	[2] 3,000
Renewal of "Q" (initial five year reinvestigation)	[1] 1,500
Renewal of "Q" (subsequent five year reinvestigations)	[1] 45

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,600 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, MD, this 15th day of July 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–17995 Filed 7–30–91; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 35

Workshop To Discuss Establishing an "Authorized Radiopharmacist"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of appropriate organizations to discuss key issues related to establishing an "authorized radiopharmacist" in NRC's regulations.

DATES: The workshop will be held Wednesday, August 7, 1991, and will begin at 9 a.m. and end about 5:30 p.m.

ADDRESSES: Sheraton International At O'Hare, 6810 North Mannheim Road, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony Tse, Regulation Development Branch, NL/S–129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3797.

SUPPLEMENTARY INFORMATION: The American College of Nuclear Physicians and the Society of Nuclear Medicine submitted a petition for rulemaking to NRC requesting that the NRC amend its regulations pertaining to the use of byproduct material in medical applications. One of the issues raised in the petition is related to compounding radiopharmaceuticals containing byproduct material.

The objective of the workshop is to conduct a roundtable discussion of the key issues related to establishing an "authorized radiopharmacist" in NRC's regulations. The organizations that will be represented at the workshop include: Board of Pharmaceutical Specialties; American Board of Science in Nuclear Medicine; National Association of Boards of Pharmacy; Committee on Radionuclides and Radiopharmaceuticals of the U.S. Council for Energy Awareness; American Pharmaceutical Association, American Society of Hospital Pharmacists, and selected graduate schools of pharmacy.

Conduct of the Meeting

The workshop will be chaired by the undersigned and moderated by Mr. John L. Telford, Section Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Commission. The workshop will be conducted in a manner that will facilitate the orderly conduct of business. The transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555 on or about August 27, 1991.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants (i.e., representatives of the organizations listed above and participating NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first-come first-served basis.

Dated at Rockville, Maryland, this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91-18104 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-61; Notice No. SC-91-9-NM]

Special Conditions: British Aerospace Model 146-100A, -200A and -300A Airplanes Equipped With Phase II Avionics; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace Model 146-100A, -200A and -300A Series airplanes. These airplanes are equipped with British Aerospace 146 Phase II high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-61, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-61. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William L. Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4046; telephone (206) 227-2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-61." The postcard will be date/time stamped, and returned to the commentor.

Background

On May 6, 1989, and January 6, 1989, British Aerospace applied for amendment to their Type Certificate (TC) No. A49EU for their Model 146 Series airplanes to include the Phase II Avionics package. The 146-100A and -200A were applied for on May 8, 1989, and the 146-300A on January 6, 1989. The Model 146 series is a high wing pressurized 94-108 passenger transport category airplane with a maximum takeoff gross weight of 84,000 to 95,000 pounds (depending on model), maximum cruise speed of 305 knots, and a maximum operating altitude of 31,000 feet. The airplanes are powered by four Avco Lycoming turbofan engines mounted on the wing. The Phase II avionics installation on the airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS) including primary airspeed and vertical speed, dual fail passive digital flight guidance system with Category III automatic landing system, dual digital air data computers, and full authority digital engine control (FADEC) with auto throttle system which are vulnerable to lightning and high-intensity radiated fields ((HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, British Aerospace must show that the Model 146 meets the applicable provisions of the regulations incorporated by reference in TC No. A49EU, or the applicable regulations in effect on the date of application for the Model 146 unless: (1) otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator.

The Phase II avionics installation for the Model 146 would be required to comply with part 25, as amended through Amendment 25-66. In addition, part 34 of the FAR through the latest amendments in effect at the time of awarding the type certificate, and part 36 of the FAR through the latest amendment in effect on the date the noise tests are performed, must be met. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for Model 146 series airplanes with Phase II avionics because of a novel or unusual design feature, special conditions are prescribed under the

provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, are required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 146 must comply with the noise certification requirements of part 36 and the engine emission requirements of part 34.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection; (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model 146 Phase II avionics which would require that the new technology electrical and electronic systems such as the electronic flight instrument system (EFIS), dual fail passive digital flight guidance system with Category III automatic landing, dual digital aid data computers, and full authority digital engine control (FADEC) with auto throttles, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (1/2 Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can the be primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into a internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10ms, the maximum is 50ms. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (1/2 Component D), and the "Multiple burst" (Component H).

These components are defined by the following exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (1/2 component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$(amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^6	0.25×10^6	$.0625\times10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established. It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz– 2 MHz	80	80
2 MHz– 30 MHz	200	200
30 MHz–100 KHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz– 1 GHz	8,300	2,000
1 GHz– 2 GHz	9,000	1,500
2 GHz– 4 GHz	17,000	1,200
4 GHz– 6 GHz	14,500	800
6 GHz– 8 GHz	4,000	666
8 GHz– 12 GHz	9,000	2,000
12 GHz– 20 GHz	4,000	509
20 GHz– 40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the British Aerospace Model 146 Series airplanes with Phase II avionics:

1. Lightning Protection

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system which performs critical functions must bedesigned and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impct the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18076 Filed 7- 30–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 22

[Public Notice 1438]

Schedule of Fees for Consular Services, Department of State and Foreign Service of the United States

AGENCY: Bureau of Consular Affairs (DOS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend § 22.1 of part 22 of title 22, Code of Federal Regulations by making certain changes in the schedule of fees. The proposed rule would increase some consular fees, remove some no-fee items from the schedule of fees, and add a new fee item for return check processing. Only those fees listed in this proposed rule would be changed. The other fees and services in the schedule of fees remain unchanged. These changes are made to reflect the cost of providing these services.

DATES: Written comments must be received on or before August 30, 1991.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Office of Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ted Gong, Office of Executive Director, Bureau of Consular Affairs [202] 647-1148.

SUPPLEMENTARY INFORMATION: The Secretary of State is authorized under E.O. 10718 of June 27, 1957 to prescribe rates of fees to be charged for official services and to designate what is to be regarded as official services, besides what are expressly declared by law. Under this authority, the Secretary has determined that a number of fees for consular services performed overseas, as well as in the United States, should be changed to better reflect the cost of providing those services, within the policy guidelines set by OMB Circular No. A-25. That policy states that services which directly benefit individuals, organizations or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The changes set forth in this proposed rule reflect this policy.

List of Subjects in 22 CFR Part 22

Passports and visas, schedule of consular fees.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Accordingly, part 22 would be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a; 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632; E.O. 11295, 31 FR 10603; 3 CFR, 1954–1958 Comp. p. 507.

§§ 22.1 [Amended]

2. The following consular fees in § 22.1 of part 22 would be revised as follows:

Item number	Current fee	Proposed fee
Passport and Citizenship Services		
1. Execution of application for passport	$7.00	$10.00
2. Examination of passport application executed before a foreign official	7.00	10.00
3. Passport issuance to adult (22 U.S.C. 214)	35.00	55.00
4. Passport issuance to minor	20.00	30.00
5. Issuance of card of identity	5.00	(1)
12. For delivery to the applicant of a certified copy of an executed form:		
(a) Of repatriation of a native-born American woman whose marital status was an alien terminated prior to January 13, 1941	4.00	(1)
(b) Of repatriation of a native-born American woman under sec. 324 of the Immigration and Nationality Act (8 U.S.C. 1435)	4.00	(1)
(c) Of repatriation under the Act of July 20, 1954 (8 U.S.C. 1438 Supp.) of a person who while a citizen of the United States lost his citizenship by voting in Japan between September 2, 1945 and April 27, 1952, inclusive	4.00	(1)
13. (a) Registration of birth of American citizen including furnishing one copy of Form FS-240 "Report of Birth Abroad of a Citizen of the United States of America" and Form FS-545, "Certification of Birth"	13.00	10.00
14. Documents from passport files and related records (except as specified in Item 13):		
(a) For file search	8.00	15.00
(b) For duplicating by photocopy or other such means, per each copy of each page	.20	.25
(c) For certifying of a true copy	2.00	5.00
(d) For certifying by letter under official seal a statement or extract from passport files or a statement that no record of a passport file can be located (plus $8.00 search charge of 14(a))	2.00	2 5.00
16. Granting an exception under 22 CFR 53.2(h) of Travel Control Regulations	80.00	100.00
17. Instant photo service, where offered by a Foreign Service post, for each pair of identical photographs	7.00	(1)
18. Certified copies of documents in item 13 concerning Pass-Port and Citizenship Services, (may be obtained from Passport Services, Correspondence Branch, Department of State, Washington, DC 20524)	4.00	10.00
VISA Services for Aliens		
20. Furnishing and verification of application and issuance of immigrant visa, including duplicate copy	125.00	170.00
21. Issuance of each immigrant visa	25.00	30.00
24. Visa or supplemental visa of alien crew list: (If Item 93 is applicable, only one surcharge shall be applied per group served on the same visit.)		
(a) Up to 40 crew members	37.00	40.00
(b) 41 to 100 crew members	88.00	100.00
(c) 101 to 200 crew members	185.00	210.00
(d) Over 200 crew members	246.00	280.00
Services Relating to Vessels and Seamen		
30. Noting marine protest, when required by a master of a foreign or an undocumented vessel	9.00	18.00
31. Extending marine protest, when required by a master of a foreign or an undocumented vessel	52.00	104.00
32. Protest of a master against charterers or freighters, when required by a master or a foreign or an undocumented vessel	8.00	16.00
33. Shipment or discharge of seamen on undocumented vessel, each seaman (If item 93 is applicable, only one surcharge shall be applied per group served on the same visit	5.00	10.00
34. Recording of bill of sale of vessel purchased abroad, taking of application for provisional certificate or registration or certificate of American ownership, and investigation	40.00	80.00

Item number	Current fee	Proposed fee
35. Issuance of provisional certificate of registry or certificate of American ownership	30.00	60.00
Notarial Services and Authentications		
45. Notarial services:		
(a) Administering an oath and certificate thereof	4.00	25.00
(b) Taking the acknowledgement of the execution of a document, and certificate thereof	4.00	25.00
(c) Certifying under official seal that a copy or extract made from an official or a private document is a true copy	2.00	25.00
(d) Certifying to official character of a foreign notary or other official (i.e., authenticating a document)	2.00	25.00
(e) For affidavit of petitioner or his agent on documents or evidence to be presented to the Federal Government	4.00	25.00
(f) Authenticating a Federal, State or Territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, or any document submitted to the Department for that purpose	4.00	25.00
49. Administering oaths, taking acknowledgements in connection with application for letters patent or registration of trademarks, or with the assignment or transfer of rights thereunder	4.00	[1]
50. Administering an oath and certificate thereof for petition for immediate relative, nonimmigrant fiance(e), temporary worker, nonimmigrant intracompany transferee, or preference immigrant status	4.00	[1]
51. Administering oaths or taking acknowledgements, or authenticating the signatures of officials, in connection with kinsmen's petitions for wages and effects of deceased seamen of the American merchant marine (46 U.S.C. 637)	13.00	[1]
55. Noting of a negotiable instrument for want of acceptance or payment, certifying to protest and giving notice to issuer and endorsers when requested to do so	10.00	20.00
67. Providing seal and certificate for return of letters rogatory executed by foreign officials	16.00	32.00
Copying and Recording		
75. For typing a copy of a document or extract of a document	3.00	6.00
76. For photocopying or otherwise duplicating a document, per copy of each page	.20	.25
Examination Services		
82. Supervising or proctoring an examination at the request of an agency or instrumentality of the Federal or a State Government by a consular or other officer, including completion of a certificate without seal—for each hour or fraction thereof unless the cost is reimbursable to the Department of State by an agency or instrumentality of the Federal or a State government	90.00	140.00
Other Consular Services		
84. Preparing and Sending Interested Party Messages for the primary benefit of nongovernment individuals, organizations, or groups:		
(a) From a Foreign Service post to the Department of State	15.00	30.00
(b) From Department of State to a Foreign Service post	15.00	30.00
(c) From a Foreign Service post to another Foreign Service post	15.00	30.00
88. Searching for and forwarding a document requested from a Foreign Service post by a nongovernment individual, organization or group (for each document)	13.00	[1]
Surcharges		
93. Surcharges for services rendered away from office or after duty hours in the United States or in a foreign country are required for all "FEE" services listed above when performed at the request of an interested party unless specifically exempted, but are not required for "No Fee" services nor for instances of common disaster (i.e. shipwrecks, air crashes, etc.) or for evacuations.		
However, whether employees can be made available to perform duties away from office or after hours will be determined by the Consul General, the supervising consular officer, or the Passport Agency Director after considering workload priorities for the staff concerned. The following surcharges, when required, are added to regular fees:		
(a) American employee	20.00	35.00
(b) Foreign Service National employee	10.00	20.00

[1] Eliminate category.
[2] Plus $15.00 search charge of 14(a).

3. The following new fee would be added to § 22.1 of part 22, as follows:

Item No.	Current fee	Proposed fee
95. Return check processing fee.	No fee	25.00

4. The following no-fee categories of services in § 22.1 of part 22 would be removed from the schedule of fees:

Item number	Current fee	Proposed fee
7. Amendment to passport: (b) To correct administrative error	No fee	Eliminate category.
8. Verification of passport	No fee	Eliminate category.
11. Administering the oath of allegiance to a native-born American woman who lost her citizenship	No fee	Eliminate category.
25. Revalidation or transfer of nonimmigrant visa	Reciprocal	Eliminate category.
86. U.S. Selective Service Registration in a foreign country	No fee	Eliminate category.
87. Distribution of U.S. Treasury checks to Federal beneficiaries	No fee	Eliminate category.

Dated: June 20, 1991.

Elizabeth M. Tamposi,

Assistant Secretary Consular Affairs.

[FR Doc. 91-17987 Filed 7-30-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 91-13, Notice No. 2]

RIN 2125-AC73

Highway Bridge Replacement and Rehabilitation Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The Federal Highway Administration (FHWA) issued a notice of proposed rulemaking (NPRM) which was published in the **Federal Register** on June 4, 1991 (56 FR 25392). Through this NPRM, the FHWA requested comments on a proposed revision to its procedures for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program. The comment period is scheduled to close on August 5, 1991. To give interested parties adequate time to respond to the NPRM, the FHWA is extending the comment period to September 5, 1991.

DATES: Comments must be received on or before September 5, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91-13, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. O'Connor, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366-1567; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA proposes to implement a level-of-service criteria for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program. This criteria would replace the evaluation method described in 23 CFR 650.409 which is based on a Sufficiency Rating formula. The basis of the level-ofservice evaluation will be structural, geometric and inventory information contained in the National Bridge Inventory. Bridges that do not provide the specified level-of-service will be included in calculations for apportioning HBRRP funds under 23 U.S.C. 144.

The FHWA has received a request from the Advocates for Highway and Auto Safety for an extension of the comment period. The Advocates for Highway and Auto Safety are requesting an extension to allow additional time for research and review of records, and to adequately prepare an informed response. The FHWA is granting the request and the comment period is being extended to September 5, 1991.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 24, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91-18027 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[CGD 13-90-03]

RIN 2115-AD86

Regulated Navigation Area; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations for the Regulated Navigation Area (RNA), 33 CFR 165.1301, in Puget Sound and adjacent waters in northwestern Washington. This action would: (1) Delete the provisions for a Temporary Special Traffic Lane (TSTL); (2) Require vessels occupying the traffic lanes to move out of the way of through traffic in the Traffic Separation Scheme (TSS); (3) Establish prohibited fishing areas in one ferry crossing, and adjacent to the main ship channel draw span of the Hood Canal Bridge; (4) Require vessels fishing in the TSS to monitor the VTS VHF-FM working frequency; (5) Change the characteristic of the existing sound signals for vessels transiting congested areas; (6) Establish a speed limit of 8 knots for vessels transiting congested areas; and (7) Establish provisions for deviations from these rules.

This amendment is needed due to the large number of user conflicts in Puget Sound and potentially hazardous situations which frequently develop during periods of heavy congestion. The intended effect of this proposed action is to prevent vessel collisions and groundings, property loss, loss of life, and environmental damage resulting from conflicts between the varied users of these waters, including fishing vessels, pleasure craft, passenger ferries, towboats, and deep draft vessel traffic.

DATES: Comments must be received on or before August 30, 1991.

ADDRESSES: Written comments should be submitted to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Comments will be available for inspection in room 3410 at the above address. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Written comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service, 1519 Alaskan Way South, Seattle, Washington 98134. Telephone (206) 286-5640.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 13-90-03), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The proposed rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. This does not preclude scheduling a hearing at a later date should the written comments provide significant new information.

Drafting Information

The drafters of this notice are CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service and LT Deborah K. Schram, USCGR project attorney,

Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Rulemaking

General

On August 13, 1984 the Coast Guard published a final rule to establish a Regulated Navigation Area in Puget Sound and adjacent waters in northwestern Washington. That rule was preceded by a Notice of Proposed Rulemaking (NPRM) on October 27, 1983 and a Supplemental Notice of Proposed Rulemaking (SNPRM) on May 10, 1984. The final rulemaking reestablished elements of a former U.S. Army Corps of Engineers' regulation and established procedures for Puget Sound Vessel Traffic Service (PSVTS) to activate Temporary Special Traffic Lanes (TSTL) to facilitate a safe and orderly flow of traffic during periods of congestion. The present regulation represents a compromise between commercial fishing and commercial transportation interests. As it currently exists, the TSTL is a temporary, two-way, 1000 yard wide traffic lane that must be vacated for through traffic. The TSTL may be established by the Puget Sound Vessel Traffic Service (PSVTS) when fishing or other operations have reached or may reach such concentrations as to significantly impede navigation or create a hazard. The existing rule provides that fishing vessels and other craft will clear a path within a TSTL when through traffic approaches. Activating the TSTL confines two way ship traffic in a one-half mile wide lane and eliminates the separation zone. After several years of experience the TSTL has proven to be ineffective in reducing user conflicts and defeats the most valuable safety feature of the TSS, the traffic separation zone. Even with Coast Guard law enforcement vessels on scene, the Coast Guard has had difficulty keeping the TSTL clear. Vessels following the temporary traffic lanes are forced to maneuver to avoid concentrations of boats and nets, resulting in frequent close-quarters situations, both wish fishing vessels and with opposing through traffic within the single TSTL lane.

On October 1, 1990 the Coast Guard published a notice of proposed rulemaking (55 FR 39986) to amend the existing rule. This notice of proposed rulemaking (NPRM) proposed to eliminate: Provisions for a Temporary Special Traffic Lane (TSTL); the required sound signal; the requirement for showing a beam light in the direction of intended travel; the requirement for showing a quick flash of light; the requirement to shine a light in the direction of gear in the water; rerouting requirements for avoiding concentrations of vessels south of Lopez Island; and, the requirement for vessels to adjust sailing times to reduce through traffic. The October 1, 1990 NPRM proposed the following new requirements: Non-through traffic to clear the Traffic Lanes 15 minutes before the arrival of through traffic; prohibited fishing areas in the Edmonds-Kingston, Mukilteo-Clinton, and Fauntleroy-Vashon-Southworth ferry crossing; a prohibited fishing area at the Hood Canal bridge; and, vessels in the Traffic Separation Scheme (TSS) to monitor the Vessel Traffic Service (VTS) VHF working frequency. The requirement to tend nets or other gear in the water was rewritten for clarity. Based on oral testimony received at an October 11, 1990 public hearing and written comments received through November 15, 1990, the NPRM is amended and is reissued as this Supplemental Notice of Proposed Rulemaking (SNPRM). The changes resulting from written comments and oral presentations are addressed in the following discussion.

(1) *Elimination of the TSTL.* Three commenters supported elimination of the TSTL and two commenters opposed it. The proposed amendment to the existing rule eliminates provisions for the TSTL. The normal Traffic Separation Scheme, or TSS, is the system of traffic lanes, separation zones, and precautionary areas intended to promote safety by directing vessel traffic through distinct, separated routes. The TSS is clearly shown on all official marine charts of the Puget Sound region. It is described in detail in title 33 Code of Federal Regulations §§ 161.183 through 161.187. Deleting provisions for the TSTL will result in traffic separation between opposing through traffic at all times. The Coast Guard remains convinced that the TSTL created too many close quarters situations and should be eliminated.

(2) *Requirement for Congesting Traffic to Clear the Traffic Lanes.* Five commenters supported the requirement for non-through traffic to clear the lanes at least 15 minutes before the arrival of through traffic rule and one commenter opposed it. The Coast Guard remains convinced that the 15 minute rule is an important safety element in managing traffic, especially in conjunction with the speed limit provision included in this SNPRM. The requirement, for vessels engaged in fishing or other operations, to draw in their gear, maneuver, or otherwise clear the traffic lane no later than 15 minutes before the arrival of through traffic would apply to both lanes of the TSS under the proposed rule. Vessels in the traffic lanes, for purposes other than through traffic, must clear the occupied traffic lane and, when in the TSS East of Port Angeles, the adjacent separation zone, when a through vessel approaches. This 15 minute provision which, under the existing rule, is a provision only during times when the Temporary Special Traffic Lane (TSTL) is implemented by PSVTS would, under this new proposal, be in force at all times. PSVTS will broadcast the Estimated Time of Arrival (ETA) of through traffic in areas of congestion. The ability to clear the lanes will be enhanced by the proposed requirement, below, that vessels in a traffic lane must monitor the PSVTS VHF–FM radio frequency.

(3) *Prohibited Fishing Areas.* Several commenters submitted statements on the proposed prohibited fishing areas. The areas proposed were the Edmonds-Kingston (including the wedge near Apple Cove Point), Mukilteo-Clinton, and Fauntleroy-Vashon-Southworth ferry crossings and an area at the Hood Canal bridge. Three supported the closure of the Edmonds-Kingston ferry crossing. One opposed the Mukilteo-Clinton prohibited fishing area. Two supported the Hood Canal Bridge prohibited fishing zone. Three opposed prohibited fishing in the ferry lanes other than Edmonds-Kingston ferry crossing. Three opposed the prohibited fishing area at Apple Cove Point, commonly referred to as the "wedge." One supported the closure of the "wedge." Ever since 1984, when the Edmonds-Kingston TSTL and the fifteen minute rule were implemented, and through 1989, the fifteen minute rule proved to be absolutely ineffective. Ferries were constantly stopped and experienced inordinate delays. Many commuter complaints were received by the Coast Guard. Members of the Washington Congressional delegation also received many complaints. Members of the delegation also received many complaints. Members of the delegation compelled the Coast Guard to find a solution. During the 1990 fishing season Puget Sound VTS issued a Temporary Special Rule which prohibited fishing in the ferry crossing. This temporary rule was wholly successful. Based on public comment and the experience gained by the Coast Guard in the 1990 fishing season, this supplemental rule proposes a prohibited fishing area in the one-half mile wide ferry lane between Edmonds and Kingston, not included the "wedge." It eliminates the proposal, made in the October 1, 1990 NPRM, for prohibited

fishing areas in the Mukilteo-Clinton and Faunterleroy-Vashon-Southworth ferry lanes. It retains the proposed prohibited fishing area near the Hood Canal Bridge draw span during the transit of a naval combatant. The existing rule calls for vessels operating in the Edmonds-Kingston ferry crossing to clear the lane 15 minutes prior to a ferry arrival. Ferry transit frequency coupled with the time required to set and retrieve nets make fishing in the ferry crossing, for practical purposes, difficult and unsafe. This proposed rule enhances safety of navigation for all users by prohibiting fishing in the ferry crossing during the hours of ferry operation. During the hours that the ferry is not operating, fishing will be allowed in the ferry lane. A prohibited fishing area will also be established within a one half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge. This restriction only applies when naval combatants are transiting the draw span. Trident Submarine commanding officers and the Commander, Submarine Group 9 have expressed grave concern over the safety of fishing vessels that maneuver near the bridge and hamper the passage of submarines.

(4) *Requirment to Listen to the VTS Frequency.* Three commenters supported the requirement for vessels in the TSS to monitor the VTS frequency. Experience has shown that key elements to a safe transit through congested areas are the abilities for vessels to monitor through traffics's location, course, speed, and Estimated Time of Arrival (ETA), and the ability to communicate, bridge to bridge. VTS broadcasts provide information about through traffic transiting the TSS, its location, and projected arrival time. Listening to the VTS frequency and the VTS broadcasts of traffic information will help fishing vessels and other craft clear the traffic lane and comply with this regulation. This is especially true at night when visibility is reduced because of darkness. An alternative to the radio listening requirement would be to stay clear of the TSS.

(5) *Sound Signal for Transiting Congested Areas.* One commenter opposed the elimination of the authorized sound signal for transiting areas of congestion. The requirement of the existing rule, dealing with sound signals, is in conflict with rules 35 and 36 of the collision regulations (72 COLREGS). The October 1, 1990 NPRM proposed to eliminate the signal. Subsequent to publication of the NPRM, and in response to a Coast Guard inquiry, the Navigation Safety Advisory Council (NAVSAC) reviewed and substantiated the conflict with the COLREGS. The intended benefactors of this sound signal, e.g. sailing vessels under sail, have a desire to know whether the through traffic is a tug with tow or not. Under this proposed rule, transiting vessels would sound the restricted visibility sound signal for a vessel of their type, followed by one extra long blast of 10 to 12 seconds duration. The requirement that vessels "shall" sound the signal is proposed to be replaced by the option "may" sound the signal. The extra long blast and the option proposals were recommended by the NAVSAC.

(6) *Speed Limit.* One commenter suggested a speed limit for through traffic. This element of the supplemental rule adds a provision for an 8 knot speed limit for traffic passing through congested areas. It is a new element that was not proposed in the October 1, 1990 NPRM. The Coast Guard is concerned for the safety of lives and property, and believes that a maximum speed of 8 knots will improve safety by providing ample time for non-through traffic to clear the lanes and for through traffic to safely maneuver through areas of congestion. A speed of 8 knots should provide sufficient steerage for the type of vessels transiting within the affected area. If this speed limit is a problem for individual vessels due to harmonic or other propulsion system limitation, a deviation from these rules may be requested in accordance with the proposed new provisions for deviations. In an emergency, any master may deviate from these regulations to avoid endangering persons, property, or the environment.

(7) *Deviations From the Regulation.* This element of the supplemental rule adds a new section regarding deviation from the other requirements of the proposed regulation. It is a new element that was not proposed in the October 1, 1990 NPRM. While every attempt is made to cover all situations that need to be regulated, characteristic problems with vessel traffic management require periodic flexibility. The area covered by this proposed regulation is the same area managed by Puget Sound Vessel Traffic Service (PSVTS). PSVTS has radar coverage of the typically congested areas and has the expertise to grant deviations to the requirements of this proposed rule. This proposed rule grants PSVTS authority for that purpose. It also allows for advance requests for deviations to be submitted to Commander, Thirteenth Coast Guard District. In each case the requested deviation must be safer than the required procedure. It also clarified that the master, pilot, or person directing the movement of a vessel may deviate in emergencies for the protection of life and property.

Economic Assessment and Certification

Three commenters opposed the statement of no significant economic impact of the October 1, 1990, NPRM. Since the changes herein would not prohibit fishing in the apparently productive Apple Cove Pt. "wedge" and two of the tree ferry crossings proposed in the October 1, 1990, NPRM and, would prohibit fishing in only the Edmonds-Kingston one-half mile wide ferry crossing during the hours the ferry is operating and occasional closing of the area in the vicinity of the Hood Canal Bridge draw span, the Coast Guard believes that the statement of no significant economic impact remains correct. This proposed regulation is considered to be nonsignificant in accordance with DOT policy and procedures for simplification, analysis, and review of regulation (DOT Order 2100.5). The economic impact of this proposal is expected to be minimal since only a very small area, compared to the area of Puget Sound and the adjacent waters, is involved. The effect of the prohibited fishing areas is to move the congestion away from a ferry commuter route and a narrow bridge opening. These prohibited fishing areas are not expected to have a significant effect on the overall ability of commercial fishing vessels to catch fish. Therefore, further economic evaluation is not necessary. This economic assessment is subject to change depending on comments received. Further analysis by the Washington Department of Wildlife and Fisheries, in response to inquiries by the Coast Guard, supports the finding of nonsignificance.

Based upon this assessment it is certified, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that the rulemaking does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment. No comments were received on federalism concerns during the comment period. However, comments regarding possible impact this proposed change to the rule may have on state fisheries regulations, Native American fishing rights, or other federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Concerns

The proposed change to the existing Regulated Navigation Area appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impacts this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Collection of Information

This proposed rulemaking contains a collection of information requirement in § 165.1301(e)(1), which requires a written request to the Commander, Thirteenth Coast Guard District for authorization to deviate from the Puget Sound regulated navigation area rules. This collection of information requirement is included in the approval for 33 CFR part 165 under OMB control number 2115–0540 as displayed in 33 CFR part 4.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposed to amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5 and 49 CFR 1.46.

2. Section 165.1301 is revised to read as follows:

§ 165.1301 Puget Sound, Washington—regulated navigation area.

(a) The following is a regulated navigation area—All the following northwestern Washington waters under the jurisdiction of the Captain of the Port Puget Sound: Puget Sound, Hood Canal, Possession Sound, Elliott Bay, Commencement Bay, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, U.S. waters of the Strait of Juan de Fuca and Georgia Strait, and all waters adjacent to the above.

(b) This regulation is intended to enhance vessel traffic safety during periods of vessel congestion. Operations potentially creating vessel congestion include, but are not limited to, vessels engaged in fishing, including gillnet or purse seine, recreational fishing derbies, sailboat races or regattas, and marine parades. For the purposes of these rules, the definition of "vessels engaged in fishing" is identical to that found in Rule 3 of the 72 COLREGS.

(c) General regulations.

(1) Vessels transmitting areas occupied by concentrations of vessels engaged in fishing or other operations may indicate their approach by sounding the restricted visibility sound signal for a vessel of their type, followed by one long blast of 10 to 12 seconds duration.

(2) Vessels engaged in fishing or any operation other than through transit of a traffic lane within an established Traffic Separation Scheme (TSS), as defined in 33 CFR 161.183 through 161.187 and 161.262 through 161.264, may not remain in, nor may their gear remain in, a traffic lane when another vessel engaged in through transit of a traffic lane approaches the area of congestion. Vessels not in through transit of a traffic lane within a TSS must draw in their gear, maneuver, or otherwise clear the traffic lane at least fifteen minutes before the arrival of the through vessel. Vessels which are required by this rule to leave the traffic lane must also remain clear of the designated separation zone when in a TSS east of Port Angles, WA.

(3) Vessels in a traffic lane or separation zone, engaged in fishing or operations other than through transit of a traffic lane or separation zone must:

(i) Monitor the Puget Sound Vessel Traffic Service VHF–FM radio frequency in use for the area in which the vessel is operating, and

(ii) At all times tend nets or other gear placed in the water so as to facilitate the movement of the vessel or gear from the lane for approaching vessels.

(4) Vessels engaged in gillnet fishing at any time between sunset and sunrise in any of the above listed waters shall display, at the end of the net most distant from the vessel, an all-round (32 point) white light visible for a minimum of two nautical miles at least three feet above the surface of the water.

(5) Vessels engaged in through transit of areas of congestion may not exceed a speed of 8 knots through the water when transiting areas occupied by concentrations of vessels engaged in fishing or other operations.

(6) Nothing in these rules shall be construed as relieving any party from their responsibility to comply with the applicable rules as set forth in the 72 COLREGS.

(d) Prohibited fishing areas. Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following areas.

(1) Edmonds—Kingston Ferry lane to include the waters within one-quarter nautical mile on either side of a straight line connecting the Edmonds and Kingston ferry landings during the hours that the ferry is operating.

(2) The Hood Canal Bridge to include the waters within a one-half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge during the transit of the draw span by naval combatants.

(e) Authorization to deviate from these rules.

(1) Commander, Thirteenth Coast Guard District may, upon written request, issue an authorization to deviate from these rules if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. An application for an authorization must state the need for the deviation and describe the proposed alternative operation.

(2) Puget Sound Vessel Traffic Service may, upon request, authorize a deviation from these rules for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure.

(i) The deviation request must be made well in advance to allow the requesting vessel and the Vessel Traffic Center (VTC) sufficient time to assess the safety of the proposed deviation.

(ii) The requesting vessel and the VTC must exchange relevant information on vessel handling characteristics, traffic density, radar contacts, and environmental conditions.

(3) In an emergency, the master, pilot, or person directing the movement of a vessel may deviate from these rules to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Dated: 6 May 1991.

J.E. Vorbach,

Commander, Thirteenth Coast Guard District.

[FR Doc. 91-17319 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3719-9E3748/P521; FRL-3876-4]

RIN 2070-AC18

Pesticide Tolerances for Zinc Phosphide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities artichoke and sugar beet (roots and tops). The proposed regulations to establish maximum permissible levels for residues of the rodenticide in or on the commodities were requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 9E3719 and 9E3748/P521], must be received on or before August 30, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions 9E3719 tand 9E3748 to EPA on behalf of the Agricultural Experiment Station of California.

1. *PP 9E3719*: In or on the raw agricultural commodity globe artichoke at 0.01 part per million (ppm).

2. *PP 9E3748*: In or on the raw agricultural commodities sugarbeet roots at 0.04 ppm and sugar beet tops at 0.02 ppm.

The petitioner proposed that these uses of zinc phosphide be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought.

Zinc phosphide is formulated as a rodenticide bait. When eaten by rodents in sufficient quantity, zinc phosphide liberates phosphine gas, which is absorbed from the intestinal tract, causing death. Uneaten bait will dissipate into the air as phosphine gas; or into soil or water as non-hazardous zinc or phosphate compounds.

Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a Registration Standard for Zinc Phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70 percent of the bound phosphate residues in treated commodities as consisting of oxy-acids of phosphorus, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30 percent of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities.

The residue of concern from the proposed use of zinc phosphide as a rodenticide bait for artichoke and sugar beet production is any unreacted zinc phosphide that may be present on the treated commodities. Residue data submitted by IR-4 indicate that the proposed tolerances for 0.1 ppm phosphine will not be exceeded as a result of any unreacted zinc phosphide that may be present on the treated commodities. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the proposed use.

A dietary exposure risk evaluation for phosphine uses a reference dose (RfD) of 0.0003 mg/kg/day, based upon an LEL (reduction of food intake and decreased body weight) from a 13-week rat feeding study, of 3.48 mg/kg/day and an uncertainty factor of 10,000. The theoretical maximum residue contribution (TMRC) for the overall U.S. population is calculated to be 0.000020 mg/kg/day (6.5 percent of the RfD) for published tolerances. The estimated increase in TMRC from the proposed use is calculated to be 0.000015 mg/kg/day (4.7 percent of the RfD) for the overall U.S. population. The total dietary exposure estimates for all population groups are well within the acceptable range; therefore, these proposed uses of zinc phosphide do not pose any unreasonable health risk.

The nature of the residues is adequately understood, and an adequate analytical method, spectrophotometric detection of phosphorus, is available for enforcement purposes in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.284 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking

proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3719 and 9E3748/P521]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 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 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 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.284 is revised to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

(a) Tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities as follows:

Commodity	Parts per million
Grapes	0.01
Grasses (rangeland)	0.1
Sugarcane	0.01

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of phosphine in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Artichoke (globe)	0.01
Sugar beet (roots)	0.04
Sugar beet (tops)	0.02

[FR Doc. 91–17930 Filed 7–30–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

48 CFR Part 586

[Docket No. 91–22]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 91–22 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due August 12, 1991.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 91–22 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket 91–22 the Commission, pursuant to section 19 of the Merchant Marine Act, 1920, proposes a new rule to adjust or meet apparent unfavorable conditions in the United States/Venezuelan trade by imposing a per voyage fee in the amount of $100,000 upon certain named Venezuelan-flag carriers. The effect of the Proposed Rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximate those imposed upon third-flag vessels by Venezuelan law, regulations, policy and practice.

The Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18058 Filed 7–30–91; 8:45 am]

BILLING CODE 6730–01–M

48 CFR Part 586

[Docket No. 91–24]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 91–24 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due August 12, 1991.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental

assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 91–24 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket 91–24 the Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Korea, proposes the imposition of fees on Korean-flag vessels calling at United States ports. Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the rule will be to adjust or meet unfavorable conditions created by those laws and regulations by imposing countervailing burdens on the Korean-flag carriers.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18059 Filed 7–30–91; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

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 Marketing Service

[TB-91-012]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: September 10, 1991.

Time: 10:30 a.m.

Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: To determine opening dates for the 1991–92 burley marketing season, discuss and adopt new policies and procedures for the 1991–92 burley marketing season, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: July 25, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–18090 Filed 7–30–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 91–075]

Animal Care; Stipulation Agreements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice of our intent to employ stipulation procedures where circumstances warrant to resolve certain violations of the Animal Welfare Act (Act) and the regulations and standards issued thereunder, without resorting to formal disciplinary proceedings under the Act.

FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville. MD 20782 (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

Regulations regarding animal welfare are set forth in 9 CFR parts 1, 2, and 3. These regulations are established pursuant to the authority in the Animal Welfare Act (Act), as amended (7 U.S.C. 2131 *et seq.*) This law requires the Secretary of Agriculture (Secretary) to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers.

Pursuant to its authority under the Act, the Department may initiate formal administrative proceedings against persons whom the Administrator, Animal and Plant Health Inspection Service, has reason to believe have violated the Act or the regulations and standards issued thereunder. The Department has regulations at 9 CFR 4.11 providing that the Administrator may enter into a stipulation, prior to the issuance of a complaint, with any person to resolve violation cases arising under the Act, regulations and standards, without resort to formal disciplinary proceedings. This stipulation procedure does not deprive an alleged violator of notice and opportunity for hearing. An alleged violator may decline to enter into a stipulation, in which case the Department will consider instituting formal disciplinary proceedings under the Act and the regulations.

In this document, we are giving notice that we intend to employ the stipulation procedure for violations where circumstances warrant. We believe that this procedure will enable us to better enforce the Act and the regulations and standards by expediting the resolution of violation cases. Under this stipulation procedure, we will seek civil penalties and, in appropriate cases, license suspensions.

Authority: 7 U.S.C. 2131–2157; 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 25th day of July, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[Fr Doc. 91–18087 Filed 7–30–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Prototype Cloud Seeding Project; Notice of Intent

AGENCY: Department of Agriculture, Forest Service.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the USDA Forest Service and the State of California will prepare a joint Draft Supplement to the Environmental Impact Statement—Environmental Impact Report (EIS/EIR) for the proposed Cloud Seeding Project to disclose the environmental consequences of specific issues brought forward in an appeal of this project. The Notice of Intent for this project was initially published in the **Federal Register** on February 23, 1990 [6410]. This project would be located in the vicinity of the Lakes Basin Area on the Plumas and Tahoe National Forests, Plumas and Sierra Counties, California. The area under consideration is located in T. 21 to T. 24 N. and Ranges 10 to 14 E. Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis of the issues in the appeal and the effects of these issues on the Final EIS/EIR will be conducted. The Record of Decision (ROD) for this project is hereby being withdrawn and a new ROD will be issued with the Final Supplement to the EIS/EIR. The Draft Supplement to the EIS/EIR will be published in August, 1991, and the Final Supplement to the EIS/EIR will be available for review in October, 1990.

ADDRESSES: Submit written comments to John Palmer, Acting Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy, California 95971.

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Planning Officer, Plumas National Forest, PO Box 11500, Quincy, California 95971, phone 916–283–2050.

SUPPLEMENTARY INFORMATION: The proposed project would use ground-based propane generators to augment snow pack by cloud seeding winter storms. These generators would be located on mountain tops in the vicinity of the Lakes Basin area. The California Department of Water Resources facilities supporting this project would be located on both Forest Service and private lands.

The Forest Supervisor's decision to authorize the cloud seeding was appealed to the Forest Service's Pacific Southwest Regional Forester who affirmed all but five issues raised by the appellants. These issues related to the watershed and fisheries conditions, cumulative watershed effects, sensitive, threatened and endangered species, potential flooding, and effects of the project on municipal supple watersheds. The Draft Supplement will address these issues and will revisit the Final EIS/EIR to assess whether the additional information will effect the initial analysis in this document.

John Palmer, Acting Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The Forest Service and the California Department of Water Resources will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Supplement to the EIS/EIR. The scoping includes:

1. Identification of any further issues to be analyzed in depth.
2. Elimination of insignificant issues or those which have been covered by a relevant previous environmental review.
3. Exploring additional alternatives.
4. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed project area.

The Draft Supplement to the EIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August, 1991. At that time EPA will publish a notice of availability of the Draft EIS/EIR in the **Federal Register**.

The comment period on the Draft Environmental Impact Statement—Environmental Impact Report will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the proposed prototype Cloud Seeding Project participate at that time. To be the most helpful, comments on the Draft Supplement to the EIS/EIR should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Hertiges, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Supplement to the EIS/EIR.

After the comment period for the Draft Supplement to the EIS/EIR ends, the comments received will be analyzed and considered by the Forest Service and the California Department of Water Resources in the preparation of the Final Supplement to the Environmental Impact Statement-Environmental Impact Report. The Final Supplement to the EIS/EIR is scheduled to be completed by October, 1991. In the Final Supplement to the EIS/EIR the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the Final Supplement to the EIS/EIR, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: July 21, 1991.

John Palmer,

Acting Forest Supervisor, Plumas National Forest.

[FR Doc. 91–18067 Filed 7–30–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1992 Census of Agriculture.
Form Number(s): Various.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,461,580 hours.
Number of Respondents: 4,100,000.
Avg Hours Per Response: 21 minutes.
Needs and Uses: The Bureau of the Census conducts the census of agriculture every five years in years ending in two and seven. The census provides detailed benchmark data for the agricultural sector of the economy and is the only source of agricultural data comparable and consistent at the national, state, and county levels. The census provides data on the number and type of farms, land use, crop acreage and production, livestock inventory and sales, production expenses, farm–related income, and other characteristics. Census data are used by the Administration, Federal Agencies, and Congress to formulate and evaluate national farm policies and by the Bureau of Economic Analysis to compile the farm sector economic indicators and the national income accounts.
Affected Public: Farms.
Frequency: Every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18134 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1991 Panel Wave 4.

Form Number(s): SIPP–11400, 11403, 11405(L).

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100 hours.

Number of Respondents: 88,200.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 4 and the 1990 Panel Wave 7 are identical. They are the following: 1) Selected Financial Assets, 2) Medical Expenses and Work Disability, and 3) Real Estate and Shelter Costs, Dependent Care, and Vehicles. Wave 4 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be three interview periods for the 1991 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18135 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–583–810]

Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5414.

Final Determination

We determine that chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination on April 18, 1991 (56 FR 15860), the following events have occurred. Verification of the questionnaire responses was conducted in Taiwan from April 26 through May 3, 1991. On May 29, 1991, Gourmet requested that the final determination in this investigation be postponed until not later than 135 days from the date of publication of the preliminary notice. On June 4, 1991, petitioner opposed the extension. On June 24, 1991, we published a notice postponing our final determination until not later than July 25, 1991 (56 FR 28739). Petitioner and respondents filed case and rebuttal briefs on July 1 and July 8, 1991, respectively. On July 12, 1991, we also received comments from San Shing. A public hearing was held on July 15, 1991.

Scope of Investigation

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this investigation. Chrome-plated lock nuts are also not subject to this investigation.

Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of the investigation is dispositive.

Period of Investigation

The period of investigation (POI) is May 1, 1990 through October 31, 1990.

Such or Similar Comparisons

For both respondent companies, in accordance with section 771(16) of the Act, we established two such or similar categories of merchandise: One-piece chrome-plated lug nuts and two-piece chrome-plated lug nuts.

Fair Value Comparisons

To determine whether sales of chrome-plated lug nuts from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both San Shing Hardware Works Co., Ltd. (San Shing) and Gourmet Equipment (Taiwan) Corporation (Gourmet), we based the United States price on purchase price, in accordance with section 772(b) of the Act, both because the chrome-plated lug nuts were sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

A. San Shing

We calculated purchase price based on packed, FOB Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, and containerization, in accordance with section 772(d)(2) of the Act.

B. Gourmet

We calculated purchase price based on packed, FOB Taiwan port, FOR Taiwan port, or CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, harbor tax, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act. We also deducted a discount given as a result of earlier sales of defective merchandise.

Foreign Market Value

A. San Shing

Because San Shing had no home market or third country sales of lugnuts, we calculated foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act. Constructed value includes materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) actual profit was applied as it exceeded the statutory minimum of eight percent; and (3) since selling expenses included credit, the interest expense reflected on the company's books was reduced for a portion of the expense related to these costs in order to avoid double counting.

We made an adjustment to constructed value, in accordance with § 353.56(a) of the Department's regulations, for differences in circumstances of sale. This adjustment was made for differences in credit expenses, bank handling charges, and commissions.

B. Gourmet

For those lugnuts where Gourmet had home market sales, we based foreign market value on those sales. Otherwise, we calculated the foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act.

Where foreign market value was based on home market sales, we added U.S. packing costs. We also made a circumstances of sale adjustment for credit expenses, pursuant to 19 CFR 353.56(a). Where foreign market value was based on constructed value, we included materials, fabrication, general expenses, profit, and packing in the constructed value. As described in more detail in the comments below, best information available was used for certain elements of the cost. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum of ten percent of materials and fabrication and (2) the statutory eight percent minimum profit was applied.

We made an adjustment to constructed value and home market price in accordance with section 353.56 of the Department's regulations for differences in circumstances of sale. This adjustment was made for differences in credit expenses.

Currency Conversion

We made currency conversions in accordance with section 353.60(a) of the Department's regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation.

We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents.

Public versions of our verification reports are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Comment 1: The petitioner states that Gourmet's costs could not be verified and, thus, should not be used to calculate the foreign market value. Petitioner states that there were numerous discrepancies between what was reported by Gourmet and what was traced to the general ledger and then to the financial statement. There were also discrepancies between Gourmet's general ledger and its audited financial statement. Therefore, the Department must base foreign market value on best information available for purposes of the final determination.

Gourmet maintains that its costs were fully verified, with the possible exception of steel material costs for the caps. Thus, the Department should calculate the foreign market value based on the verified information.

DOC position: During verification the Department encountered discrepancies between Gourmet's response and its accounting records. However, in general, the Department was able to verify the most significant elements needed in calculating the foreign market value. In those few instances where we were unable to verify the correct information, we have used the best information available.

Comment 2: Petitioner argues that because Gourmet subcontracts most of its production processes and purchases inputs, such as basenuts, which are themselves subject to the proceeding, it should not be considered the "producer" of the subject merchandise.

DOC position: We disagree. Although Gourmet subcontracts certain processes and purchases major inputs, it does perform processing, *e.g.*, tumbling and welding, and it produces caps. Therefore, we consider Gourmet to be the manufacturer of the merchandise under investigation. Moreover, even if Gourmet purchases inputs which may be considered as unfinished lug nuts, Gourmet uses those inputs to produce the merchandise which is being sold to the United States. Those sales are the subject of this investigation and Gourmet is the seller.

Comment 3: Petitioner argues that for product type 9A, Gourmet was supplied the base nut by its customer and simply performed a tolling function. In addition, retail sales packaging for this lug nut states that it was "made by the customer in Taiwan." Therefore, this type of lugnut should not be considered made by Gourmet and the Department should disregard sales of type 9A.

Gourmet argues that it substantially transforms the basenuts before they are exported to the United States. Thus, Gourmet is the producer of type 9A lug nuts. Furthermore, Gourmet argues that there is no legal authority to exclude these sales and that the Department uses tolled sales in calculating antidumping margins.

DOC position: Regardless of the claims on the package, these are tolled sales which the Department routinely includes in its analysis. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France (52 FR 812, January 9, 1987). U.S. price was based on the tolling charge.

Comment 4: Gourmet argues that since the Department could not confirm its steel costs for the production of caps, the Department should use the price at which Gourmet purchased caps from an unrelated subcontractor during the POI Gourmet states that it would be appropriate to use the price of the caps it bought even though the cost of producing the caps in-house is lower, as best information available.

Petitioner argues that even if the Department uses the cap price in lieu of actual steel cost, the Department should

adjust upward the cost to reflect the reject rate in the welding operation, sorting, and inspecting. Petitioner also contends that the Department should use the price that San Shing paid for caps, adjusted upward to reflect the fact that it costs Gourmet more to produce the caps for larger sized lug nuts.

DOC position: We agree with Gourmet in part. We were not able to verify Gourmet's steel input costs or labor for producing caps. However, we did verify that Gourmet purchased caps from an unrelated supplier. This verified price of caps is the best information available for determining Gourmet's costs with respect to caps. We do not see any reason to accept petitioner's suggestion that we use the prices paid by San Shing for caps, with an adjustment for size.

At the same time, we agree with petitioner that this cost must be adjusted upward to reflect yields at the welding stage, i.e., when the caps are welded onto the basenut, and have made such an adjustment.

Comment 5: Gourmet argues that the Department should not increase direct labor costs to correct for what it believes is an omission of overtime. Gourmet states that since the payroll already included overtime, the increase is not warranted. Moreover, there is no evidence in the verification exhibits to support or explain this increase. Finally, Gourmet states that sales volume rather than sales value should be used to allocate the direct labor cost.

Petitioner argues that the direct labor cost should be increased. In addition, petitioner argues that, contrary to Gourmet's assertion, direct labor costs in producing lug nuts approximate sales values rather than sales volume. Thus, the Department should allocate direct labor cost on the basis of sales value and not sales volume.

DOC position: The direct labor cost reported by Gourmet could not be verified. In the process of trying to demonstrate the correct cost of direct labor, Gourmet company officials stated that their payroll records only list straight time. In an attempt to verify the correct total direct labor cost, we examined Gourmet's general ledger which showed that direct labor costs were significantly higher than the cost shown in the payroll. Therefore, we increased the direct labor cost by a percentage represented by the ratio of verified labor costs as reported in the payroll to those reflected in the general ledger.

With respect to the allocation issue, Gourmet has argued that labor costs should be allocated among products based on volume. We note that a value based allocation results in higher costs being assigned to lugnuts. Because we were not able to verify labor costs reported in the response, we have used the more adverse, value-based allocation methodology.

Comment 6: Gourmet argues that the total electricity and other variable expenses should be added together and allocated to lug nuts based on the ratio of the volume of lug nuts sold to the volume of all products sold to arrive at the total variable production overhead costs.

Petitioner argues that variable production overhead should be allocated based on sales value and not sales volume.

DOC position: For the same reasons discussed in response to Comment 5, we have allocated these variable expenses on the basis of value rather than volume.

Comment 7: Petitioner states that Gourmet should have reported the cost of pallets as part of packing material cost. Also, where lug nuts are packed in clam shells, the packing cost should include the cost of clam shells and packing labor. Finally, petitioner argues that packing labor costs should be allocated based on sales value rather than sales volume.

Gourmet states that in calculating the packing expense, although packing materials relates only to those materials used in packing lug nuts, packing labor relates to all products packed by Gourmet. Therefore, only a portion of packing labor is attributable to lug nuts and that portion should be determined by the ratio of sales volume of lug nuts to the sales volume of all products sold.

DOC position: Gourmet claims that its merchandise is not shipped on pallets and we saw no evidence at verification that pallets were used. Therefore, we have not included a cost for pallets.

With respect to packing the lug nuts in clam shells, Gourmet typically does not do this. Instead, the lug nuts and empty clam shells are packed separately in the same carton. On one invoice, however, there is an indication that the lug nuts were pre-packed in clam shells. This invoice also carries a higher unit value in comparison with the other invoices to the same customer. To account for this, we have increased the constructed value to include the extra packing element.

We have allocated the portion of packing labor attributable to lug nuts based on the value of lug nuts and other products sold for the reasons discussed in response to comment 5.

Comment 8: Gourmet argues that the Department should calculate the profit based on the POI. Additionally, the cost of manufacture used in calculating the profit should include the cost of purchasing the caps, consistent with the treatment of purchases from other subcontractors.

Petitioner argues that the Department should use the profit calculated on a semi-annual basis, excluding the cost of purchasing the cap.

DOC position: The Department used the eight percent statutory minimum as best information available.

Comment 9: Petitioner contends that the Department should have examined the sale of the trading companies because (1) Gourmet was not identified as the manufacturer of the subject merchandise until after the trading company received a questionnaire from the Department, (2) Gourmet incurs no direct selling expenses, no short-term bank financing, and no R&D expenses, and (3) most sales are made through the trading companies.

Gourmet argues that the use of sales by trading companies would be contrary to long-standing precedent. The Department uses sales by trading companies only when the ultimate destination of the merchandise is not known by the trading company's supplier. However, in this investigation, Gourmet knew the destination of all exported merchandise, including merchandise sold to trading companies.

DOC position: We agree with Gourmet. It is longstanding Department practice to look at the prices charged by the manufacturer, as opposed to the trading company, where the manufacturer knows the destination of the merchandise (see, Electrolytic Manganese Dioxide from Japan, 54 FR 8778, March 2, 1989). On occasion, the Department has been asked to examine whether trading companies are engaged in "middleman dumping," but petitioner has made no such claim.

Comment 10: Petitioner argues that the number of entries on reports supplied by Customs, compiled for purposes of analyzing the critical circumstances issue pursuant to petitioner's request, does not match the number of entries reported by Gourmet. Additionally, petitioner argues that for direct sales, the unit price in the Customs report is lower than the unit price reported in the response. For indirect sales, *i.e.*, sales through trading companies, the unit price in the Customs report is higher than the unit price reported in the response.

Gourmet argues that the Customs report is inaccurate and should not be relied upon by the Department. In addition, the entered value of indirect sales should be higher on the Customs report, since these sales were made to

trading companies and the entered value ostensibly includes the profit and expenses of the trading companies. The entered value of direct sales should be lower on the Customs report than the response because the Customs report has the invoice price and the invoice price reflects the allowance for defective goods given for these sales.

DOC position: The Customs report referred to by petitioner was compiled solely for purposes of analyzing the critical circumstances issue. All the sales information used in this final determination was verified. The Department generally will not use any information in place of verified information absent compelling reasons to do so. Gourmet has provided a plausible explanation as to why there are slight discrepancies between the Customs report and the verified information, and we have no compelling reason to disregard the verified information.

Comment 11: Petitioner argues that Gourmet did not account for the cost of sorting and inspection. Gourmet maintains that the costs of sorting and inspection are included in the packing labor costs.

DOC position: Based on our observation during the plant tour at verification, we conclude that the verified packing cost includes the cost of sorting and inspecting.

Comment 12: With respect to the discount given on current sales for defective units sold prior to the POI, petitioner argues that the Department should use the discounted price as U.S. price. Additionally, the constructed value should be increased proportionally to reflect the cost of replacing the defective lug nuts.

Gourmet states that it incurred no loss on the sale of the defective lug nuts. Gourmet was paid in full by its customer in 1989 for the defective merchandise and the allowance is a method of reimbursing the customer. Gourmet asserts that the amount of this allowance was verified, and must be added to the unit price on the invoice to arrive at the gross U.S. price. Gourmet contends that this allowance has nothing to do with the cost of producing the merchandise during the POI.

DOC position: In the Department's judgment, the price reduction at issue appears to be a normal price discount. Therefore, we have treated it as such and deducted it from the United States price. We have not increased the cost of producing the subject merchandise by the amount of the price reduction, in addition to treating the reduction as a price discount, because to do so would be double counting.

Comment 13: Petitioner argues that the interest portion of constructed value should not be adjusted for imputed credit. No adjustment is needed to avoid double counting of interest expense since Gourmet incurred no interest expenses during the POI. Since home market sales were made for cash, the only credit expenses reported by Gourmet were those on its U.S. sales of the covered merchandise.

Gourmet asserts that the Department should not abandon its long-standing practice of reducing the interest expense reflected in a company's books by the amount of imputed credit. Gourmet states that the Department's rationale is that the failure to reduce the interest expense in a company's books would result in double counting. Gourmet further maintains that it does not matter that home market sales were made on a cash basis.

DOC position: We agree with petitioner. As Gourmet did not incur any interest expense, no adjustment was necessary to reduce interest expense for the amount related to imputed credit expense.

Comment 14: Petitioner argues that San Shing's interest rate should be used, as best information available, to calculate Gourmet's imputed interest expense. Petitioner maintains that since Gourmet did not incur any interest expenses from which its own rate could be derived, the information based on the actual experience of another producer should be used.

Gourmet argues that the Department should not use the credit experience of another company with an unknown credit experience and rating to calculate its imputed credit expense. Instead, Gourmet suggests that the Department use the interest rate of its trading company obtained during verification.

DOC position: We have used the weighted-average short-term interest rate (the thirty- to ninety-day rate) for the POI published in the Monthly Statistics by the Central Bank of China to calculate Gourmet's imputed interest expense. We used the thirty- to ninety-day rate because this time period approximates the average amount of time between the date of shipment and the date of payment for Gourmet. We do not believe it is appropriate to apply an interest rate to Gourmet which applies to some other company not similarly situated to Gourmet.

Comment 15: In the Department's preliminary determination, petitioner states that the costs were calculated on the date of exportation and not the date of sale. This treatment, petitioner maintains, is inconsistent with the Department's regulations in relation to calculating constructed value in a purchase price situation. Petitioner states that the cost of producing the subject merchandise is incurred up to 45 days before the merchandise is shipped. Because of production lead times, the exchange rate for the cost of production should reflect a similar lag.

DOC position: We found during verification that Gourmet records its expenses in its general ledger one month after the expenses are actually incurred. Therefore the costs used in this determination reflect the actual costs incurred during the POI.

Additionally, we have no reason to believe that the costs incurred in the period preceding the POI should differ from the costs incurred during the POI. Therefore, we have used the POI costs as a reasonable surrogate.

Section 353.60(a) of our regulations directs us to make currency conversion as of the date of the U.S. sale. We have determined that the invoice date is the date of sale and have made currency conversions as of that date.

Comment 16: Petitioner argues that movement charges were improperly allocated. Petitioner argues that the freight charges should be allocated based on weight and marine insurance and harbor tax by value.

Gourmet states that its allocations, based on volume, more closely approximate the manner in which the charges were incurred.

DOC position: We have allocated all movement charges according to the manner in which the cost was incurred. Therefore, we have allocated freight on the basis of volume and the other charges on the basis of value.

Comment 17: Petitioner argues that information on sales of open-end chrome-plated lug nuts should have been provided.

Gourmet asserts that the number of open-end chrome-plated lug nuts sold during the period of investigation was so small that it can have no material impact on this investigation and should be ignored. Gourmet contends that this small quantity was overlooked because chrome-plated open-end lug nuts are an anomally since a lug nut that exposes the bolt does not serve a decorative purpose. Moreover, most open-end lug nuts sold by Gourmet during the POI were zinc-plated and not chrome-plated. The Department verified over 95.5 percent of Gourmet's sales, and these sales are sufficiently representative of the 0.05 percent inadvertently omitted and disregarded for purposes of the Department's analysis.

DOC position: Due to the insignificant value of sales during the POI

represented by open-ended chrome-plated lug nuts, the Department has not analyzed these sales for purposes of calculating United States price.

Comment 18: Petitioner argues that fixed production overhead should be allocated based on sales value and not sales volume.

DOC position: For the reasons stated in response to comment 5, we have allocated fixed overhead among products based on their respective value.

Comment 19: Petitioner argues that "other material" costs are not accurate because the Department did not examine purchases prior to June 1990, which reflect purchases and costs incurred on the covered products sold during the period of investigation.

DOC position: See Comment 15.

Comment 20: Petitioner argues that Gourmet's SG&A should be recalculated based on Gourmet's audited financial statement.

Gourmet does not necessarily agree with the SG&A amount verified by the Department, but argues that recalculation of this amount is not warranted. Because Gourmet's SG&A is less than ten percent, the statutory minimum should be used.

DOC position: We have calculated Gourmet's SG&A based on its annual audited financial statement, since G&A and actual selling expenses would not be verified.

Comment 21: Petitioner argues that San Shing received an export subsidy on its steel input purchases from a state-owned steel supplier.

San Shing argues that the steel company, from which San Shing purchases most of its steel materials, merely sets its prices based on its marketing strategy in promoting its products. The price treatment given by this steel company to its customer should not be viewed as a countervailable subsidy.

DOC position: Consistent with past practice, we have deducted the rebate received by San Shing in calculating the cost of the company's steel costs (see, *United States* v. *European Trading Co.*, 27 CCPA 289). We have not made any adjustments to our calculations to reflect this alleged subsidy.

Comment 22: Petitioner argues that San Shing did not account for the cost of pickling and drawing.

San Shing maintains that all costs associated with pickling and drawing are accounted for in the fixed and variable production overhead.

DOC position: We verified the total cost of producing the subject merchandise. Included within the total cost is the cost of pickling and drawing.

Comment 23: Petitioner argues that San Shing did not account for all waste inherent in each stage of the production process. Accordingly, petitioner argues, the steel cost must be increased to reflect the production of defective nuts (exclusive of cap), with the revenue generated from sale of scrap used to offset production overhead costs only when the scrap is sold.

San Shing asserts that the waste incurred during the manufacturing process is limited, and was accounted for in its calculation of constructed value. In addition, the revenue generated from the sale of scrap was used to offset the cost of production.

DOC position: We agree with San Shing. We verified that all waste experienced during the manufacturing process was accounted for by San Shing. Additionally, we have determined that revenue from scrap should be used to offset cost of manufacture since scrap is generated during the manufacturing process. We have offset the cost of manufacture by the revenue earned by the sale of scrap.

Comment 24: Petitioner argues that packing is unique to the subject merchandise and should be allocated over the subject merchandise only.

DOC position: We verified that San Shing does not keep separate accounting records for each of its several products. We determined that San Shing's methodology for allocating packing cost is reasonable and have accepted its methodology of allocating the packing cost over all products, including the subject merchandise, packed by the packing department

Comment 25: Petitioner argues that the R&D expense incurred by the "Tooling Department" should not be deducted from the fixed production overhead. Petitioner maintains that the benefit derived from this R&D can be attributable to the subject merchandise since San Shing uses the products produced by the Tooling Department to produce the subject merchandise. San Shing argues that its R&D expense is not related to the production of lug nuts. San Shing explained that the R&D expenses related to the production of the basenut were incurred prior to the period of investigation. San Shing maintains that there were no further R&D expenses related to the subject merchandise.

DOC position: We agree with petitioner. San Shing uses the machinery and tools produced by the Tooling Department to produce the subject merchandise. Therefore, research and development in the Tooling Department will benefit the production of the subject merchandise.

Comment 26: Petitioner maintains that R&D expenses attributable to other products and departments should not be deducted from San Shing's G&A expense.

DOC position: We agree with petitioner. We used the audited financial statement in calculating G&A expenses and have not deducted R&D expenses attributable to other products and departments in this calculation.

Comment 27: Petitioner argues that where payment has not been received for a sale, the days for which credit was outstanding should be increased regardless of the terms of the sale.

DOC position: The actual payment dates for each sale were obtained at verification and were used in our final determination.

Critical Circumstances

Petitioner alleges that imports of chrome-plated lug nuts from Taiwan present "critical circumstances." Under section 735(a)(3) (A) and (B) of the Act, critical circumstances exist if we determine that (1) there is history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

It is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. See e.g., Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, May 3, 1989). The estimated margins in this final determination do not meet the requirements to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act. We also examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Taiwanese manufacturers, producers, and exporters of the subject merchandise.

On this basis, we find that the requirements of section 735(a)(3)(A) are not met with regard to imports of the subject merchandise. Therefore, we determine that critical circumstances do not exist.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation on entries from Gourment and to continue to suspend liquidation of all other entries of chrome-plated lug nuts, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit equal to the estimated amounts by which the foreign market value of chrome-plated lug nuts exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
San Shing Hardware Works Co., Ltd...	11.57
Gourmet Equipment (Taiwan) Corp. (Gourmet)	6.57
All Others	7.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: July 25, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18136 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Antidumping Duty Order: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 377-3965 or (202) 377-4929.

Order

Scope of Order

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 USC 1673d(a)) (the Act), on June 5, 1991, the Department made its final determination that silicon metal from Brazil is being sold at less than fair value (56 FR 26977, June 12, 1991). On July 24, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

In its final determination, the Department also found that critical circumstances existed with respect to exports from Brazil by Companhia Brasileira Carbureto de Calcio (CBCC). However, on July 24, 1991, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Brazil. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3) of the Act, the Customs Service will refund all cash deposits and release all bonds collected on silicon metal from Brazil entered, or withdrawn from warehouse, for consumption, on or after December 29, 1991, and before March 29, 1991.

Therefore, in accordance with sections 736 and 751 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of silicon metal from Brazil. These antidumping duties will be assessed on all unliquidated entries of silicon metal from Brazil, entered or withdrawn from warehouse, for consumption on or after March 29, 1991, the date on which the Department published its preliminary determination notice in the Federal Register. On or after the date of publication of this notice in the Federal Register, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Producer/manufacturer/exporter	Deposit rate (percent)
Companhia Brasileira Carbureto de Calcio (CBCC)	87.79
Camargo Correa Metais, S.A. (CCM)	93.20
All others	91.06

This notice constitutes the antidumping duty order with respect to silicon metal from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 23, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18137 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91–00006." A summary of the application follows.

Summary of the Application

Applicant: North America Blueberry Export Corporation, U.S.A. ("NABEC"), c/o P.O. Box 100, Main Street, Milbridge, Maine 04658; Contact: Anthony F. Essaye, Esquire; Telephone (202) 331–7760.

Application No.: 91–00006.

Date Deemed Submitted: July 18, 1991.

Members (in addition to applicant): Allen's Blueberry Freezer, Ellsworth, Maine; Cobi Foods Inc., Port Williams, N.S. BOP 1T0, Canada; Jasper Wyman & Son, Milbridge, Maine; Les Bleuets Sauvages du Quebec, Inc., St. Bruno, Lac-St.-Jean, P.Q., GOW 2L0, Canada; The Maine Wild Blueberry Co., Inc., Machias, Maine; Oxford Frozen Foods, Limited; (including Cherryfield Foods, Inc., Cherryfield, Maine, a subsidiary of Oxford Frozen Foods, Limited), Oxford, N.S., BOM 1P0, Canada.

Export Trade:

Product: Fresh and processed wild blueberries.

Export Trade Facilitation Service (as they relate to the export of Product)

All export-related services, including, but not limited to, exclusive sales representation; international market research; marketing; advertising and sales promotion, including joint promotional, sales and marketing efforts; handling; shipping and other transportation; export licensing, trade documentation; common marking and identification; setting guidelines and export prices; terms of sale and sales negotiations; communication and processing of export orders, financing; foreign exchange; taking title to goods; and legal assistance.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), Canada, and Japan.

Export Trade Activities and Methods of Operation: NABEC and its Members seek certification for the following conduct wherein:

1. NABEC may serve as the Members' exclusive sales representative in the Export Markets, dealing exclusively in wild blueberries produced by its Members.

2. Each member may dedicate a percentage of its annual production of processed wild blueberries to be available for sale to the Export Markets by NABEC.

3. NABEC may establish the quantity of processed wild blueberries to be sold by its Members in the Export Markets.

4. Members may solicit sales in the Export Markets but, in so doing, will act exclusively on behalf of NABEC.

5. NABEC and its members may sponsor joint promotional, sales and marketing efforts in the Export Markets.

6. NABEC may communicate and process export orders on behalf of its Members.

7. NABEC may provide export trade facilitation services and engage in other activities to assist the export of the Members' wild blueberries, including securing financing, legal assistance, foreign exchange and taking title to the Members' wild blueberries.

8. NABEC may require its Members to refuse to deal in the Export Markets with export intermediaries other than NABEC or other members acting on its behalf.

9. NABEC may require common marking of the Members' wild blueberries sold in the Export Markets.

10. NABEC may set guidelines to govern all sales negotiations and sales of the Members' wild blueberries, the Export Markets.

11. NABEC may set export prices for the Members, wild blueberries.

12. NABEC and its Members may exchange information regarding:

a. market research and sales strategies, including advertising and promotion, in the Export Markets;

b. expenses related to exporting, including handling and transportation;

c. legislation and regulations affecting sales to the Export Markets, including applicable licensing and other trade documentation requirements;

d. common marking and identification;

e. contract and spot pricing in the Export Markets, including prices and availability of processed wild blueberries or substitute products for competitors in the Export Markets;

f. customary terms of sale in the Export Markets and specifications from customers in the Export Markets;

g. export prices for the Members' wild blueberries and projected demand for the Product in the Export Markets;

h. financing, legal assistance, foreign exchange, and taking title to the Members' wild blueberries; and

i. efforts and activities undertaken by NABEC on behalf of its Members in connection with the export the Members' wild blueberries to the Export Market.

Dated: July 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–18080 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 910527–1127]

RIN 0693–AA85

Proposed Federal Information Processing Standard (FIPS) for Government Network Management Profile (GNMP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Version 1.0 Government Network Management Profile (GNMP) is proposed for Federal agency use. The GNMP specifies the common management information exchange protocol and services, specific

management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources. The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, December 1990, developed by the OSI Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the International Organization for Standardization (ISO).

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, GNMP. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the GNMP from the Standards Processing Coordinator (ADP), Technology Building, room B–64, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed FIPS must be received on or before October 29, 1991.

ADDRESSES: Written comments concerning the adoption of GNMP as a FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for GNMP, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Nielsen, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3669.

Dated: July 24, 1991.

John W. Lyons,

Director.

Federal Information Processing Standards Publication _____

(date)

Announcing the Standard for Government Network Management Profile (GNMP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Government Network Management Profile (GNMP).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the Version 1.0 GNMP. The Government Network Management Profile (GNMP) specifies the common management information exchange protocol and services, specific management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources.

The GNMP builds on FIPS 146–1, Government Open Systems Interconnection Profile (GOSIP), and includes the GOSIP Version 2.0 by reference. The GOSIP specifies lower layers protocols and three applications that support general network management operations. Future versions of the GNMP will add network management functions and services for GOSIP-compliant end systems and intermediate systems. The GNMP and GOSIP are interrelated and will cross-reference each other as required.

The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, December 1990, developed by the OSI Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the ISO.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. *Cross Index.*

a. NBS Special Publication 500–183, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 4, Edition 1, NIST Workshop for Implementors of Open Systems Interconnection, December 1990.

b. FIPS PUB 146–1, Government Open Systems Interconnection Profile (GOSIP).

7. *Related Documents.* Related documents are listed in the Reference Section of the GNMP document.

8. *Objectives.* The primary objectives of this standard are: to achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment; to reduce the costs of computer network systems by increasing alternative sources of supply; to facilitate the use of advanced technology by the Federal Government and; to stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

9. *Specifications.* GNMP (affixed).

10. *Applicability.* GNMP shall be used by Federal Government agencies when acquiring network management functions and services for computer and communications systems and networks.

11. *Implementation.* This standard is effective January 31, 1992. For a period of 18 months after the effective date, agencies are permitted to acquire alternative network management functions and services which provide equivalent functionality to this standard. Agencies are encouraged to use this standard for solicitations and contracts for new network management functions and services to be acquired after the effective date. This standard is compulsory and binding for use in all solicitations and contracts for new network management functions and services to be acquired 18 months after the effective date. Additional management support functions will be added to GNMP as implementation specifications for these functions are developed by the NIST Workshop for Implementors of OSI. For a period of 18 months after these new functions are included in GNMP, agencies are permitted to acquire alternative functions and services which provide equivalent functionality. After the 18-month period, the new functions and services should be cited in solicitations and contracts when systems to be acquired provide equivalent

functionality to the protocols defined in the GNMP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Information.* The GNMP is being developed in phases. Version 1.0 GNMP specifies the initial phase of the GNMP. Additional management capabilities and managed objects will be included in subsequent releases of the profile. Eventually, as the NM standards all reach technical maturity the GNMP will embrace the full set of management functionality.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB _____), and title Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 91–18020 7–30–91; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: NMFS, Southwest Fisheries Science Center, (P77#52)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. Applicant: Dr. Izadore Barrett, Director, Science and Research Director, Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038.

2. Type of Permit: Scientific research under MMPA and scientific purposes under ESA.

3. Name and Number of Marine Mammals:

80 Bottlenose dolphin (*Tursiops triuncatus*)
80 Risso's dolphin (*Grampus griseus*)
80 Short-finned pilot whales (*Globicephala macrorhynchus*)
80 Common dolphin (*Delphinus delphis*)
80 Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)
80 Northern right-whale dolphin (*Lissodelphis borealis*)
80 Harbor porpoise (*Phocoena phocoena*)
80 Dall's porpoise (*Phocoenoides dalli*)
20 Baird's beaked whales (*Berardius bairdii*)
20 Sperm whales (*Physeter macrocephalus*)
20 Humpback whales (*Megaptera novaeangliae*)
20 Blue whales (*Balaenopteram usculus*)
20 Fin whales (*B. physalus*)
20 Minke whales (*B. acutorostrata*)
20 Gray whales (*Eschrichtius robustus*)
20 North Pacific right whales (*Eubalaena glacialis*)

4. Type of Take: The applicant requests authority to collect tissues samples taken by projectile dart from cetaceans encountered during the California Current cetacean surveys. The immediate goal is the collection of tissue samples during survey activities in the California Current. The samples will be collected, imported and archived for use in genetic analyses.

5. Date and Location of Activity: Field work is scheduled to begin July 28, 1991, aboard the NOAA vessel *McArthur.* Permit coverage for the area extending beyond the continental shelf edge to roughly the boundary of the California current and the boundary of the U.S. territorial waters to the south and the Oregon/California state boundary in the north for a period of 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115 (206/526–6150); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/516–4020).

Dated: July 25, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–18055 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposed New Rule 553—Average Price System

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule to implement an average pricing system.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted a proposed new rule pursuant to section 5a(12) of the Commodity Exchange Act ("Act"). The proposed rule would allow clearing firms to confirm to customers average prices when certain orders or series of orders for futures or options contracts are executed at multiple prices. The proposed pricing system would not alter prices at which trades were cleared or reported, nor alter the handling of liquidations or transfers.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the CME's proposal for public comment. The Division believes that publication of CME's proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 30, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or Lois J. Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

By letter dated July 15, 1991 and received July 18, 1991, the CME submitted proposed new Rule 553 pursuant to Commission Regulation 1.41(c). Proposed new Rule 553 would put into place an average price system ("APS") which would enable clearing firms to confirm to customers an average price when multiple execution prices were received on an order or series of orders for futures, options or combination transactions. The APS could be used for a single order or an order representing multiple accounts executed only during a regular trading hours session [1] and only if the order was for the same commodity and month for futures contracts and the same commodity, month, put or call and strike price for option contracts. The CME believes that APS would provide a fair allocation method when multiple prices were received on an order for multiple accounts in that each customer would be confirmed an average price which would be no better or worse than any other customer whose order was included.

Under the proposed rule, both the office and floor order for an order that would be averaged in the event of multiple execution prices would be required to include an APS indicator at the time of acceptance in addition to all other current CME order recordation requirements. An APS-indicated order, like other orders, would be transmitted into the pit for execution and if the floor broker was able to execute the order at a single price, no averaging would be necessary. If the APS order was filled at multiple prices, an average price would be computed based on the fill prices, and the average price would be confirmed to the customer.[2] The prices reported to the Clearing House and to quotation services would remain the actual execution prices arrived by open outcry in the pit, and trades subject to APS would be cleared at the execution prices.

The APS system is proposed to be used both when the executing firm also carries the accounts represented by an order and when the executing and carrying firm are different. The proposed rule would require every clearing firm that confirms to customers average prices to include an APS indicator on each customer statement including daily and monthly confirmations.

The CME represents that the proposed system would have no impact on its audit trail or resulting computerized trade reconstruction. With respect to partial fills, allocation would be subject to currently applicable allocation methods. Confirming an average price to a customer would have no impact on margin, settlement, or liquidations or transfers of trades.

[1] The APS system initially would be available only for trades executed during regular trading hours; however, after the system became operational, the CME would propose to permit APS also to be used for GLOBEX transactions.

[2] Pursuant to the proposed rule, if the average price was not consistent with the minimum price increment, the average price would be rounded to the next price increment. Buy orders would be rounded up and sell orders rounded down. This process would create a cash residual which the CME states would be paid to the customer if the confirmed price was the rounded average.

II. Request for Comments

The Commission requests comments on any aspect of the proposed new CME rule that members of the public believe may raise issues under the Act or Commission regulations.

Copies of CME's proposed rule submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, on July 25, 1991.

Andrea M. Corcoran,

Director.

[FR Doc. 91–18057 Filed 7–30–91; 8:45 am]

BILLING CODE 6351–01–M

Chicago Mercantile Exchange Proposal To Establish Option Trading for the Globex Trading System Based on Implied Volatility

AGENCY: Commodities Futures Trading Commission.

ACTION: Notice of proposed contract market rule and rule amendments.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted to the Commodity Futures Trading Commission ("Commission") a proposal to establish an alternative format for trading option contracts, and combinations involving option contracts, on the Globex trading system. The proposal would permit trading based on the quotation of implied volatility for the underlying futures contract, rather than the actual premium (price) level of the option.

The Division of Trading and Markets ("Division") has determined, pursuant to authority delegated by Commission Regulation 140.96, to publish the CME's proposal for comment. The Division believes that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATES: Comments must be received by August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence R. Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June 21, 1991, the CME submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to permit option trading based on the implied volatility of the underlying futures contracts. The CME proposal would apply only to the Globex trading system. The proposal includes newly proposed Rule 584, proposed amendments to Rules 4611, 4612, 4613, 4614, 4615, 4616, 5001, and 5101, a proposed Definition, and a proposed Interpretation and Notice. The proposal would permit trading based on implied volatility for options on the Pound Sterling, Canadian Dollar, Deutsche Mark, Japanese Yen, Swiss Franc, Australian Dollar, Three-Month Eurodollar, and Three-Month U.S. Treasury Bill futures contracts.

II. Description of Proposal

The proposal would establish an additional format for trading option contracts on the Globex system. Under the proposal, Globex terminal operators could enter option contract bid and/or ask quotations in terms of the implied volatility of the option's underlying futures contract, rather than the premium (price) of the option. Following execution, a price would be derived by the CME from a predetermined standard option pricing model. This price would be used to calculate the amount due from the purchaser of the option contract and also would serve as the basis for the clearing of positions. In the case of a combination transaction (i.e., a transaction involving both options and futures contracts) the standard option pricing model also would be used to determine the number of futures contracts for the combination transaction.

The proposed new format would be in addition to, not in place of, the listing of option contracts quoted in the conventional manner. That is, under the proposal, both conventionally priced and volatility-based options would be listed for the same future contract, with the system programmed to display the conventionally-priced and volatility-based options on separate lines of the Globex terminal screen. For purposes of clearing and settlement, the two types of options would be fungible.

The CME believes that adoption of the proposal could encourage trading on the Globex system. According to the CME, traders in an open outcry environment can easily adjust their bid and ask quotations in response to changes in competitive circumstances or other material market variables. The CME contrasts this with the Globex system, where bid and ask quotations are entered via keyboard and are subject to immediate acceptance as market conditions change. Thus, on Globex, a trader with multiple bids and/or offers with the system would run the risk that stale quotes could be picked off before they could be updated. Because many trading decisions are based on volatility estimates, the CME concludes that the proposal could reduce the need of Globex terminal operators to continually cancel and re-enter bid and ask quotations, and thereby facilitate or encourage trading activity. The CME notes that the over-the-counter market in interbank currency options is based on a method similar to the proposal.

III. Request for Comments

The Commission requests comments on any aspect of the proposal that members of the public believe may raise issues under the Act or the Commission's regulations. In particular, the Commission seeks comment on whether the fact that under the proposal there could be a two-tiered pricing structure for the same option raises any issues under the Act or the Commission's regulations.

Copies of the CME's submission are available for inspection of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person submitting written data, views or arguments on the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 25, 1991.

Andrea, M. Corcoran,

Director.

[FR Doc. 91–18056 Filed 7–30–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Personal Property Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

SUMMARY: Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on September 19, 1991 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural charges to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

FOR FURTHER INFORMATION CONTACT: All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, 5611 Columbia Pike, Falls Church, VA 22041–5050, or at telephone number (703) 756–1600, between 0800–1630 hours. Topics to be discussed should be received on or before August 9, 1991.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–18260 Filed 7–30–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

[Special Public Notice 91–4, Permit No. 2–830038, Kamishak Bay 1]

Reevaluation of Permit Decision

AGENCY: Alaska District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Alaska District Engineer has determined that a reevaluation of the Paint River fish ladder permit is warranted. Recent information regarding the possible effect of the project on McNeil River State Game Sanctuary and Katmai National Park bear concentrations and behavior; as well as recent legislation passed by the Alaska Legislature expanding the sanctuary and

establishing the McNeil River State Game Refuge constitutes the need for further review. Substantive comments on the impacts of the project on bear concentrations and behavior will be used to determine whether modification, suspension, or revocation of the permit is appropriate.

DATES: Comments must be received by the Alaska District on or before August 30, 1991.

ADDRESSES: Comments must reference the permit number above and be submitted to the following address: U.S. Army Corps of Engineers Alaska District Regulatory Branch, Post Office Box 898, Anchorage, Alaska 99506–0898.

FOR FURTHER INFORMATION CONTACT: Messrs. Steve Meyers or Kevin Morgan at the Anchorage address above, or by calling (907) 753–2712.

SUPPLEMENTARY INFORMATION:

1. *Permittee:* Cook Inlet Aquaculture Association.

2. *Location:* Paint River, approximately 100 miles west of Homer, Alaska, Section 12, Township 12 South, Range 30 West, Seward Meridian, USGS quadrangle map Iliamna (A–4), Alaska.

3. *Authorized work:* Discharge 237 cubic yards (cy) of fill material, dredge 2,080 cy of gravel and excavate 3,600 cy of solid rock in association with the construction of a fish ladder.

4. *Purpose:* Paint River currently produces no salmon; colonization has been prevented by the steep falls located near the mouth. Fish ladder construction coupled with a 5 year stocking program would allow the development of self-sustaining salmon runs. All 5 Alaskan salmon species would be introduced. Paint River would be expected to produce 600,000 chum, 900,000 pink, 225,000 sockeye, 5,000 kings, and 7,500 coho salmon annually.

5. *Background information:* A completed application was received by the Corps on March 22, 1988, and a 30 day public notice describing the project was issued on April 29, 1988. The Public Notice was sent to all interested parties (on the Corps mailing list) including appropriate State and Federal resource agencies to solicit comments. In response, only letters of no objection to permit issuance were received. An environmental assessment was completed on August 9, 1988, and the permit was issued on August 23, 1988. The time limit for completing the authorized work is August 31, 1991.

6. *Water quality certification:* A Certificate of Reasonable Assurance was issued by the State of Alaska, Department of Environmental Conservation on July 12, 1988.

7. *Coastal Zone Management Act Certification:* A Conclusive Consistency Determination was issued by the State of Alaska, Division of Governmental Coordination on July 11, 1988.

8. *Special area designation:* The project site is located approximately 1 mile north of the north boundary of the McNeil River State Game Sanctuary. This sanctuary is also listed on the National Registry of Natural Landmarks (36 CFR part 62). The project site is approximately 15 miles from the closest boundary of Katmai National Park.

9. *Additional information:* Recent legislation passed by the Alaska Legislature designates the Paint River corridor as part of the McNeil River State Game Sanctuary and establishes the McNeil River State Game Refuge which encompasses the approximate Paint River watershed. This legislation becomes effective the date the fish ladder becomes operational.

10. *Authority:* The permit was issued pursuant to section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act. In accordance with General Condition 5 on the permit form (ENG Form 1721), the District Engineer may reevaluate his decision at any time the circumstances warrant. Reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

John O. Roach II,

Department of the Army, Liaison Officer to the Federal Register.

[FR Doc. 91–18175 Filed 7–30–91; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 91–27]

OMB Clearance Request for Standard Form, Performance Bond for Other Than Construction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Standard Form XX, Performance Bond for Other Than Construction.

DATES: Comments may be submitted on or before September 30, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, GSA (202) 501–4547.

SUPPLEMENTARY INFORMATION:

A. Purpose

The new standard form, Standard Form XX, Performance Bond for Other Than Construction, is being proposed for establishment. This coincides with the proposed rule, FAR case 91–27, providing a contract clause governing performance bonds for other than construction. The terms and conditions governing performance bonds for construction and other than construction may vary. The SF XX is being created to reflect these different terms and conditions.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 5; total annual responses, 2500; hours per response, 30; and total response burden hours, 1250.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Standard Form XX, Performance Bond for Other Than Construction, FAR case 91–27 in all correspondence.

Dated: July 23, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18029 Filed 7–30–91; 8:45 am]

BILLING CODE 6820–JC–M

DEFENSE INFORMATION SYSTEMS AGENCY

Video Teleconferencing Industry; Draft Military Standard

The Department of Defense (DoD) announces the development of a draft military standard, MIL–STD–188–131, entitled Interoperability and Performance Standard for Video Teleconferencing. This draft standard will state DoD's minimum interoperability requirements as well as optional features. Industry is invited to

review this document for accuracy and technical feasibility and provide comments. All information shall be provided at no cost to the government. All organizations willing to participate will do so at their own expense. Copies of the draft standard may be obtained from the Joint Tactical Command, Control and Communications Agency (JTC3A), TBBC (JTC3A–STT) (Attn. Mr. Rittenbach), Fort Monmouth, New Jersey 07703–5613, after 22 July 1991. Only written or faxed requests will be honored. Fax numbers are (908)–532–7773 and (908)–532–7752. Request industry comments be submitted to JTC3A no later than 23 September 1991.

Klaus H. Rittenbach,

Electronics Engineer.

[FR Doc. 91–17843 Filed 7–30–91; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 30, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: July 25, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.

Title: Institutional Quality Control Pilot Project: Notice of Deadline Date for Participation and Revision of Selection Criteria.

Frequency: Annually.

Affected Public: Businesses or other for-profit; non-profit institutions.

Reporting Burden—Burden Hours: 50; *Responses:* 50.

Recordkeeping Burden—Burden Hours: 0; *Recordkeepers:* 0.

Abstract: This form will be used by financial aid administrators in demonstrating their commitment to quality control and error reduction in processing and awarding student aid dollars. The Department will use the information to assess an institution's intent and capacity to support the program.

[FR Doc. 91–18050 Filed 07–30–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–178–001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 24, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 17, 1991, tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 602 and Substitute First Revised Sheet No. 658 proposed to be effective August 1, 1991.

Algonquin states it is submitting this amended tariff filing to clarify the term "new interruptible agreement" in reference to § 30.2(d) of Algonquin's tariff which simply established the point in time when agreements are subject to the first come, first serviced principles set forth in Order No. 436. Algonquin states its tariff does not contain a precise definition for that term, however, and for purposes of clarification, Algonquin submits this definition in section 1 of its general terms and conditions.

Algonquin notes that copies for this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before July 31, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18040 Filed 7–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–471–002]

Central Maine Power Co.; Filing

July 25, 1991.

Take notice that on June 10, 1991 Central Maine Power Company tendered for filing, in compliance with prior Commission orders in this docket, a transmission agreement between Central Maine Power Company and Massachusetts Municipal Wholesale Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18049 Filed 7–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–59–007]

Northern Natural Gas Co., Proposed Changes in F.E.R.C. Gas Tariff

July 24, 1991.

Take notice that Northern Natural Gas Company (Northern), on July 16, 1991, tendered for filing to become part of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff) the following tariff sheets:

Third Revised Volume No. 1

Sixty-Fourth Revised Sheet No. 4A
Ninety-Fourth Revised Sheet No. 4B
Sixty-Third Revised Sheet No. 4B.1
Twenty-First Revised Sheet No. 4G.2
Fourteent-Revised Sheet No. 4H

Original Volume No. 2

One Hundred Second Revised Sheet No. 1C
Eighth Revised Sheet No. 1C.a

Northern proposes an effective date of August 1, 1991, to suspend the ANGTS Cumulative Adjustment from Northern's demand and commodity rates for the period August 1, 1991, through December 31, 1991.

Northern states that copies of the filing were served upon the company's customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18038 Filed 7–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1986 Oregon]

Oregon Trail Electric Consumers Cooperative, Inc.; Intent To File Application for a New License

July 24, 1991.

Take notice that the Oregon Trail Electric Consumers Cooperative, Inc., the existing licensee for the Rock Creek Hydroelectric Project No. 1986, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1986 was issued effective June 30, 1946, and expires June 29, 1996.

The project is located on Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal works of the Rock Creek Project include a low concrete diversion dam; a flume about 8,800 feet long; a regulating forebay of about 7 acre-feet; a 2,720-foot-long penstock; a powerhouse with a total installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 3275 Baker St., Baker City, OR 97814 and 2023 Court, Baker City, OR 97814.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 29, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18036 Filed 7–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–60–005]

Overthrust Pipeline Co.; Report of Refunds

July 24, 1991

Take notice that on July 12, 1991, Overthrust Pipeline Company (Overthrust) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of the Commission's Order, issued May 21, 1991, Approving Settlement with Modifications in Docket Nos. RP85–60–000, and RP85–60–002.

Overthrust states that it made refunds of $11,444,765 to its customers on June 14, 1991 and June 17, 1991, inclusive of interest calculated in accordance with § 154.67(c) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and Procedure (18 CFR 385.211 (1990)). All such protests should be filed on or before July 31, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18039 Filed 7–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP91–10–000]

Complaint; Rocky Mountain Natural Gas Co.

Issued July 24, 1991.

Take notice that on July 5, 1991, Rocky Mountain Natural Gas Company, a Division of K N Energy, Inc. (Rocky Mountain) filed a complaint against Jack J. Grynberg, individually and as a general partner for the Greater Green River Basin Drilling Program: 72–73 (Grynberg), because of an alleged failure to refund $749,736.40 as required by § 270.101(e) of the Commission's regulations.[1] Rocky Mountain states that gas sold to it from the six wells in question was produced from gas reserves committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act of 1978 (NGPA) and the sales must be made at the applicable NGPA section 104 price. Rocky Mountain requests that the Commission issue an order requiring Grynberg to comply with section 270.101(e) of the Commission's regulations by refunding to Rocky Mountain the amount of $749,736.40 for payments, including interest thereon, which were in excess of the applicable maximum lawful prices for NGPA section 104 gas purchased by Rocky

[1] 18 CFR 270.101(e).

Mountain from Grynberg under a 1975 contract prior to January 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 or 214 of the Commission's rules of practice and procedure. All such petitions shall be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining 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 with a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondent's answer to the complaint is also due on or before 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18037 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-6-003]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 24, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 16, 1991 the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

Original volume No. 2	Proposed effective date
Original sheet Nos. 3951 through 3970 constituting Transco's Rate Schedule X-322, a firm gas transportation agreement dated December 15, 1989 by and among Transco and the Public Service Electric & Gas Company (PSE&G).	Dec. 15, 1989.
Original sheet No. 3951-A	Apr. 1, 1990
First revised sheet No. 3951-A	Apr. 10, 1990.

Transco states that the Commission authorized the subject gas transportation agreement by its Order Issuing Certificate issued June 7, 1989 in Docket Nos. CP37-5-000, *et al.* (June 7 order) in which Transco was authorized *inter alia*, to construct facilities and transport certain quantities of natural gas commencing November 15, 1989 pursuant to the terms and conditions of the precedent agreement contained in the Stipulation and Agreement filed by the Associated Penn East Customer Group (APEC).

Transco later determined that certain facilities which were authorized by the Commission in its June 7 order would not be placed in service by November 15, 1989. Therefore, on October 25, 1989, Transco filed an application seeking authority to utilize, on an interim basis, a portion of the facilities authorized by the Commission in conjunction with Transco's SS-2 storage service in order to providee firm tranportation service for the APEC customer group. On December 14, 1989 the Commission issued in Docket No. CP90-131-000 an Order Amending Certificate For Limited Term authorizing the use of the SS-2 facilities until the earlier of March 31, 1990 or the date on which the APEC facilities are placed in service. In its December 14, 1989 order the Commission also authorized interim rates for the APEC service based on the revised cost of service resulting from the utilization of the SS-2 facilities. The tariff sheets submitted in the instant filing proposed to be effective December 15, 1989, the commencement date of the APEC service, reflect the interim rates authorized by the Commission.

Transco states it is submitting Original Sheet No. 3951-A effective April 1, 1990 reflecting the additional APEC facilities which were placed into service on March 31, 1990, and that these April 1, 1990 rates are the rates which are originally authorized by the Commission in its June 7 Order.

Transco states it is also submitting First Revised Sheet No. 3951-A proposed to be effective April 10, 1990 in order to make reference to Substitute Fourth Revised Sheet No. 22 to Transco's Second Revised Volume No. 1 Tariff, which contains rates applicable to the APEC firm transportation service effective April 10, 1990, and that such rates were accepted by the Office of Pipeline and Producer Regulation Letter Order issued May 9, 1990 in Docket No. RP90-8-003.

Transco states that copies of the instant filing are being mailed to PSE&G and CNG Transmission Corporation, and that in accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Fedeal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before July 31, 1991. Protests wil 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18044 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-006]

Transcontinental Gas Pipe Line Corp; Compliance Filing

July 24, 1991.

Take notice that on July 22, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing revised tariff sheets to its Volume No. 1 and Volume No. 2 tariffs in compliance with the Federal Energy Regulatory Commission's (Commission) order issued June 19, 1991 in the reference dockets.

Transco states that included in appendix A to its filing (Book 1) are revised tariff sheets for the locked-in period (April 10, 1990-July 31, 1991). Transco also states that appendix B to its filing contains tariff sheets for the prospective period to be effective August 1, 1991, including (i) An entire new Third Revised Volume No. 1 FERC Gas Tariff superseding Second Revised Volume No. 1 (Book 1) and (ii) revisions to certain tariff sheets contained in Original Volume No. 2 for the prospective period (Book 2).

Transco refers the Commission's and the parties' particular attention to the following aspects of the instant compliance filing:

1. Transco hereby reserves the right to make changes to the enclosed tariff sheets based upon the Commission's rehearing order on the June 19 Order of any successor rehearing orders;

2. Transco has filed fuel retention factors to be effective August 1, 1991 under the fuel tracking mechanism approved as part of the Rate Settlement, which fuel retention factors are based on the date submitted in Transco's fuel tracking filing of March 11, 1991 in Docket No. TM91-7-29-000 and designed on the throughput and allocation methodology underlying the prospective rates under the Rate Settlement. For the period April 10, 1990-July 31, 1991, Transco proposes to utilize the locked-in fuel retention factors included in the Rate Settlement;

3. As provided for in the June 19 Order, Transco has proposed in § 6.4 of Rate Schedule FT a formula for withdrawals from Eminenance Storage Service which differs from the formula suggested by the Commission in the June 19 Order, but which, Transco submits, is a more equitable and workable formula because the Commission's formula regarding returns of prior withdrawals would unduly favor customers with larger FT contract demands.

4. Transco has made several changes to the format of the imbalance "cash-out" program set forth in section 5 of the FT and IT Rate Schedules which appear appropriate in view of the modifications required by the June 19 Order.

5. For the prospective period, Transco has removed its former curtailment provisions from its tariff and has included a new section 13 of its General Terms and Conditions which provides a curtailment plan in accord with the requirements of the June 19 Order.

Transco states that copies of the filing were mailed to all parties in the reference GIC Settlement and Rate Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 31, 1991. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18042 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-197-000]

United Gas Pipe Line Co.; Tariff Filing

July 24, 1991.

Take notice that on July 16, 1991, United Gas Pipe Line Company ("United") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to implement the provisions of an experimental capacity brokering program authorized on the High Island Offshore System ("HIOS") and U-T Offshore System ("UTOS"). United proposes a July 31, 1991 effective date.

United states that on October 30, 1990, in HIOS' Docket No. RP89-37-000, *et al.*, and in UTOS' Docket No. RP89-38-000, *et al.*, respectively the Commission issued an "Order Approving Uncontested Settlement, Amending Blanket Certificate, and Granting a Request for Waiver," which, among other things, authorized an experimental capacity brokering program ("Brokering Program") for firm transportation capacity on the HIOS and UTOS systems.

United states that it currently holds firm transportation capacity rights on the HIOS and UTOS systems and accordingly may choose to broker its firm transportation capacity rights to a third-party assignee pursuant to the provisions of HIOS' and UTOS' Brokering Programs. United states that the October 30, 1990 order and HIOS' and UTOS' respective tariffs require certain preconditions to participation in the brokering programs. First, an interstate pipeline must have accepted a blanket certificate of public convenience and necessity under subparts G and/or K of part 284 of the Commission's Regulations. Second, HIOS' and UTOS' tariffs require that an interstate pipeline must also have on file with the Commission tariff sheets that (i) Reflect the pertinent procedures and conditions set forth in the brokering programs; and (ii) provide for the establishment of an open season for the allocation of assignable capacity. Accordingly, in compliance with the Commission's October 30, 1990 order and HIOS' and UTOS' tariffs, United is tendering certain tariff sheets which, when accepted and permitted to become effective, will provide for the brokering of its firm transportation capacity rights on the HIOS and UTOS systems and provide for an open season to initiate brokering activity.

For good reason shown United requests that the Commission grant waiver of the 30-day minimum notice period as allowed in § 154.51 of the Commission's Regulations. United proposes a 15-day notice period which would facilitate the entry of United and its customers into brokering activity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of 18 CFR. All such motions, or protests should be filed on or before July 31, 1991. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18041 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3979-3]

Invitation for Submittal to the Vendor Information System for Innovative Treatment Technologies (VISITT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of invitation.

SUMMARY: EPA's Technology Innovation Office (TIO), of the Office of Solid Waste and Emergency Response, is announcing an invitation for Submittal for participation in VISITT. VISITT is a new database being developed by EPA to provide current information on innovative treatment technologies for remediation of contaminated hazardous waste sites, soil, and ground water. This database will contain technology information submitted by developers, manufacturers, and suppliers of innovative treatment technology equipment and services. VISITT will provide a means for treatment technology vendors to make their products and capabilities known. By meeting the below-mentioned requirements and completing the Vendor Information Form, vendors can be included in this database.

DATES: The first release of VISITT is scheduled for early 1992; complete information submitted by September 30, 1991, will be eligible for inclusion in that release.

ADDRESSES: The Vendor Information Form (EPA/540/2-91/011) is available from EPA/ORD Publications at (513) 569-7562. Submit completed Vendor Information Forms to: System Operator, VISITT, PRC Environmental Management, Inc., 1505 Planning Research Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: The VISITT Hotline at 1-800-245-4505.

SUPPLEMENTARY INFORMATION: EPA anticipates that VISITT will be used by hundreds of professionals responsible for the cleanup of Superfund sites, RCRA corrective action sites, state-led cleanups, federal facility restoration programs, and remedial actions at leaking underground storage tank (UST) sites. The database will allow users to

screen technologies for consideration in engineering feasibility studies, and to identify vendors who provide treatability studies and cleanup services.

The database will contain information on vendors of innovative technologies that treat ground water in situ, as well as soils, sludges, and sediments. Examples of technologies included are soil washing, thermal desorption, bioremediation, solvent extraction, and in situ vitrification. VISITT will not include more-established technologies—incineration, solidification/stabilization, and traditional pump-and-treat ground water remediation. Technologies may be at bench, pilot, or full scale.

VISITT will contain the following minimum vendor information, as submitted in full by vendors: company information (name, address, contacts, and phone number); technology description; technology advantages and limitations; and applicable media, wastes, and contaminants. Additional optional information includes: performance data, waste limitations, unit costs and factors affecting costs, available hardware/capacity, project names and contacts, permits obtained, treatability study capabilities, and references.

Technology vendors will provide information directly to EPA's TIO for insertion in the database, which will be updated at least annually. Vendors must verify or update the information at least once a year to remain in the database. The information contained in this invitation for Submittal is approved by the Office of Management and Budget under OMB Control Number 2050–0114.

Dated: July 23, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91–18110 Filed 7–30–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100091, FRL–3932–5]

Ultra Technologist; Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Ultra Technologist Inc. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Ultra Technologist Inc. consistent with the requirements of 40 CFR 2.307 (h)(3) and 2.308(h)(2). This transfer will enable Ultra Technologist Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Ultra Technologist Inc. will be given access to this information no sooner than August 5, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D1–0017, Ultra Technologist Inc. will provide technical support services to the Office of Pesticide Programs (OPP), Special Review and Registration Division. In support of these services, Ultra Technologist Inc. will assist with the design and development of data systems that will be compatible with other EPA and Office of Pesticide Programs personal computers and office automation. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Ultra Technologist Inc. to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Ultra Technologist Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Ultra Technologist Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Ultra Technologist Inc. by EPA for use in connection with this contract will be returned to EPA when Ultra Technologist Inc. has completed its work.

Dated: July 11, 1991.

Douglas D. Campt.

Director, Office of Pesticide Programs.

[FR Doc. 91–17931 Filed 7–30–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50716; FRL–3879–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–60. Renewal. Abbot Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 7,249 grams of the plant growth regulator N-[phenylmethyl]-1*H*-purine-6-amine on 390 acres of apples to evaluate its use as a thinning agent. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. The experimental use

permit is effective from May 13, 1991 to May 13, 1992. A permanent tolerance for residues of the active ingredient in or on apples has been established (40 CFR 180.376). (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

241–EUP–120. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543. This experimental use permit allows the use of 1,440 pounds of the chemical hybridizing agent potassium 3,4-dichloro-5-isothiazolecarboxylate on a maximum of 900 acres of cotton to evaluate the effects of the hybridizing agent on cotton seed. The program is authorized only in the State of Arizona. The experimental use permit is effective from April 12, 1991 to April 12, 1993. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

241–EUP–122. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543. This experimental use permit allows the use of 25 pounds of the herbicide (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid on 400 acres of field corn to evaluate the control of various broadleaf weeds and grasses. The program is authorized only in the States of Colorado, Illinois, Iowa, Indiana, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. The experimental use permit is effective from March 1, 1991 to March 1, 1993. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–25. Renewal. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 1,500 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 4,000 acres of rice to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from March 20, 1991 to March 20, 1992. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–27. Extension. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 4,575 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 4,575 acres of turf to evaluate the control of various weeds. The program is authorized only in the States of California, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, and Virginia. The experimental use permit is effective from January 1, 1991 to December 31, 1991. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–29. Renewal. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 36 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 180 acres of sorghum, soybeans, and spring wheat to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Idaho, Illinois, Indiana, Kansas, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Washington. The experimental use permit is effective from May 21, 1991 to December 1, 1991. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

100–EUP–92. Issuance. Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 1,240 pounds of the plant growth regulator 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid ethyl ester on 615 acres of turf grasses to evaluate the control of the growth of turf grasses. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 18, 1991 to April 18, 1992. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

56336–EUP–2. Issuance. Consep Membranes, Inc., c/o Walter Talarek, Esq., 1577 Springhill Road, Suite 600, Vienna, VA 22182–7501. This experimental use permit allows the use of 367 pounds of the pheromone (*E,E*)-8,10-dodecadien-1-ol on 3,000 acres of apples, pears, and walnuts to evaluate the control of codling moths. The program is authorized only in the States of California, Colorado, Michigan, New Mexico, New York, Oregon, Texas, Utah, Virginia, Washington, and West Virginia. The experimental use permit is effective from April 10, 1991 to October 1, 1992. (Phil Hutton, PM 17, Rm. 202, CM #2, (703–557–2690))

62719–EUP–13. Issuance. DowElanco, 9002 Purdue Road, Quad IV, Indianapolis, IN 46268–1189. This experimental use permit allows the use of 15.35 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl(1,2,4)triazolo 1,5-α-pyrimidine-2-sulfonamide on 102 acres of corn and soybeans to evaluate the control of broadleaf weeds. The program is authorized only in the States of Arkansas, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin. The experimental use permit is effective from March 8, 1991 to March 8, 1992. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

352–EUP–146. Extension. E.I. duPont de Nemours & Company, Inc., Agricultural Products Department, Barley Mill Plaza, Wilmington, DE 19880–0038. This experimental use permit allows the use of 2,500 pounds of the herbicide methyl 2[[[[[(4,6-dimethoxypyrimidin-2-yl)amino]carbonyl] amino]sulfonyl]methyl]benzoate, bensulfuron methyl on 2,730 aquatic acres of canals, lakes, ponds, and reservoirs. The program is authorized only in the States of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Montana, New Jersey, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wyoming. The experimental use permit is effective from January 6, 1991 to January 6, 1992. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

352–EUP–152. Extension. E.I. duPont de Nemours & Company, Inc., Agricultural Products Department, Barley Mill Plaza, Wilmington, DE 19880–0038. This experimental use permit allows the use of 500 pounds of the insecticide chloroethoxyphos on 2,000 acres of corn to evaluate the control of various insects. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Mexico, Nebraska, Ohio, Pennsylvania, South Dakota, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 9, 1991 to April 9, 1992. A temporary tolerance for residues of the active ingredient in or on corn has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

279–EUP–117. Extension. FMC Corporation, Agricultural Chemicals Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 850 pounds of the insecticide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxadinone on 850 acres of cotton to evaluate the control of annual grasses and broadleaf weeds. The program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Michigan, Missouri, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 12, 1991 to June 12, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

64004–EUP–1. Issuance. Frost Technology Corporation, 6701 San Pablo Avenue, Oakland, CA 94608–1239. This experimental use permit allows the use of 117.3 pounds of Pseudomonas fluorescens A506, Pseudomonas fluorescens 1629RS, and Pseudomonas syringae 742RS on almonds, apples, cherries, pears, potatoes, strawberries, and tomatoes to evaluate the control of frost-forming bacteria on leaves, blossoms, and fruit. The program is authorized only in the States of Arizona, California, Florida, Georgia, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Washington, and Wisconsin. The experimental use permit is effective from Janaury 29, 1991 to January 29, 1993. (Carl Grable, PM 21, Rm. 223, CM #2, (703–557–1900))

8340–EUP–10. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 1,953.74 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate on 599 acres of noncrop areas, tree crops, and vine crops to evaluate the control of annual and perennial emerged grasses and broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from June 6, 1991 to June 6, 1992. A temporary tolerance for residues of the active ingredient in or on citrus, grapes, pome fruit, and stone fruit has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

8340–EUP–11. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 148.5 pounds of the herbicide (+)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate on 900 acres of rice to evaluate the control of annual and perennial grasses in rice. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from March 30, 1991 to March 30, 1992. A permanent tolerance for residues of the active ingredient in or on rice has been established (40 CFR 180.430). (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

8340–EUP–13. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 661.5 pounds of the herbicides (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate; 2-ethylhexyl-2,4-dichlorophenoxyacetate; and isooctyl-2-methyl-4-chlorophenoxyacetate on 3,675 acres of spring barley to evaluate selective postemergence control of green and yellow foxtail, millet species and wild oats. The program is authorized only in the States of Idaho, Minnesota, Montana, North Dakota, and South Dakota. The experimental use permit is effective from April 10, 1991 to April 10, 1992. A temporary tolerance for residues of the active ingredients in or on barley has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

49036–EUP–2. Issuance. Ishihara Sangyo Kaisha, Ltd., c/o Landis Associates, Inc., 3025 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126. This experimental use permit allows the use of 5,381.25 pounds of the insecticide/nematicide O-ethyl S-(1-methylpropyl)-(2-oxo-3-thiazolidinyl)-phosphonothionate on 1,435 acres of tobacco and tomatoes to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, California, Florida, Georgia, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 11, 1991 to March 11, 1992. A temporary tolerance for residues of the active ingredient in or on tomatoes has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

49036–EUP–3. Issuance. Ishihara Sangyo Kaisha, Ltd., c/o Landis Associates, Inc., 3025 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126. This experimental use permit allows the use of 2006.25 pounds of the insecticide/nematicide O-ethyl S-(1-methylpropyl)-(2-oxo-3-thiazolidinyl)-phosphonothionate on 535 acres of tomatoes to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, California, Florida, Georgia, Indiana, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 11, 1991 to March 11, 1992. A temporary tolerance for residues of the active ingredient in or on tomatoes has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

264–EUP–79. Extension. Rhone Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 2,600 pounds of the insecticide thiodicarb on 350 acres of apples to evaluate the control of various insects. The program is authorized only in the States of Maine, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia. The experimental use permit is effective from February 20, 1991 to February 20, 1992. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703 557–2386))

55947–EUP–11. Issuance. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 390 pounds of the herbicide 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide on 520 acres of corn to evaluate the control of preemergent weeds. The program is authorized only in the States of Iowa, Illinois, Michigan, Minnesota, Nebraska, Indiana, Ohio, South Dakota, and Wisconsin. The experimental use permit is effective from May 2, 1991 to May 2, 1992. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–557–8540))

55947–EUP–12. Issuance. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 224 pounds of the herbicide 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide on 300 acres of soybeans to evaluate the control of preemergent weeds. The program is authorized only in the States

of Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin. The experimental use permit is effective from May 2, 1991 to May 2, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–557-8540))

36029–EUP–1. Issuance. Wilco Distributors, Inc., P.O. Box 291, Lompoc, CA 93438. This experimental use permit allows the use of 300 pounds of the rodenticide strychnine in baits on 150 acres of burrow-builder subterranean applications on rangeland and alfalfa fields (after harvest) to evaluate the control of pocket gophers. The program is authorized only in the State of California. The experimental use permit is effective from April 1, 1991 to April 1, 1992. (Robert Forrest, PM 14, Rm. 211, CM #2, (703– 557–7889))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 8, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18105 Filed 7-30-91; 8:45 am]
BILLING CODE 6560–50–F

[OPP–50729; FRL–3930–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

62719–EUP–1. Renewal. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 48,960 pounds of the herbicide triclopyr on 2,000 acres of canals (drainage and irrigation), ditches, lakes, marshes, ponds, reservoirs, rivers, streams, and wetlands to evaluate the control of woody plants and annual and prennial weeds. The program is authorized only in the States of Alabama, Arizona, California, Florida, Idaho, Indiana, Louisiana, Massachusetts, Michigan, Minnnesota, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from June 11, 1991 to June 11, 1993. A temporary tolerance for residues of the active ingredient in or on potable water has been established. (Robert Tayor, PM 25, Rm. 245, CM #2 , (703–557–1800))

62719–EUP–8. Renewal. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 1,500 pounds (over 2 years) of the herbicide triclopyr on 4,000 acres (over 2 years) of rice to evaluate the control of weeds. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from June 23, 1991 to June 23, 1993. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Robert Tayor, PM 25, Rm. 245, CM #2, (703–557–1800))

618–EUP–13. Issuance. Merck Sharp Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887. This experimental use permit allows the use of 7.5 pounds of the miticide avermectin B^1 on 150 acres of apples to evaluate the control of various mites. The program is authorized only in the States of California, Colorado, Idaho, New Jersey, New York, North Carolina, Maine, Michigan, Ohio, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 15, 1991 to June 15, 1992. A temporary tolerance for residues of the active ingredient in or on apples has been established. (George LaRocca, PM 15, Rm. 204, CM #2, (703–557–2400))

524–EUP–56. Issuance. Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005. This experimental use permit allows the use of 8,000 pounds of the herbicide acetochlor on 4,000 acres of corn to evaluate the control of various weeds. The program is authorized only in the States of Iowa, Minnesota, and South Dakota. The experimental use permit is effective from May 1, 1992 to May 1, 1993. A temporary tolerance for residues of the active ingredient in or on corn has been established (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

45639–EUP–46. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 6,115 pounds of the insecticide amitraz on 6,115 acres of cottonseed to evaluate the control of armyworms, bollworm-tobacco budworms, and pink bollworms. The program is authorized only in the States of Alabama, Arizona, Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from May 30, 1991 to May 30, 1992. (Dennis Edwards, PM 12, Rm. 202, CM #2, (703–557–2386))

34704–EUP–10. Renewal. Platte Chemical Company, P.O. Box 667, Greeley, CO 80632. This experimental use permit allows the use of 1,306.8 pounds for each of the nematacide/insecticides ethoprop and phorate on 1,200 acres of corn to evaluate the control of corn rootworms, cutworms, larvae, mites, nematodes, seed corn beetles, symphylans, wireworms, and the suppression of white grubs. The program is authorized only in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, North Carolina, Ohio, South Dakota, Texas, and Wisconsin. The experimental use permit is effective from May 17, 1991 to May 17, 1992. Permanent tolerances for residues of the active ingredients in or on corn have been established (40 CFR 180.206 and 180.262). (Robert Forrest, PM 14, Rm. 716, CM #2, (703–557–7889)).

64595–EUP–1. Issuance. U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center, Laurel, MD 20708. This experimental use permit allows the use of 0.37 pounds of the insecticide (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate on 12.35 acres of water to evaluate the impact of pesticide induced reduction in aquatic prey availability on duckling growth and survival. The program is authorized only in the State of Minnesota. The

experimental use permit is effective from June 6, 1991 to June 6, 1992. (George LaRocca, PM 15, Rm. 204, CM #2, (703–557–2400))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18106 Filed 7–30–91; 8:45 am]
BILLING CODE 6560–50–F

[WH–FRL–3979–6]

Availability of Study Plans; Exxon Valdez Oil Spill

AGENCY: Environmental Protection Agency and Alaska Department of Law.

ACTION: Notice of availability of study plans for 1991 restoration science studies and work plans for restoration implementation projects for the *Exxon Valdez* oil spill.

SUMMARY: This notice announces the availability of study plans for restoration science studies and work plans for restoration implementation projects that are in progress or may be carried out in 1991 and invites public comment. This notice is a follow-up to a prior notice, which announced the draft 1991 Restoration Work Plan (56 FR 8898, March 1, 1991).

DATES: Comments on this notice and requests for copies of the study and work plans for 1991 should be received no later than September 16, 1991.

ADDRESSES: All requests for copies of the study and work plans must be submitted in writing to the following address: Restoration Planning Work Group, c/o Oil Spill Public Information Center, 645 G Street, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Linda R. Comerci, Environmental Protection Agency, or Stanley E. Senner, Alaska Department of Fish and Game, at 907–271–2461.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1991 the Environmental Protection Agency (EPA), on behalf of the Federal Trustees (National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior), and the Alaska State Trustees (Department of Law, Department of Environmental Conservation, Department of Fish and Game) published in the **Federal Register** a draft 1991 Restoration Work Plan (56 FR 8898). It described restoration planning and implementation activities being considered by the Trustees for 1991. More details of these activities were to be described subsequently. Today's notice announces the availability of details about specific restoration activities in 1991 and provides additional opportunity for public comment.

The first part of this notice describes restoration science studies in 1991 and announces the availability of detailed study plans for these studies. The second part of this notice lists the titles of restoration implementation projects described in the March 1, 1991, **Federal Register** notice and announces the availability of detailed work plans for two of these projects. Many of the 1991 restoration science studies are being funded either by the State or the Federal government. Efforts are underway to authorize funds for the remaining science studies.

Some Trustee agencies have funds for implementation of restoration projects. Not all Trustee agencies, however, have been able to locate funding for the restoration implementation projects and funds may not be available for these projects in 1991. The Trustees agencies intend to seek costs for restoration projects from responsible parties.

II. Restoration Science Studies

Background

Restoration science studies provide information used to evaluate potential restoration implementation activities. There are three types of studies (individual studies may serve more than one purpose):

—*Feasibility studies* test the practicality and potential success of proposed restoration techniques;

—*Technical support studies* provide biological information or other information necessary to identify, evaluate, or conduct restoration activities;

—*Monitoring studies* document the extent, degree, and pace of natural recovery of an injured resource.

Each of the 12 studies described below and in the detailed study plans has been reviewed by agency staff and outside experts. The Trustee Council also has evaluated each study, taking into account the following factors:

a. Documentation of probable injury;

b. Estimated time needed for natural recovery;

c. Restoration activity or endpoint that may result from this study;

d. Need for the proposed study with respect to the ability to carry out future restoration activities;

e. Technical feasibility of the proposed study and the prospect for success;

f. Importance of conducting the study in 1991 (i.e., would delay beyond 1991 result in a lost opportunity); and

g. The cost of a proposed study relative to the degree of injury or to the cost of the potential restoration outcome.

The timing of this notice is such that all of the studies described below are now underway, with the exception of study number 11, "Pre-Spill and Post-Spill Concentrations of Hydrocarbons in Sediments and Mussels at Intertidal Sites in Prince William Sound". The Trustee Council however invites public review of the plans for all 12 studies. Any comments submitted by September 16, 1991 will be considered as the Trustee Council reviews the progress of these studies in 1991 and develops proposals for 1992. The detailed study plans for any or all of the studies may be obtained by written request to the address above.

Brief descriptions of each of the science studies follow:

1. Habitat Use, Behavior, and Monitoring of Harbor Seals in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

This technical support and feasibility study will delineate habitats used by harbor seals and provide missing life history information. Satellite tagging methods will be tested. This study will identify possible opportunities for habitat protection and other management activities. Cost: $182,000.

2. Killer Whale Monitoring and Habitat

Lead agency: National Oceanic and Atmospheric Administration.

This technical support and monitoring study is designed to identify habitat needs and determine population trends for killer whales and other cetaceans in the spill area. In 1991 this study will analyze existing census and location data (1984 to present) to determine their adequacy in supporting decisions on habitat protection and other

management activities. This study also will begin development of satellite tagging methods for year-round tracking of killer whales, although no tags will be applied in 1991. Cost: $44,000.

3. Population Assessment of the Prince William Sound Sea Otter Population

Lead agency: U.S. Fish and Wildlife Service.

This feasibility and technical support study will develop a technique for sea otter population census and will gather data on otter habitat use. Development of an efficient and reliable census technique is necessary for tracking the long-term recovery of this injured species. The habitat data will be used to identify opportunities for habitat protection and other management activities. Cost: $150,000.

4. Identification of Upland Habitats Used by Marbled Murrelets in Prince William Sound

Lead agency: U.S. Fish and Wildlife Service, U.S. Forest Service.

This technical support study will further document the presence or absence of marbled murrelets in selected upland habitats and characterize their nest habitats through vegetation mapping. This study may link an injured marine species with adjacent upland habitats and identify possible opportunities for habitat management and protection. Cost: $124,000.

5. Prince William Sound Harlequin Duck Breeding Habitat Analysis

Lead agencies: U.S. Fish and Wildlife Service, U.S. Forest Service, Alaska Department of Fish and Game.

This technical support study will attempt to locate nests of harlequin ducks and characterize their nest sites in relation to streams, vegetation, and other habitat features. This study may link the injured marine bird species with upland riparian habitats and identify possible opportunities for habitat management protection. Cost: $223,000.

6. Feeding Ecology and Reproductive Success of Black Oystercatchers in Prince William Sound

Lead agencies: U.S. Fish and Wildlife Service

This technical support and monitoring study will track the breeding productivity and analyze the feeding ecology of a shorebird species at Herring Bay. It will provide data on the status and recovery of an intertidal predator in relation to the recovery of key intertidal invertebrates. Cost: $60,000.

7. Dolly Varden and Cutthroat Trout Populations in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

This technical support study will identify unoiled streams with Dolly Varden and cutthroat trout and estimate stock sizes. This will enable fisheries managers to redirect sport fishing from oiled to unoiled streams, where the stocks can better sustain harvest, allowing faster recovery of stocks in oiled streams. Cost: $147,000.

8. Salmon Coded-Wire Tagging in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

In this technical support study coded-wire tags will be applied to juvenile wild salmon, which will be recovered as adults the following year, to enable greater separation of wild and hatchery stocks. Separation of wild and hatchery stocks, which are harvested together in an intercept fishery, will enable management actions focused on the restoration of stocks from oiled streams. Cost: $805,000.

9. Prince William Sound Pink Salmon Escapement Enumeration

Lead agency: Alaska Department of Fish and Game.

This technical support study will use weir counts to provide data on salmon escapements to compare with and "calibrate" aerial survey aerial. Streams will be walked to obtain additional information on intertidal spawners and stream enhancement opportunities. This study will provide information needed to determine management and enhancement alternatives to restore stocks from oiled streams. Cost: $230,000.

10. Monitoring Coastal Habitats at Herring Bay

Lead agency: U.S. Forest Service.

This monitoring study will track recovery of intertidal invertebrates and marine plants in oiled, unoiled, and cleaned areas at Herring Bay, Prince William Sound. It will provide information needed to understand the extent, degree, and pace of the natural recovery of the intertidal ecosystem on which many species depend for food and habitat. Cost: $245,000.

11. Pre-Spill and Post-Spill Concentrations of Hydrocarbons in Sediments and Mussels at Intertidal Sites in Prince William Sound

Lead agency: National Oceanic and Atmospheric Administration.

This study will monitor hydrocarbon levels in sediments and mussels at sampling sites for which there are historical data. Sampling supported by this study (a second late-summer sampling) will supplement early-spring sampling supported by the 1991 Natural Resource Damage Assessment Study, Coastal Habitat Intertidal Study 1B. A description of this study may be found in, "The 1991 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill" p.181–187, available from the Oil Spill Public Information Center whose address is given above. This study will provide a more complete history of exposure from releases of oil buried in intertidal sediments, particularly during biologically active summer months. The proposed second sampling will be conducted only if 1989 and 1990 sampling results indicate that seasonal factors affect levels of residual hydrocarbons in sediments and mussels. Cost: $84,000.

12. Survey of Injured Tidal Marshes in Prince William Sound and the Gulf of Alaska

Lead agency: U.S. Environmental Protection Agency.

This technical support study will review existing data on the extent, relative value of, and injury to marsh-wetland habitats. The review may be supplemented by field surveys. Pending the results of this study, there may be field studies to test the feasibility of using hydrological and transplanting techniques to restore oiled marshes. Cost: $15,000.

III. Restoration Implementation Projects

Four restoration implementation projects were described in the March 1, 1991 **Federal Register** notice (56 FR 8898). Work plans are now available for two of the four projects listed below, projects 2 and 3. Based on the results of the May Shoreline Assessment Program for Prince William Sound and the Gulf of Alaska, conducted by the U.S. Coast Guard, the State of Alaska and Exxon, the Trustees have decided that the need for the first project, "Restoration of the Beach Wild Rye Community, is limited. If any areas of Beach Rye are determined to need replanting, these activities will be carried out under the clean-up/response program.

The Restoration Planning Work Group is currently developing a process by which the fourth project, "Protection of Strategic Fish and Wildlife Habitats and Recreation Sites," could be implemented.

The proposed implementation projects are:

1. Restoration of the Beach Wild Rye Community

Lead agencies: Alaska Department of Environmental Conservation, U.S. Forest Service.

2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead agency: U.S. Department of the Interior.

3. Salmonid Stocks and Habitat Restoration

Lead agencies: Alaska Department of Fish and Game, U.S. Forest Service.

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Forest Service, U.S. Environmental Protection Agency.

Public comments are invited on all four implementation projects.

Dated: June 19, 1991.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: July 18, 1991.

Charles E. Cole

Attorney General, State of Alaska.

[FR Doc. 91-18107 Filed 7-30-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the FDIC as Conservator or Receiver

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy which sets forth procedures and guidelines as to how the FDIC, as conservator or receiver of an insured depository institution, will treat collateralized "put" options issued by the insured depository institution. This action is intended to cover collateralized put options issued in connection with capital markets financing transactions.

DATES: This Statement of Policy applies to (1) all collateralized put options originally issued prior to August 9, 1989 by insured depository institutions for which the FDIC is appointed as conservator or receiver and (2) collateralized put options issued on or after that date if the put option was issued in renewal, replacement, or extension of a put option issued prior to that date.

FOR FURTHER INFORMATION CONTACT: Linda L. Stamp, Counsel (202-736-0161), or Martin Roberts, Counsel (202-736-0160), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy Regarding Treatment of Collateralized Put Options After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver. The text of the Policy Statement follows:

Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

This Statement of Policy sets forth the treatment that the Federal Deposit Insurance Corporation (FDIC) as the conservator or receiver of an insured depository institution will give collateralized "put" options issued by the insured depository institution.

Background

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was signed into law. This statute amended the Federal Deposit Insurance Act (FDI Act) to clarify the FDIC's rights as conservator or receiver to repudiate contracts. With regard to secured contracts, the FDI Act provides that the repudiation provisions are not to be construed as permitting the avoidance of any legally enforceable or perfected security interest in any assets of the institution except where such interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the institution's creditors. 12 U.S.C. 1821(e)(11). Absent this provision for legally enforceable or perfected security interests, the conservator or receiver arguably could avoid such security interests and render any claim on the repudiated contract unsecured.

Reading these statutory provisions as a whole, it is clear that even secured contracts may be repudiated; that damages are limited to the extent set forth in the statute; and that legally enforceable or perfected security agreements must be honored to the extent of such damages but no further or otherwise. In other words, if there is a repudiation, the collateral securing the contract may be liquidated and the proceeds paid to or retained by the creditor up to the damages allowed by the statute, i.e. damages for actual direct compensatory losses measured as of the date of the appointment of the conservator or receiver. The remaining collateral or proceeds must then be remitted or returned to the conservator or receiver as property of the institution or its estate, or to a bona fide junior lienholder to the extent applicable.

While the preceding statement sets forth the existing law and is applicable to all contracts which have been or will be repudiated by a conservator or receiver after August 9, 1989, regardless of when the contract was entered into, certain issues have been raised regarding collateralized put options.

The FDIC has maintained a longstanding position that contingent obligations have no provable damages under the FDI Act's statutory damages limitation, if repudiated by the receiver or conservator, because the damages are not fixed and certain as of the date of the appointment of the receiver or conservator. As FIRREA has made this result more apparent, market certainty and stability have been affected.

Statement of Policy

The FDIC has considered a number of relevant policy factors, including its legal rights and powers under FIRREA; the assurances provided by the Federal Home Loan Bank Board prior to the enactment of FIRREA and market reliance on those assurances; the need for market certainty and stability; the potential long-term cost to the FDIC of outright repudiation of collateralized put options; and the potential for immediate acceleration of the issuer's obligations under these collateralized put options. Based on its consideration and balancing of such factors, the FDIC has determined to adopt and implement the following Policy with respect to the treatment of collateralized put options after its appointment as conservator or receiver of insured depository institutions having these types of obligations:

(1) This Policy will apply to collateralized put options in all respects where the collateralized put options were originally issued by insured depository institutions prior to August 9, 1989.

(2) It is recognized that the FDIC as conservator or receiver has the right to call, redeem or prepay any collateralized put options by repudiation or disaffirmance either directly by cash payment in exchange for release of the collateral or by the repudiation of the contract evidencing such borrowings followed by liquidation of the collateral

by a trustee or other secured party. Accordingly, the FDIC in its capacity as conservator or receiver may accelerate the collateralized put options, in which event payment will be made to the extent of available collateral up to an amount equal to the outstanding principal amount or accreted value of the secured obligations, together with interest at the contract rate up to (and including, if so provided in the contract) the date of payment, plus expenses of liquidation, if so provided in the contract. If the holder of the options for any reason fails to accept the amount tendered, the FDIC will deem the options contract and the related collateral arrangement terminated. If the FDIC does not accelerate the contract, the terms of the contract will be enforceable during the pendency of the conservatorship or receivership.

(3) The FDIC shall have a reasonable time, which is specifically defined as 180 days from the date of appointment of any conservator or receiver, to make a determination whether or not to accelerate a collateralized put option. In the case of institutions for which the FDIC already has been so appointed, the 180-day period shall begin to run as of the date of adoption of this Policy.

(4) This Policy is intended to cover only collateralized put options issued in connection with capital markets financing transactions, including the formation of publicly offered unit investment trusts and other sales of insured depository institutions' portfolio securities in capital markets transactions.

(5) This Policy shall apply in all respects to collateralized put options issued on or after August 9, 1989 only if the put option was issued in renewal, replacement or extension of a put option issued prior to the enactment of FIRREA.

(6) This Policy shall only apply to transactions where the underlying security interest is in collateral owned and pledged by the insured depository institution to secure its obligations and the security interest is both perfected and legally enforceable.

(7) It is understood that persons involved in secured transactions with insured depository institutions may reasonably rely upon this Policy Statement.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of July, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-18021 Filed 7-30-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

[Notice 1991-14]

Filing Dates for the Virginia Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Virginia has scheduled a Special General Election on November 5, 1991. The Republican and Democratic 7th Congressional District Committees have scheduled August 25, and September 7, 1991, respectively, to select nominees for the Special General Election.

Committees required to file reports in connection with the Special Convention of the Republican Party should file a 12-day Pre-Convention Report by August 13, 1991. Committees required to file reports in connection with the Special Convention of the Democratic Party should file a 12-day Pre-Convention Report by August 26, 1991. Committees required to file reports in connection with both the Special Convention and Special General Election to be held on November 5, 1991, must file a 12-day Pre-Convention Report, a 12-day Pre-General Report by October 24, 1991, and a Post-General Report by December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Virginia special elections must file reports according to the schedules given in Charts I and II. The committee treasurer should consult the chart that corresponds to the candidate's situation.

Party committees and PACs that make contributions or expenditures in connection with the Virginia special elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not have to file the special election reports.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS

[Chart I. Democratic Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
All Committees Only Involved in the Special Democratic Convention (9/7) Must File:			
Pre-Convention	07/01/91-08/18/91	08/23/91	08/26/91
Year-End	08/19/91-12/31/91	01/31/92	01/31/92
All Committees Involved in the Special Democratic Convention (9/7) and Special General (11/5) Must File:			
Pre-Convention	07/01/91-08/18/91	08/23/91	08/26/91
Pre-General	08/19/91-10/16/91	10/21/91	10/24/91
Post-General	10/17/91-11/25/91	12/05/91	12/05/91
Year-End	11/26/91-12/31/91	01/31/92	01/31/92
All Committees Only Involved in the Special General (11/5) Must File:			
Pre-General	07/01/91-10/16/91	10/21/91	10/24/91
Post-General	10/17/91-11/25/91	12/05/91	12/05/91
Year-End	11/26/91-12/31/91	01/31/92	01/31/92

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS

[Chart II. Republican Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
All Committees Only Involved in the Special Republican Convention (8/25) Must File:			
Pre-Convention	07/01/91-08/05/91	08/10/91	08/13/91
Year-End	08/06/91-12/31/91	01/31/92	01/31/92
All Committees Involved in the Special Republican Convention (8/25) and Special General (11/5) Must File:			
Pre-Convention	07/01/91-08/05/91	08/10/91	08/13/91
Pre-General	08/06/91-10/16/91	10/21/91	10/24/91
Post-General	10/17/91-11/25/91	12/05/91	12/05/91

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS—Continued

[Chart II. Republican Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
Year-End.....	11/26/91–12/31/91	01/31/92	01/31/92
All Committees Only Involved in the Special General (11/5) Must File:			
Pre-General..	07/01/91–10/16/91	10/21/91	10/24/91
Post-General.....	10/17/91–11/25/91	12/05/91	12/05/91
Year-End.....	11/26/91–12/31/91	01/31/92	01/31/92

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: July 25, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-18024 Filed 7-30-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Ben Lovell Cundiff, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Ben Lovell Cundiff, Nashville, Tennessee; to acquire an additional 27 percent of the voting shares of Trigg Bancorp, Inc., Cadiz, Kentucky, for a total of 52.53 percent, and thereby indirectly acquire Trigg County Farmers Bank, Cadiz, Kentucky.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Dan H. Cook, Wilson, Texas; to acquire 25.12 percent of the voting shares of Wilson Bancshares, Inc., Wilson, Texas, and thereby indirectly acquire Wilson State Bank, Wilson, Texas.

2. Bobby Max Ham, Crosbyton, Texas, to acquire an additional 18.77 percent for a total of 23.53 percent; and Kimberly Ham Eudy, Austin, Texas, to acquire 18.77 percent of the voting shares of Citizens Bancshares, Inc., Crosbyton, Texas, and thereby indirectly acquire Citizens National Bank of Crosbyton, Crosbyton, Texas.

Board of Governors of the Federal Reserve System, July 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18064 Filed 7-30-91; 8:45 am]

BILLING CODE 6210-01-F

Gifford Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gifford Bancorp, Inc. Employee Stock Ownership Plan, Gifford, Illinois; to acquire 34.6 percent of the voting shares of Gifford Bancorp, Inc., Gifford, Illinois, and thereby indirectly acquire The Gifford State Bank, Gifford, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Fischer Corporation, Lewiston Minnesota; to acquire 66.67 percent of the voting shares of Ostrander Bancshares, Inc., Ostrander, Minnesota, and thereby indirectly acquire Ostrander State Bank, Ostrander, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Commercial Bancorp, Salem, Oregon; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, July 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18065 Filed 7-30-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3335]

Alleghany Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Alleghany Corporation to divest, within twelve months of this order, all rights and interest in either its own title plants and back plants or those of Westwood Equities Corporation, to a Commission-approved acquirer.

DATES: Complaint and Order issued July 11, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Tuesday, March 5, 1991, there was published in the **Federal Register**, 56 FR

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

9219, *Correction*, 56 FR 12422, a proposed consent agreement with analysis In the Matter of Alleghany Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-18132 Filed 7-30-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Management of Cancer-Related Pain

A public meeting will be held on clinical practice guidelines for the management of cancer-related pain. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material in the August 28, 1990 **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

A public meeting to address guidelines for the management of cancer-related pain will be held on September 5, as follows:

September 5, 1991, 9 a.m. to noon
Washington Vista Hotel, 1400 M Street, NW., Washington, DC 20005
(202) 429-1700

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b) provides for the development of initial guidelines, standards, performance measures, and reviews criteria that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or

2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priority for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;

2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures, and

3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics were selected for initial guideline development:

1. Visual Impairment due to Cataract in the Aging Eye.

2. Diagnosis and Treatment of Benign Prostatic Hyperplasia.

3. Urinary Incontinence in the Adult.

4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores.

5. Delivery of Comprehensive Care in Sickle Cell Disease.

6. Management of Acute Post-Operative Pain.

7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

In addition, in 1991 the following five new topics have been selected for guideline development:

1. Management of Cancer-Related Pain.

2. Treatment of Stage II and Greater Pressure Ulcers.

3. AIDS and HIV Infection.

4. Low Back Disorders.

5. Development of Quality Determinants of Mammography Screening and Differential Diagnosis.

To assure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot testing of drafts of the guidelines. Thus far, public meetings of panels to solicit information and comments from interested parties have been held with respect to benign prostatic hyperplasia, depression, management of post-operative pain, pressure ulcers, urinary incontinence, and cataracts.

Arrangements for September 5 Public Meeting on the Management of Cancer-Related Pain

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the Forum at the address set out below by August 21 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these on the Forum by August 21. If more requests to make oral statements are received than can be accommodated between 9 a.m. and noon on September 5, the chair person will allocate speaking time in a manner which

ensures, to the extent possible, that a range of views of health care professional and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constaints can be assured that their written comments will be considered by the panel in developing the guidelines.

Registration should be made with and written materials submitted to: Kathleen A. McCormick, Ph.D., Director, Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 327, Rockville, MD 20852, Phone 301–227–6671, Fax 301–226–6679.

Dated: July 24, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–18070 Filed 7–30–91; 8:45 am]

BILLING CODE 4160–90–M

Centers For Disease Control

[Announcement Number 129]

Evaluation and Enhancement of HIV Prevention; Street and Community Outreach Programs That Serve Injecting-Drug Users and Youth in High-Risk Situations

Introduction

The Centers For Disease Control (CDC) announces the availability of Fiscal Year 1991 funds for cooperative agreements to evaluate and enhance the applicant's street and community-based HIV prevention outreach activities (including street, public housing project, and other nontraditional outreach efforts) targeting (a) injecting drug users (IDUs) and their sex partners and (b) youth in high-risk situations (Y–HRS) such as runaways, homeless youth, and youth who are IDUs. This program is being undertaken in consultation with the National Institute on Drug Abuse (NIDA) of the Alcohol and Drug Abuse and Mental Health Administration (ADAMHA).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives described in Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program announcement is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended, and section 317(a) (42 U.S.C. 247(a)), as amended.

Eligibility

Eligibile applicants for both IDUs and Y-HRS components are state and local health departments, state and local substance abuse control/treatment agencies, national organizations working at the community level, community-based organizations, universities, and other nonprofit entities that are currently operating street/community outreach programs for either or both of these populations. Because of the disproportionate effect that HIV infection and AIDS have had on certain metropolitan statistical areas (MSAs), eligibility is limited to organizations and agencies where proposed projects serve MSAs that have reported more than 3,000 cumulative AIDS cases to CDC through December 31, 1990, The eligibile MSAs are: Atlanta, GA; Chicago, IL; Houston, TX; Los Angeles, CA; Miami, FL; Newark, NJ; New York, NY; Philadelphia, PA; San Francisco, CA; San Juan, PR; and Washington, DC.

Availability of Funds

A. Approximately $2,800,000 is available in Fiscal Year 1991 to fund as many as nine projects to evaluate IDU street outreach. The average award is expected to be $300,000 (ranging from $175,000 to $600,000) for each 12-month budget period within a three- to five-year project period beginning in September 1991.

B. Approximately $1,800,000 is available in Fiscal Year 1991 to fund as many as five projects to evaluate outreach programs serving Y-HRS. The average award is expected to be $350,000 (ranging from $100,000 to $600,000) for each 12-month budget period within a three- to five-year project period beginning in September 1991.

Continuation of the projects after such 12-month budget period will depend on their progress and the availability of federal funds.

Purpose

The purpose of the assistance provided through this announcement is to conduct a comparative evaluation of the existing and enhanced interventions, including analyses of the impact of the interventions on risk behavior, HIV seroincidence, and STD rates, and the cost effectiveness of the activities and interventions.

Street/community outreach is defined as fact-to-face interactions with persons at risk for HIV infection that occur outside traditional health and drug abuse treatment clinic services. Outreach workers typically are drawn from and reside in the communities which are most heavily affected by AIDS/HIV and many are former IDUs or youth who have engaged in high-risk behavior. The outreach workers provide HIV risk-reduction and drug prevention messages; distribute items such as a literature, condoms, and bleach; and refer persons at risk for HIV infection to needed services, including drug treatment, HIV prevention counseling, HIV-antibody counseling and testing, HIV early intervention, and other physchosocial, social support, and medical services. Street/community outreach typically takes place in neighborhoods, including housing projects, where there is a high prevalence of drug use.

The funds available under this announcement will be used to support community studies to evaluate the coverage, cost, and impact of existing HIV prevention outreach interventions targeting IDUs and their sex partners and Y-HRS. Such evaluations will document the quantity and quality of current activities; the costs to provide services and support associated activities; the changes in sexual practices and drug use behaviors of clients served; and the use of health care and drug treatment services that has resulted from the interventions provided by the applicant.

Program Requirements

Applicants must have demonstrated ability to collect and analyze qualitative and quantitative data to be used to measure intervention effectiveness. A specific objective will be to develop or enhance computer-based systems for monitoring program activities and costs that can be used by other outreach programs. Applicants must have demonstrated collaboration and coordination with government (including PHS and other national and State agencies), health care, research, and community organizations engaged in the development, delivery, and evaluation of targeted interventions.

Applicants must show evidence of (a) ongoing outreach services to at least one of the two priority populations, i.e., IDUs (and their sex partners) and/or Y-HRS; (b) an ability to evaluate these interventions; and (c) an ability to use evaluation data to design and implement enhancements of these interventions so that the interventions can serve as

models for other HIV prevention programs that serve similar populations in other locations.

Applicants that target Y-HRS should coordinate plans with the local health agency if the applicant is applying for CDC funds under program announcement number 152, entitled, "Cooperative Agreements to Coordinate Local Programs to Prevent HIV Infection and Related Priority Health Problems Among Youth in High-Risk Situations".

Each applicant must identify and submit to CDC the names of persons (and their professional affiliations) to serve on a local evaluation planning group (LEPG) as advisors and consultants on the scientific aspects of the proposed evaluation activities. The LEPG must include, at a minimum, a behavioral scientist with experience in evaluation of health risk reduction interventions, a biostatistician, an experienced epidemiologist, an anthropologist/ethnographer, and a representative from the state or local health department and the state or local substance abuse control agency. The LEPG for projects targeting Y-HRS must also include representation from the state or local agency responsibile for programs serving these youth. Additionally, LEPGs should include culturally competent representatives from other community-based organizations and agencies serving the target population. CDC project officers or technical staff will frequently attend meetings of the LEPG to provide technical assistance and consultation. All activities and findings must be fully documented and submitted to CDC on an approved timetable so that information can be disseminated to other organizations and agencies serving similar populations.

A. Recipient Activities

Phase I

1. Form an LEPG. Convene the group and develop procedures for compiling existing information and for indenfying unmet HIV prevention needs of the target population. The assessment should address HIV prevention, HIV early intervention, drug abuse treatment, and other relevant needs of the target population. The assessment of unmet needs should include, but not be limited to: a description of the target population (IDUs and/or Y-HRS); descriptions of current interventions and how well they cover the target population; identification of obstacles to HIV prevention, early intervention, drug treatment/detoxification, and other relevant services; epidemiologic, ethnographic, ans seroprevalence data (if available) relevant to the target population; and information on the impact of local HIV prevention efforts directed to the target population.

2. Identify and describe the unmet needs of the target population, compile existing information, and submit a comprehensive report of findings to CDC.

3. Convene the LEPG to assist in designing a scientific protocol for evaluation of the current interventions carried out through outreach efforts. Collaborate with CDC, and NIDA as appropriate, to develop a written plan that contains the following elements:

a. Statement of the questions to be answered (hypotheses to be tested);

b. Description of each intervention to be evaluated;

c. Specific process and outcome data that will be collected and analyzed, including, but not limited to, the following:

(1) Process indicators

(a) Estimated total population of IDUs (and their sex partners), or Y-HRS in the local service area;

(b) Estimated number of persons served and estimated number of encounters (contacts) with each person served, by age, sex, race-ethnicity, and risk behavior;

(c) Number of referrals made and referrals completed (verified) to HIV counseling and testing, HIV early intervention, drug treatment, and social services; and

(d) Costs and expenses associated with conducting the outreach program.

(2) Outcome indicators, including changes in

(a) Intravenous drug practices, such as needle sharing or needle hygiene;

(b) Sexual practices, including numbers and types of partners and use of condoms;

(c) Attitude and knowledge changes;

(d) STD incidence (i.e., syphilis and gonorrhea) in the target population; and

(e) HIV incidence in the target population.

d. Description of methods (both scientific and operational) for collecting process and outcome data;

e. Description of how the data will be maintained (i.e., in what databases), including how duplicate data will be removed. The description should also include computer-based systems for monitoring program activities and costs that can be used by other outreach programs; and

f. Description of statistical techniques that will be used to analyze the data.

4. Implement the evaluation plan and begin the process and outcome evaluation of current outreach interventions.

5. Coordinate evaluation of outreach efforts with appropriate health, substance abuse control/treatment (e.g., NIDA funded grantees), youth, community-based, and minority organizations that serve the target population.

6. Analyze findings, and submit progress and final reports to CDC.

Phase II (Additional Guidance Will Be Provided for Developing Continuation Applications for Phase II)

1. Convene LEPG to help plan existing intervention enhancements based on evaluation findings and feedback from CDC. Applicants will be required to participate with other organizations in a collaborative multisite study.

2. Conduct a comparative evaluation of the existing and enhanced interventions; including analyses of the impact of the interventions on risk behavior, HIV seroincidence, and STD rates; and the cost effectiveness of the activities and interventions.

Phase III (Additional Guidance Will Be Provided for Developing Continuation Applications for Phase III)

Provide training and technical assistance to other organizations that provide HIV prevention outreach services to IDUs and Y–HRS.

B. CDC Activities

1. Provide consultation and technical assistance in assessing the unmet needs of the target population; the evaluation of coverage, cost and impact of current interventions; and design of scientific protocols. Standard protocols will be established for multisite projects that are focused on specific evaluation questions.

2. Collaborate in designing the evaluation of coverage, cost, and impact of existing interventions and in developing intervention enhancements. Provide consultation on data collection instruments and procedures, and coordinate evaluation and intervention activities between sites.

3. Monitor data collection and analysis of information collected from evaluation, and provide technical assistance in establishing standardized data collection and reporting systems to monitor program activities and costs of outreach programs.

4. Provide up-to-date scientific information about HIV prevention and coordinate with related activities of the national HIV prevention program.

5. Assist in the transferring of information and methods developed in these projects to other programs.

Evaluation Criteria

A. *Competing Application* (maximum total 100 points; no application will be considered for funding that scores less than 25 points): Applicants may apply for both components; however, each application must be complete and must stand alone. Each application will be reviewed individually and evaluated according to the following criteria:

1. The scientific quality and feasibility of the applicant's plan for evaluating the coverage, cost, and impact of existing outreach interventions. (20 points)
2. The applicant's ability to use evaluation data to design and implement enhancements of existing outreach interventions so that they can be used as models for other HIV prevention programs. (10 points)
3. The extent to which the target population has been affected by HIV, substance abuse, or STDs. (5 points)
4. The extent of the applicant's history of delivering outreach interventions to the target population using street/community-based outreach. (15 points)
5. The extent to which the applicant has progressed toward achieving realistic process and outcome objectives for current HIV prevention street/community outreach. (15 points)
6. The extent to which the applicant demonstrates collaboration, coordination, and communication with government, health care, drug treatment, youth service, community, and minority organizations and agencies engaged in HIV-prevention. (10 points)
7. Experience of the organization in conducting similar evaluation research organizations or researchers. (15 points)
8. Plan for obtaining continuing scientific input into the design, development, implementation, monitoring, and analysis of evaluation activities including the role of the LEPG and the scientific background and experience of persons on the LEPG, documented by training and education credentials, and publications. (10 points)

In addition, consideration will be given to the appropriateness of the budget and its consistency with the intended purpose of the funding.

B. Continuation Applications

In future years, noncompeting continuation applications within an approved project period will be evaluated on satisfactorily documented progress in meeting established short- and long-range objectives; the extent to which the objectives for the new budget period are consistent with the purposes for which the cooperative agreement was originally approved and are realistic, specific, measurable, and achieved on-time; the extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans, or personnel are likely to enhance the success of the project; and the availability of federal funds. In addition, consideration will be given to the extent to which the budget request and the proposed use of project funds are appropriate and reasonable.

Funding Priorities

Priority for funding will be given to applicants that demonstrate:

A. A history of providing services to the chosen target population;

B. A capacity to evaluate program activities and interventions during the project period; and

C. Experience in conducting research, especially evaluation research, or experience in collaborating with research organizations or researchers (not necessarily HIV-related research).

Other Requirements

A. Recipients

Must comply with the terms and conditions in the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, And Educational Sessions [January 1991], a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the health department's HIV/AIDS prevention program.

B. Paperwork Reduction Act

Projects funded through this cooperative agreement mechanism that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

C. Human Subjects and Confidentiality

Cooperative agreements will not be awarded for any project involving research on human subjects until an acceptable assurance has been given that the project or activity will be subject to initial and continuing review by an appropriate institutional committee(s) as described in 45 CFR part 46.

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)) all information obtained on any person by any program that is acting with funds awarded through this cooperative agreement shall not be disclosed unless that person provides written consent. Information may be released only as necessary to provide services to that person or as may be required by a law of a state or the political subdivision of a state. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who received diagnoses or care under such programs are not identified. Recipients of CDC funds that must obtain and retain identifying information as part of their work plan must (a) maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosure of client identifiers; (c) obtain informed consent by explaining the possible risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal government) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. On or before September 26, 1991, if SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road N.E., Room 300, Mailstop E–14, Atlanta, GA 30305, ATTN: Eddie L. Wilder. CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after September 26, 1991.

Catalog of Federal Domestic Assistance Number

The catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Application Submission and Deadline

The original and two copies of the application (PHS 5161–1) must be submitted on or before August 30, 1991, to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road N.E., room 300, Mailstop E–14, Atlanta, GA 30305.

A. *Deadline:* Applications will meet the deadline if they are:

(1) Received on or before the deadline date of August 30, 1991;

(2) or sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

B. *Late Applications:* Applications that do not meet the criteria in A.1. or A.2. are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 129. You will receive a complete program description, information on application procedures, an application package, and the name and phone number of the business management technical assistance contact assigned to this program announcement.

Eddie L. Wilder, Grants Management Specialist, will provide the business management technical assistance, and programmatic technical assistance will be provided by William Darrow, Ph.D., Center for Prevention Services, Mail Stop E–44, Centers for Disease Control, Atlanta, GA 30333, (404) 639–0829 or FTS 236–0829.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington DC 20402–9325 (Telephone 202–783–3238).

Dated: July 26, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18216 Filed 7–30–91; 8:45 am]
BILLING CODE 4160–18–M

[Announcement Number 158]

National Institute for Occupational Safety and Health; Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatal Accident Circumstances and Epidemiology Model, Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC), announces the availability of fiscal year 1991 funds for cooperative agreements to build state capacity for conducting traumatic occupational fatality surveillance and investigations through the National Institute for Occupational Safety and Health (NIOSH) Fatal Accident Circumstances and Epidemiology (FACE) surveillance and investigative models. The cooperative agreement will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247(b)) of the Public Health Service Act as amended.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, and similar organizations located within any state or territory of the United States. The sole restriction for this cooperative agreement excludes as eligible applicants those agencies which conduct occupational fatality investigations, and in doing so, are legally responsible for the determination of compliance with occupational safety and health standards. Awards will be limited to those organizations which can exercise public health authority for intervention into occupational safety and health problems. Additionally, only one application per state will be accepted under this cooperative agreement.

Availability of Funds

It is expected that approximately $350,000 will be available in fiscal year 1991 to fund four to six state programs with an expected average amount of $70,000 each within a range from $60,000 to $85,000. The awards will be made on or about September 28, 1991, with 12-month budget periods within a project period of up to 5 years. It is anticipated that $60,000 per awardee per year will be available in the second through fifth years. These funding estimates may vary and are subject to change. Continuation awards within the project period will be made annually on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

Purpose

The purpose of this cooperative agreement is to expand the FACE program into more states. A pilot study for conducting occupational fatality investigations by state-level personnel using the NIOSH FACE model has demonstrated that such programs can be successfully implemented at the state level. The most immediate products of the state level FACE programs have been accurate and verifiable surveillance systems for detecting traumatic occupational fatality events occurring within the state, fatality investigations that identified potential causal factors for occupational trauma, and subsequent recommendations for developing and implementing successful intervention strategies. By stimulating phased development and growth at the state level, this program will permit the states following the FACE model to structure their surveillance and investigative activities to more efficiently capture input from other investigating state agencies and departments.

Additionally, states will be able to target occupational traumatic injury research and prevention programs based on specific state priority areas.

All FACE data will be shared with the recipients.

The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple source state-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the state.

2. Conduct investigations of selected traumatic occupational fatalities using the NIOSH FACE investigative model.

3. Identify potential risk factors for selected types of traumatic occupational fatalities which will be useful for targeting intervention strategies and prioritizing research efforts.

4. Develop intervention demonstration projects to reduce traumatic occupational injuries and fatalities.

5. Develop and disseminate preventive recommendations to reduce the risk of fatal traumatic injuries within the state.

Program Requirements

The cooperative agreement recipient shall be responsible for conducting the activities under A. below, and CDC will be responsible for conducting the activities under B. below.

A. Recipient Activities:

1. Identify and develop a multiple source surveillance notification system for timely identification of all traumatic occupational fatalities occurring within the state.

2. Develop a state-based surveillance system for timely collection and recording of epidemiologic (core) data on all occupational fatalities occurring within the state.

3. Interface the state-based surveillance system with a NIOSH on-line communications network for transmitting data to NIOSH.

4. Conduct in-depth investigations of occupational fatalities resulting from falls from elevations, electrocutions, and exposure to confined spaces using the NIOSH FACE model for investigation.

5. Develop and submit to NIOSH a summary report of each fatality investigation which describes the fatal incident and includes recommendations for preventing future occurrences of the specific fatality type.

6. Conduct epidemiologic analysis of common fatal incident circumstances to develop recommendations and information on intervention and prevention techniques and engineering solutions offering effective remedies.

7. Identify sentinel hazards and contributing circumstances with timely dissemination of recommended solutions to the identified problems through various written media.

8. Identify deficiencies, limitations, or absences of safety standards when occupational fatalities occur during circumstances outside the purview of regular state or federal enforcement agencies.

B. CDC Activities:

1. Provide epidemiologic data reporting forms, coding formats, computer-based software programs, and state personnel training for electronically recording and on-line transmission of FACE core data to a central NIOSH database.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks and for defining roles in providing safety and health referral services.

3. Provide initial training in procedures for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments), and provide subsequent on-site technical assistance to state personnel in conducting fatality investigations.

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance and support in the dissemination of summary reports and other published findings to state and local health officials, state and local labor officials, voluntary health groups, workers, management, unions, employers and professional organizations.

Evaluation Criteria

The review of the application will be based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Overall quality of the state proposal for identifying, recording and investigating traumatic occupational fatalities within the state using the FACE model. (30%)

2. Quality and completeness of the state's plan and methodology, including a proposed schedule, for accomplishing the activities and objectives for this cooperative agreement. The state should also demonstrate collaborative relationships among the various relevant state agencies in addressing the problem of traumatic occupational fatality surveillance and investigations. (25%)

3. The qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support for the state-based FAAC program. (20%)

4. Demonstration of the need for developing and implementing a state-based occupational surveillance and field investigation program based on identification of high risk industries and occupations within the state. (15%)

5. Relevance of the proposal to the scope and objectives announced in the program announcement. (10%)

6. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Other Requirements

Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305 no later than 30 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, 235 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 12, 1991.

1. Deadline: Applications shall be considered as meeting the deadline if they are either: a. Received on or before the deadline date, or b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. immediately above are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E–14, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 (404) 842–6630 or FTS 236–6630.

Programmatic technical assistance may be obtained from the following contacts at the sponsoring NIOSH Division in Morgantown, West Virginia: Timothy J. Pizatella, Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, (304) 291–4575 or FTS 923–4575 OR John M. Dower, Chief, Trauma Investigations Section, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888 (304) 291–4885 or FTS 923–4885.

Please refer to Announcement Number 158, "Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatal Accident Circumstances and Epidemiology Model" when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: July 25, 1991.

Timothy W. Groza,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 91–16061 Filed 7–30–91; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 91M–0243]

A.E. Staley Manufacturing Co.; Premarket Approval of MIRA–FLO™ Starch

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by A.E. Staley Manufacturing Co., Decatur, IL, for premarket approval, under the Medical Device Amendments of 1976, of the MIRA–FLO™ Starch. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 17, 1991, of the approval of the application.

DATES: Petitions for administrative review by August 30, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Jan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

SUPPLEMENTARY INFORMATION: On March 1, 1990, A.E. Staley Manufacturing Co., Decatur, IL 62525, submitted to CDRH an application for premarket approval of the MIRA–FLO™ Starch. The MIRA–FLO™ Starch device is a biologically absorbable dusting powder which is indicated for use as a lubricating powder for surgical gloves.

On June 17, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact George Jan (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the 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 CDRH'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 CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration 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 substantial 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 a 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 30, 1991, file with the Dockets Management Branch (address above) two 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 hearing of this document Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(b), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 17, 1991.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 91-18072 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0268]

Takeda Chemical Industries, Ltd.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Takeda Chemical Industries, Ltd., has filed a petition (GRASP 0G0358), proposing to affirm that urease enzyme product derived from *Lactobacillus fermentum* is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by September 30, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 201(s), 409(b)(5), 21 U.S.C. 321(s), 348(b)(5)) and the regulation for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Takeda Chemical Industries, Ltd., 12-10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan, has filed a petition (GRASP 0G0358), proposing that urease enzyme product derived from nonpathogenic and nontoxigenic *Lactobacillus fermentum* be affirmed as GRAS for use as a direct human food ingredient to prevent the development of ethyl carbamate in wine products.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before September 30, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 25, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18142 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1991:

Name: Council on Graduate Medical Education.

Time: September 5, 1991, 8:30 a.m.-5 p.m. and September 6, 1991, 1 p.m.-3:30 p.m.

Place: Conference room I, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The plenary Council will hear and discuss presentations on agency updates from the Health Resources and Services Administration, the Health Care Financing Administration, and the Department of Veterans Affairs; four issue papers on factors affecting the future need for physician manpower; Canadian medical education and physician manpower planning; and issues of access to care in inter-city areas.

Anyone requiring information regarding the subject Council should contact Carol Gleich, Ph.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3626.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: September 4, 1991, 8:30 a.m.-5 p.m.

Place: Conference room I, Parklawn Conference Center, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: The subcommittee will hear and discuss observations regarding historically black medical schools, presentations on college and medical school minority preparation and recruitment Programs, and the Indians into Medicine Program (INMED).

Anyone requiring information regarding the subject Subcommittee should contact Mr. Lanardo E. Moody, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6326.

Name: Subcommittee on Medical

Education Programs and Financing of the Council on Graduate Medical Education.

Time: September 6, 1991, 8:15 a.m.–12 noon.

Place: Conference room J, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: The Subcommittee will discuss Primary Care 2000: HRSA Long-Range Plan for Health Professionals, and a paper on medical education issues and options.

Anyone requiring information regarding the subject Subcommittee should contact Ms. Debbie M. Jackson, Subcommittee Principal Staff Liaison, or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Division of Medicine, Bureau of Health Professions, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: September 6, 1991, 8:12 a.m.–12 noon.

Place: Conference room I, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: The subcommittee will discuss a draft paper on the need for more primary care physicians; and review an updated plan for developing the physician manpower report.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Agenda Items are subject to change as priorities dictate.

Dated: July 25, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–18069 Filed 7–30–91; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Office of the Assistant Secretary for Health; Redelegation Concerning Patents and Inventions

Notice is hereby given that, under the authority delegated to the Assistant Secretary for Health by the Secretary under 45 CFR Section 6.2 (31 FR 12842), the Assistant Secretary for Health has amended the July 15, 1988, delegation to PHS Agency Heads concerning patents and inventions. The amendment modified the redelegation of the following authorities, as they pertain to the National Institutes of Health (NIH): 35 U.S.C. 202(c)(7), 35 U.S.C. 202(d), and 35 U.S.C. 202(e), Disposition of Rights, as amended; 35 U.S.C. 204, Preference for United States Industry; 35 U.S.C. 207(a), Domestic and Foreign Protection of Federally Owned Inventions; and 45 CFR 7.3 and 7.7, Determination as to Domestic Rights and Notice to Employee of Determination, as amended.

Redelegation

These authorities may be redelegated within the Office of the Director, NIH.

Prior Delegations

All previous delegations and redelegations shall continue in effect, provided they are consistent with this delegation.

Effective Date

This amendment became effective on July 24, 1991.

Dated: July 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–18025 Filed 7–30–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–3285; FR–3091–C–02]

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program; Correction Notice To Extend Dates

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of procedures for designating consortia: HOME investment partnerships program; Correction notice to extend dates.

SUMMARY: On July 25, 1991 (56 FR 34094), the Department published a notice in the **Federal Register** on procedures for designating consortia in the HOME Investment Partnerships Program. The July 25 notice stated that the date by which consortia requests must be received in the appropriate HUD Field Office is August 1, 1991, and the date by which the HUD Field Office must notify HUD Headquarters of consortia requests that they approve is September 1, 1991. The Department has found it necessary to extend those dates.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers).

Accordingly, FR Doc. 91–17638, published in the **Federal Register** on July 25, 1991 (56 FR 34094), is amended by correcting the DATE section, to read as follows:

DATES: For consideration of an allocation of HOME funds in FY 1992, consortia requests must be received in the applicable HUD Field Office by September 3, 1991. Consortia requests which are approved by the HUD Field Offices must be submitted to HUD Headquarters by September 30, 1991 to be considered for funding in FY 1992.

Dated: July 26, 1991.

Anna Kondratas,

Assistant, Secretary for Community Planning and Development.

[FR Doc. 91–18271 Filed 7–30–91; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N-91-3284; FR-3089-N-02]

NOFA for HUD-Administered State Rental Rehabilitation Programs for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions; Announces Available Funds for Puerto Rico

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1991 and deadlines for submitting program descriptions for HUD-administered State rental rehabilitation programs; Announces available funds for Puerto Rico.

SUMMARY: On July 25, 1991 (56 FR 34098), the Department published a notice in the **Federal Register** announcing allocations of funds available to localities by competition in States which have not elected to administer the Rental Rehabilitation Program for Fiscal Year 1991. In these States, HUD will administer the program.

The purpose of this notice is to announce that in addition to the funds announced in the July 25 notice, a total of $269,000 in rental rehabilitation grant funds is available in Puerto Rico to localities that did not receive a formula allocation and that are not eligible for Farmers Home Administration assistance under Title V of the Housing act of 1949. The date by which Program Descriptions must be received for localities in Puerto Rico to be considered for funding is August 30, 1991. Except for the different submission date, the notice as published in the July 25 **Federal Register** notice applies.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

Dated: July 26, 1991.

Anna Kondratas,

Assistant Secretary, for Community Planning and Development.

[FR Doc. 91-18272 Filed 7-30-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4212-13; N-53583]

Realty Action; Exchange of Public Lands in Clark County, NV

The following described public lands administered by the Bureau of Land Management, including the mineral estate with no known values, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, NV

T. 21 S., R. 60 E.,
Sec. 20, E½NE¼SE¼SW¼, E½E½ NW¼SE¼, SW¼NW¼SE¼, W½NW¼ SW¼SE¼, E½SW¼NE¼SE¼.
Sec. 29, E½NW¼NE¼SE¼, SE¼NW¼ NE¼, E½SE¼SW¼NE¼, E½SW¼ SE¼NE¼, W½SE¼SE¼NE¼.

Aggregating 65 acres.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All the oil, gas, sodium, potassium and any other minerals of known value.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

In exchange for the above described public lands, the United States will acquire the following described private lands from Rhodes Design and Development Corp. All of Rhodes Design and Development's interest in the private lands will be transferred.

Mount Diablo Meridian, NV

T. 21 S., R. 59 E.,
Sec. 6, Lot 6.
T. 14 S., R. 69 E.,
Sec. 28, SW¼SE¼, SE¼SW¼.
Sec. 32, SE¼NE¼.
Sec. 33, NE¼NW¼, W½NW¼, W½NW¼NE¼.

Aggregating 300.36 acres.

SUPPLEMENTARY INFORMATION: The exchange is consistent with the Clark County Management Framework Plan. The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. If necessary, land values may be equalized through an acreage adjustment and/or a payment by the exchange proponent in accordance with 43 CFR 2201.5(c)(2). The lands being disposed of are not within a grazing allotment and therefore no reduction in grazing privileges is necessary.

In accordance with the regulation of 43 CFR 2201.1(b), publication of this Notice shall segregate the parcel described as T. 21 S., R. 60 E., sec. 20, E½SW¼NE¼SE¼ from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Rhodes Design and Development. The other parcels described above were segregated by publication of a Notice in the **Federal Register** (56 FR 9288) dated March 5, 1991. The segregation of the additional parcel will terminate upon the issuance of patent or two years from the date of publication of this notice, or upon publication of a notice terminating the segregation.

Further information regarding this exchange is available at the Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas, at the above address. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 22, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-18068 Filed 7-30-91; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of a Draft Environmental Assessment To Amend the Habitat Conservaton Plan of an Incidental Take Permit for Development in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft environmental assessment (EA) on the proposed amendment to section 10(a)(1)(B) of the Endangered Species Act (Act) to allow incidental take of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*) in Riverside County, California, is available for public review. Comments and suggestions are requested. This notice is provided pursuant to section

10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the EA should be received on or before August 30, 1991.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing the Riverside County Habitat Conservation Agency. Documents will be available for public inspection during normal business hours (8 a.m. to 5 p.m.) at the Riverside County Habitat Conservation Agency and the Riverside Central Library. Written data or comments concerning the proposed permit amendment and draft EA should be submitted to the Laguna Niguel Field Office. Please reference permit number PRT 739678 with your comments.

Laguna Niguel Field Office, U.S. Fish and Wildlife Service, 24000 Avila Road, Room 3106, Laguna Niguel, CA 92656 (714/643–4270 or FTS 796–4270).

Riverside Central Library, Government Publications Section, 3581 Seventh Street, Riverside, CA 92501–3651.

Riverside Central Library, Government Publications Section, 3581 Seventh Street, Riverside, Ca 92501–3651.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper at the above Laguna Niguel Field Office.

SUPPLEMENTARY INFORMATION: The County of Riverside California, has applied to the Fish and Wildlife Service for a proposed amendment to their existing incidental take permit amendment that would authorize changes in the Stephens' kangaroo rat (SKR) reserve study area boundaries. These changes are being promulgated pursuant to the terms and conditions of the existing short-term (2-year) SKR Habitat Conservation Plan (HCP). This short-term plan requires review of the proposed boundary changes every 6 months until such time as the final SKR reserve study area boundaries and the long-term HCP are completed and approved.

The proposed action is to authorize specific modification of the boundaries of the HCP Fee Area and various Study Areas. This proposed action is detailed in section II.B.1 Alternative 1—The Proposed Action and Preferred Alternative. The total changes to the HCP Fee Area would result in the deletion of 3,136 acres including a net decrease of 1,481 acres of SKR occupied habitat. The total changes to the SKR Study areas would result in a net decrease of 3,304.3 acres (in areas unlikely to become a part of the permanent reserve system) while achieving a net gain of 30.8 acres of SKR occupied habitat within the boundaries of the Study Areas. These changes result in a net increase of 3,270.2 acres in the area outside of Study Areas but within the HCP Fee Area.

Dated: July 25, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–18033 Filed 7–30–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Proposed Development Concept Plan, Santa Rosa Island, Channel Islands National Park, CA; Intent to Prepare an Environmental Impact Statement

Summary: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the National Park Service, Channel Islands National Park is preparing an environmental impact statement to assess the impacts of implementing a proposed development concept plan for Santa Rosa Island. The proposal and alternatives will be based on the general direction provided in the 1985 General Management Plan for the park.

The plan will consider needed actions to protect natural and cultural resources on the island, and to provide for visitor use consistent with the island's carrying capacity. The need for additional support facilities for park management and research will also be evaluated.

Scoping workshops on planning for Santa Rosa Island were held February 12–15, 1990 at Channel Islands National Park. In-depth press briefings on the planning project were provided in the park on July 17, 1990.

Persons wishing to comment upon or provide additional input to the scoping process for the environmental impact statement should provide such comments to the Superintendent, Channel Islands National Park, 1901 Spinnaker, Ventura, California 93001, within 30 days following the publication of this notice. For further information, contact the Superintendent at the above address or telephone number (805) 644–8157.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft environmental statement is expected to be completed and available for public review in November 1991, and the final environmental statement and record of decision anticipated in spring 1992.

Dated: July 12, 1991.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 91–18032 Filed 7–30–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

[332–288]

AGENCY: International Trade Commission.

ACTION: Amended notice of determination.

SUMMARY: This notice amends the notice issued December 13, 1990, which preliminarily established the base quantiy for 1991 for U.S. imports of fuel ethyl alcohol from CBI-beneficiary countries as required under section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note). The "base quantity" of imports is the quantity of fuels ethyl alcohol that can be imported with a zero percent local feedstock requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for ethyl alcohol as required by section 7 of the Act, the Commission instituted investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

For the 12-month period ending September 30, 1990, the Commission preliminarily determined the level of U.S. consumption of ethyl alcohol to be 1.21 billion gallons and the "base quantity" for 1991 to be 84.5 million gallons. It was noted that certain of the data required to make the determination was being estimated by the Commission pending finalization of Treasury statistics through September 1990 for alcohol fuel producers, and in the event that the finalized data changed the base quantity estimate to be used in 1991, the Commission would notify the Customs Service and issue an amended Federal Register notice. Final data has been received from the Department of the Treasury, with the result that the estimated U.S. level of consumption is finalized at 1.18 billion gallons and the

"base quantity" for 1991 is finalized at 82.6 million gallons.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202–205–3352) or Mr. James A. Emanuel (202–205–3367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: July 26, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18121 Filed 7–30–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 303–TA–21 (Preliminary) and 731–TA–519 (Preliminary)]

Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: International Trade Commission.

ACTION: Correction to notice of determinations.

SUMMARY: The notice of determinations in the subject investigations, published in the **Federal Register** of July 17, 1991 (56 FR 32589), incorrectly stated that the views of the Commission are contained in USITC publication 2440. The correct publication number is 2400.

EFFECTIVE DATE: July 23, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: July 23, 1991.

By order of the Commission.

Edward G. Carroll,

Acting Secretary.

[FR Doc. 91–18120 Filed 7–30–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–522 (Preliminary)

Minivans From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission [2] unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of minivans, provided for in headings 8703 and 8704 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1991, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of General Motors Corp., Detroit, MI, Ford Motor Co., Dearborn, MI, and Chrysler Motors Corp., Detroit, MI, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of minivans from Japan. Accordingly, effective May 31, 1991, the Commission instituted antidumping investigation No. 731–TA–522 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 10, 1991 (56 FR 26694). The conference was held in Washington, DC, on June 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 15, 1991. The views of the Commission are contained in USITC Publication 2402 (July 1991), entitled "Minivans from Japan: Determination of the Commission in Investigation No. 522 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 15, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18125 Filed 7–30–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f).

[2] Commissioner Rohr not participating.

[Investigations Nos. 701–TA–305 (Final) and 731–TA–476 and 478–482 (Final)]

Steel Wire Rope From Argentina, India, Mexico, People's Republic of China, Taiwan, and Thailand

AGENCY: International Trade Commission.

ACTION: Limited waiver of rules and revised schedule for the subject investigations.

EFFECTIVE DATE: July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On April 18, 1991, the Commission instituted the subject investigations and established a schedule for their conduct (56 FR 20024, May 1, 1991). Subsequently, on May 13, 1991, the Department of Commerce extended the date for its final determinations in the investigations concerning India, the People's Republic of China, Taiwan, and Thailand from July 1, 1991, to September 4, 1991 (56 FR 21988).

In addition, on June 28, 1991, the Commission instituted preliminary investigation No. 731–TA–524 concerning steel wire rope from Canada, pursuant to a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, alleging that such imports are being sold in the United States at less than fair value, and that an industry in the United States is materially injured and threatened with material injury by reason of such imports (56 FR 30765, July 5, 1991).

The Commission, therefore, is partially waiving its rules and revising its schedule as follows: in the subject final investigations, the Commission is waiving its rules regarding the submission of briefs to allow for the filing of additional briefs (not to exceed 5 pages) to discuss the issue of whether imports from Canada should be cumulated with imports from the subject countries and the impact of any such cumulation, and the deadline for filing such supplemental briefs is July 23, 1991; and in the final investigations concerning India, the People's Republic

of China, Taiwan, and Thailand, supplemental briefs (not to exceed 10 pages) will be allowed to discuss Commerce's final margins, and the deadline for filing such supplemental briefs is September 13, 1991.

For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 16, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18124 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-497 (Final)]

Tungsten Ore Concentrates From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-497 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of tungsten ore concentrates, provided for in subheading 2611.00.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by conducting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of tungsten ore concentrates from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 23, 1991, by U.S. Tungsten Corp., Danbury, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on September 13, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 26, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 24, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 23, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 1, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 1, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18119 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-329]

Certain Vacuum Cleaners; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint filed with the U.S. International Trade Commission on June 21, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amway Corporation, 7575 East Fulton Road, Ada, Michigan 49355 and Bissell, Incorporated, 2345 Walker Avenue, NW., Grand Rapids, Michigan 49504. The complaint alleges a violation of section 337 in the importation into the United States of certain vacuum cleaners by reason of alleged infringement of U.S. Patent Des. 309,203 and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone (202) 205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 17, 1991, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain vacuum cleaners by reason of alleged infringement of the claim of U.S. Patent Des. 309,203, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The Complainants are:

Amway Corporation, 7575 East Fulton Road, Ada, Michigan 49355
Bissell, Incorporated, 2345 Walker Avenue, NW., Grand Rapids, Michigan 49504

(b) The respondent is the following company alleged to be in violation of section 337, and the party upon which the complaint is to be served:

Iona Appliances, Inc., 1110 Hansler Road, Welland, Ontario L3B 5S1, Canada

(c) Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401P, Washington, DC. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules, 19 CFR 201.16(d) and 210.21(a), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: July 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18123 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-111]

Passenger Train Operation

To: Chicago Central & Pacific Railroad Company

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train No.s 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Watertown, Wisconsin are out of service because of a derailment. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East Dubuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate or allow the operation of trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between

said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:15 a.m., (CDT), June 21, 1991.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., (CDT), June 22, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, June 21, 1991, by Heber P. Hardy, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18086 Filed 7–30–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 Sub-No. 116X]

Norfolk Southern Railway Co. Abandonment Exemption—in Mecklenburg, County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.13-mile line of railroad betweeen milepost R–0.0, at 2nd Street, and milepost R–0.13, at Stonewall Street, in Charlotte, Mecklenburg County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 30, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance uder 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 20, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 16, 1991.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist. 4.I.C.C.2d 164(1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18085 Filed 7–30–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–25,988]

Aeroquip Corp.; Herber Springs, AR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 1, 1991 in response to a worker petition which was filed July 1, 1991 on behalf of workers at Aeroquip Corporation, Herber Springs, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18117 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,593]

Goss & Deleeuw Machine Co., Kensington, CT; Negative Determination Regarding Application for Reconsideration

By an application dated June 21, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 16, 1991 and published in the **Federal Register** on May 21, 1991 (56 FR 28577).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that imports of Porta and Trevisan machines from Italy

have increased their share of Goss & Deleeuw's market at the expense of domestic production. The petitioners submitted a list of several companies which purchased imported Italian Porta and Trevisan machines from Goss.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of machine tools (metal cutting and metal forming) declined absolutely and relative to domestic shipments in 1990 compared to 1989.

A review of the investigation file shows that company data was collected through 1990. The data show that sales and production of Goss' chucking machines declined in 1990 compared to 1989 while increases in sales and production were shown for rebuilds and other small tools.

Other findings show that the Italian machines were not like or directly competitive with Goss' chucking machines. Goss' marketing agreements for the Italian machines had two phases. In the first phase Goss would do the installation and service work and be the sole U.S. distributor. In the second phase Goss would asemble the machines in Kensington with Italian components.

The findings also show that Goss imported one Porta machine in 1990 and one Trevisan machine in 1989 and built one Trevisan machine in 1990 with a machine base and slides imported from Italy. The components to the Trevisan machine were never produced in Kensington. Goss did not produce the Trevisan machine in 1989 or the Porta machine in 1990 when they were imported. Accordingly, these imports would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Stephan A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18115 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,632]

Pennsylvania Shipbuilding Co., Chester, PA; Negative Determination Regarding Application for Reconsideration

By an application dated June 25, 1991, a former company official requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 22, 1991 and published in the **Federal Register** on June 5, 1991 (56 FR 25699).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former company official stated that construction projects were removed from the shipyard because of foreign competition and that other shipyards (Bethlehem Steel's Sparrow Point and Levingston's shipyards) received worker group certifications. It was also stated that foreign shipyards are subsidized by their governments thereby making the U.S. shipyards non-competitive.

The Department's denial was based on the fact that there was no production during the period applicable to the petition. The Chester facility had only two new construction projects over the past three years—both U.S. Navy ships. All production and repairing at the subject firm ceased in August 1989 when the U.S. Navy pulled the two ships out of the subject shipyard and towed them to a domestic Navy shipyard in Florida. A domestic transfer of production would not provide a basis for a certification.

The last certifications for Bethlehem Steel's Sparrow Point Yard and Levingston Shipbuilding were issued on January 28, 1983 (TA–W–13,270) and July 27, 1983 (TA–W–14,462), respectively. These prior certifications, more than eight years ago, have no bearing on the instant case since those decisions were made in an earlier time period when production and/or sales and import data were different. Each petition is judged on its own merits and in the time period when it was filed.

Lastly, foreign competition from shipyards that are subsidized by their governments would not, in itself, provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18114 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 607]

Revere Transducers, Inc., Wallingford, CT; Revised Determination on Reconsideration

On July 19, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Revere Transducers, Inc., Wallingford, Connecticut.

The Wallingford plant produces transducers and is expected to close in February 1992 when all production will be transferred to Revere's Breda plant in the Netherlands and to a domestic facility.

Findings on reconsideration show that Revere made a decision in January 1991 to transfer the production of several of its product lines for the domestic market to the Netherlands. The Netherland's production transfer accounted for a substantial portion of Wallingford's total plant production in 1991. This production is now being imported into the U.S. domestic market.

A substantial number of Revere's employees have been adversely affected because of the production transfer. Workers are not separately identifiable by product.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with transducers produced at Revere Transducers, Inc., Wallingford, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers at Revere Transducers, Inc., Wallingford, Connecticut. In accordance with the provisions of the Trade Act of

1974, I make the following revised determination:

All workers of Revere Transducers, Inc., Wallingford, Connecticut who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18112 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–20–M

[TA–W–25,635]

Tric-Trac, Ltd., New York, NY; Negative Determination Regarding Application for Reconsideration

By an application dated June 14, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 24, 1991 and published in the **Federal Register** on June 11, 1991 (56 FR 26840).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The subject firm ceased operations in November, 1990.

The Department denied the subject firm on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. The Department's survey of the subject firm's major customers revealed that none of the respondents reported import purchases in the relevant period. On further review, however, the investigation findings show that the workers' firm did not produce an article within the meaning of the Trade Act. All of Tric-Trac's dresses and tee shirts were produced overseas according to the subject firm's designs and imported.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18116 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,759]

Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, CO; Affirmative Determination Regarding Application for Reconsideration

By a letter dated June 26, 1991, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, Colorado. The Negative Determination was issued on June 20, 1991, and was published in the **Federal Register** on June 28, 1991 (56 FR 29718).

The petitioner claims that the Rocky Mountain Division does not produce drilling muds but applies the muds at the drilling site and services drilling rigs.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18113 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act Title III; State Designations of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N–4469, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III.

Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC, this 26 day of July 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

July 1991.

Dislocated Worker Units Nationwide

Alabama

Mrs. Ruth Ott, Employment & Training Division, Department of Economic and Community Affairs, P.O. Box 250347, Montgomery, Alabama 36125–0347, Telephone: 205–284–8990

Alaska

Mr. William Mailer, JTPA Program Manager, Rural Development Division, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 403, Anchorage, Alaska 99508, Telephone: 907–563–1955

Arizona

Mr. Manuel F. Mejia, Assistant Director, Division of Employment and Rehabilitation Services, Department of Economic Security, 1300 West Washington, Site Code 901A, Phoenix, Arizona 85005, Telephone: 602–542–4910

Arkansas

Mr. William D. Gaddy, Administrator, Arkansas Employment Security Division, P.O. Box 2981, Little Rock, Arkansas 72203, Telephone: 501–682–2121

California

Mr. Werner Schink, Chief, Job Training Partnership Division, Employment & Training Branch, Employment Development Department, 800 Capitol Mall, Sacramento, California 95814, Telephone: 916–322–4440

Colorado

Mr. Dick Rautio, Dislocated Worker Unit, Governor's Job Training Office, Suite 550,

720 South Colorado Boulevard, Denver, Colorado 80222, Telephone: 303–758–5020

Connecticut

Mr. Arthur Franklin, Title III Coordinator, State Department of Labor, Dislocated Worker Unit, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, Telephone: 203–566–7433

Delaware

Ms. Alice Mitchell, Technical Service Manager, Delaware Department of Labor, Division of Employment & Training, University Plaza, P.O. Box 9499, Newark, Delaware 19714–9499, Telephone: 302–368–6913

District of Columbia

Mrs. Ruby Washington, Chief, Branch of Federal Programs, D.C. Department of Employment Services, Employment Security Building, 500 C Street NW., Suite 300, Washington, DC 20001, Telephone: 202–639–1135

Florida

Mr. Hayden Gray, Asst. Chief, Bureau of Job Training, Division of Labor, Employment & Training, Department of Labor & Employment Security, 1320 Executive Center Drive, Suite 201 Atkins Building, Tallahassee, Florida 32399–0667, Telephone: 904–488–9250

Georgia

Mr. Robert Davis, Title III Coordinator, Georgia Department of Labor, Sussex Place, 148 International Boulevard NE., Atlanta, Georgia 30303, Telephone: 404–656–6336

Hawaii

Mr. Mario R. Ramil, Director, Department of Labor and Industrial Relations, 830 Punchbowl Street, Room 204, Honolulu, Hawaii 96813, Telephone: 808–548–3150

Idaho

Ms. Cheryl Brush, Planning, Employment and Training Programs Bureau, Department of Employment, 317 Main Street, Boise, Idaho 83735–0001, Telephone: 217–785–6006

Illinois

Mr. Herbert Dennis, Manager, Job Training Programs Division, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62704, Telephone: 217–785–6006

Indiana

Mr. Richard Sewell, Deputy Director, Indiana Department of Employment and Training Services, Program Operations Division, 10 N. Senate Street, Indianapolis, Indiana 46909, Telephone: 317–232–6086

Iowa

Mr. Jeff Nall, Administrator, Div. of Job Training, Iowa Dept. of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: 515–242–4779

Kansas

Mr. Patrick Prichard, Director of Program and Support Services, Department of Human Resources, Program/Support Services, 401 SW Topeka Boulevard, Topeka, Kansas 66603, Telephone: 913–296–5159

Kentucky

Ms. Jill Day, Asst. Director, Div. of Job Training and Employment, Department of Employment Services, 275 East Main, 2–West, Frankfort Kentucky 40621, Telephone: 502–564–5360

Louisiana

Mr. Dale Miller, Supervisor, Special Programs Section, Office of Labor, Federal Training Program Division, P.O. Box 94094, Baton Rouge, Louisiana 70804–9094, Telephone: 504–342–7637

Maine

Mr. Michael Bourret, Special Assistant to Commissioner, Maine Department of Labor, 20 Union Street, Augusta, Maine 04330, Telephone: 207–289–1292

Maryland

Mr. Ron Windsor, Office of Employment & Training, Department of Economic and Employment Development, 1100 N. Eutaw Street, Room 310, Baltimore, Maryland 21202, Telephone: 301–333–5149

Massachusetts

Ms. Suzanne Teegarden, Director, Industrial Services Program, One Ashburton Place, Room 1413, Boston, Massachusetts 02108, Telephone: 617–727–8158

Michigan

Mr. James Houck, Chief, Rapid Response Unit, Bureau of Employment Training, Victor Center Building, P.O. Box 30015, Lansing, Michigan 48909, Telephone: 517–335–5853

Minnesota

Mr. Edward Retka, Program Coordinator, Employment and Training, Minnesota Department of Jobs & Training, State Job Training Office, 690 American Center Building, 150 East Kellogg, St. Paul, Minnesota 55101, Telephone: 612–296–7918

Mississippi

Ms. Jane Black, DWU Director, Department of Job Development and Training, Governor's Office of Federal-State Programs, 301 West Pearl Street, Jackson, Mississippi 39203–3089, Telephone: 601–949–2128

Missouri

Mr. Larry Earley, Director, Div. of Job Development and Training, 221 Metro Drive, Jefferson City, Missouri 65109, Telephone: 314–751–7796

Montana

Mr. Dan Miles, DWU Supervisor, Research, Safety & Training Division, Montana Department of Labor & Industry, P.O. Box 1728, Helena, Montana 59624 Telephone: 406–444–4500

Nebraska

Mr. Edward Kosark, Nebraska Department of Labor, Job Training Program Division, 550 South 16th Street, Box 95004, Lincoln, Nebraska 68509–5004, Telephone: 402–471–2127

Nevada

Ms. Jan Perozzi, DWU, State Job Training Office, Capitol Complex, 400 West King Street, Carson City, Nevada 89710, Telephone: 702–885–4310

New Hampshire

Mr. James Taylor, DWU Manager, New Hampshire Job Training Coordinating Council, 64B Old Suncock Road, Concord, New Hampshire 03301, Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Response Team Coordinator, New Jersey Department of Labor, John Fitch Plaza, Trenton, New Jersey 08625, Telephone: 609–984–3519

New Mexico

Mr. Kent James, DWU Supervisor, New Mexico Department of Labor, Job Training Division, P.O. Box 4218, Santa Fe, New Mexico 87502, Telephone: 505–827–6866

New York

Mr. Paul Gunn, New York State Department of Labor, State Office Campus—Building 12, Albany, New York 12240, Telephone: 518–457–3101

North Carolina

Mr. Joel C. New, Director, Div. of Employment & Training, Department of Economic and Community Development, 111 Seaboard Avenue, Raleigh, North Carolina 27611, Telephone: 919–733–7546

North Dakota

Mr. James Hirsh, Director, Job Training Division, Job Service North Dakota, 1000 E. Divide, P.O. Box 1537, Bismark, North Dakota 58501, Telephone: 701–224–2843

Ohio

Mr. James Conrad, Administrator, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, Ohio 43215, Telephone: 614–466–2100

Oregon

Mr. Bill Braly, Manager, Job Training Partnership Adm., Economic Development Department, 775 Summer Street NE., Salem, Oregon 97310, Telephone: 503–373–1995

Pennsylvania

Mr. Robert J. Connolly, Deputy Secretary for Employment, Department of Labor and Industry Bldg., 1700 Labor and Industry Building, 7th & Forster Streets, Harrisburg, Pennsylvania 17120, Telephone: 717–787–1745

Puerto Rico

Mr. Jose Reyes Herrerro, Director, DWU, Right to Employment Administration, 5 Mayaguez Building, Hato Rey, Puerto Rico 00918 Telephone: 809–754–3962

Rhode Island

Mr. Richard D'Iorio, Coordinator, Employer Relations Unit, 109 Main Street, Pawtucket, Rhode Island 02860, Telephone: 401–277–3450

South Carolina

Dr. Robert E. David, Executive Director, South Carolina Employment Security Commission, P.O. Box 995, Columbia, South Carolina 29202, Telephone: 803–737–2617

South Dakota

Mr. Lloyd Schipper, JTPA Administrator, South Dakota Department of Labor, Kneip Building, 700 Governor's Drive, Pierre, South Dakota 57501 Telephone: 605–773–5017

Tennessee

Ms. Brenda Bell, DWU Manager, Tennessee Department of Labor, 501 Union Building, 6th Floor, Nashville, Tennessee 37219–5388, Telephone: 615–741–1031

Texas

Ms. Linda K. Bergeron, Manager, Program Operations, Texas Department of Commerce, 816 Congress Avenue, Austin, Texas 78701, Telephone: 512–320–9800

Utah

Mr. Gary Gardner, Utah Office of Job Training for Economic Development, 324 South State Street, Suite 210, Salt Lake City, Utah 84111, Telephone: 801–538–8750

Vermont

Mr. Thomas Douse, Director, Office of Employment and Training Programs, Department of Employment and Training, P.O. Box 488, Montpelier, Vermont 05602, Telephone: 802–229–0311

Virgin Islands

Ms. Carol M. Burke, Assistant Commissioner, Employment and Training, V.I. Department of Labor, 7 & 8 Queen Street, C'sted, St. Croix, Virgin Island 00820, Telephone: 809–773–1994

Virginia

Dr. James E. Price, Executive Director, Governor's Employment and Training Department, The Commonwealth Building, 4615 West Broad Street, Third Floor, Richmond, Virginia 23230, Telephone: 804–786–8823

Washington

Mr. Larry Malo, Commissioner, Employment Security Department, Training and Employment Analysis Division, 605 Woodview Drive S.E., MS KG11, Olympia, Washington 98504–5311, Telephone: 206–438–4611

West Virginia

Mr. Paul Skaff, Administrative Manager, State DWU, Employment and Training Division, Governor's Office of Community and Industrial Development, 5790–A MacCorkle Avenue, SE., Charleston, West Virginia 25304, Telephone: 304–348–5920

Wisconsin

Mr. Dan Bond, Division of Employment and Training, State Job Training Program, Section/Job Service Bureau, DILRH, 201 E. Washington Avenue, P.O. Box 7972, Madison, Wisconsin 53707, Telephone: 608–266–0745

Wyoming

Mr. Matt Johnson, Deputy Director, JTPA, Department of Employment, 100 West Midwest, P.O. Box 2760, Casper, Wyoming 82602, Telephone: 307–235–3601.

[FR Doc. 91–18118 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: These additions to the annual list of labor surplus areas are effective August 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-aside in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurement.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor supplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective August 1, 1991.

The list of labor surplus areas published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on July 25, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas.

August 1, 1991

Labor surplus areas	Civil jurisdictions included
Massachusetts:	
Lawrence—Haverhill MA-NH PMSA.	Essex County MA (part), Amesbury Town, Andover Town, Boxford Town, Georgetown Town, Groveland Town, Haverhill City, Lawrence City, Marrimac Town, Methuen Town, Newbury Town, Newburyport City, North Andover Town, Salisbury Town, West Newbury.
	Rockingham County NH (part), Arkinson Town, Brentwood Town, Danville Town, Derry Town, East Kingston Town, Hamstead Town, Kingston Town, Newton Town, Plaiston Town, Salem Town, Sandown Town, Seabrook Town, Windham Town.
Pittsfield MSA	Berkshire County (part), Cheshire Town, Dalton Town, Hinsdale Town, Lanesborough Town, Lee Town, Pittsfield City, Richmond Town, Stockbridge Town.
Rhode Island:	
West Warwick Town.	West Warwick Town.

[FR Doc. 91–18111 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Meeting; Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Thursday, September 5, 1991. The meeting will be held at the MITRE-Hayes Building, 7525 Colshire Dr., McLean, VA 27006. The meeting will last from 9 a.m. to 2:30 p.m. The agenda is as follows:

A. Opening remarks
B. Administrative remarks
C. Briefings on industry and Government activities

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22202–2199.

Beverly Sampson,

Federal Register, Liaison Officer.

Dennis I. Parsons,

Captain, USN, Assistant Manager NCS Joint Secretariat.

[FR Doc. 91–18063 Filed 7–30–91; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services II Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services II Section) to the National Council on the Arts will be held on August 14, 1991 from 9 a.m.–6:30 p.m. and August 15 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 15 from 4:30 p.m.–5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 14 from 9 a.m.–6:30 p.m. and August 15 from 9 a.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 25, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18026 Filed 7–30–91; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 20–21, 1991 from 9 a.m.–5:30 p.m. and August 22 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 22 from 3 p.m.–5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 20–21 from 9 a.m.–5:30 p.m. and August 22 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18066 Filed 7–30–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 19, 1991, the National Science Foundation published notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on July 24, 1991:

Wayne Trivelpiece, G.A. McFeters, and Deneb Karentz.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18144 Filed 7-30-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission staff is withdrawing Regulatory Guide 1.2 (Safety Guide 2), "Thermal Shock to Reactor Pressure Vessels." This guide has been superseded by § 50.61, "Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events," which is in 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and by Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors." Section 50.61 establisnes screening criteria that effectively limit the extent of irradiation embrittlement permitted for the reactor pressure vessel materials. The pressurized thermal shock requirements are sufficient to address the thermal snock concern.

The withdrawal of Regulatory Guide 1.2 does not alter any prior or existing licensing commitments based on its use. Copies of this guide will continue to be available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 1st day of July 1991.

For the Nuclear Regulatory Commission.

Eric S. Beckford,

Director, Office of Nuclear Regulatory Research.

Draft Regulatory Guide; Withdrawal

The NRC staff is withdrawing from all consideration Task SG 301-4, "Standard Format and Content Guide for Access Authorization Plans for Nuclear Power Plants," which was issued for public comment in September 1984 as a draft regulatory guide proposed for Division 5, "Materials and Plant Protection."

The access authorization plans proposed in this draft guide are no longer under consideration. Therefore, the NRC staff will not proceed with development of Task SG 301-4.

The Regulatory Guide Series was developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 11th day of June 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91-18102 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Withdrawal

The Nuclear Regulatory Commission staff is withdrawing six regulatory guides because they have become obsolete. The following guides are being withdrawn:

1.58 Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel (Revision 1, September 1980), which endorsed ANSI N45.2.6-1978, "Qualifications of Inspection, Examination, and Testing Personnel for Nuclear Power Plants"

1.64 Quality Assurance Requirements for the Design of Nuclear Power Plants (Revision 2, June 1976), which endorsed ANSI N45.2.11-1974, "Quality Assurance Requirements for the Design of Nuclear Power Plants"

1.88 Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records (Revision 2, October 1976), which endorsed ANSI N45.2.9-1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records for Nuclear Power Plants"

1.123 Quality Assurance Requirements for Control of Procurement of Items and Services for Nuclear Power Plants (Revision 1, July 1977), which endorsed ANSI N45.2.13-1976, "Quality Assurance Requirements for Control of Procurement of Items and Services for Nuclear Power Plants"

1.144 Auditing of Quality Assurance Programs for Nuclear Power Plants (Revision 1, September 1980), which endorsed ANSI N45.2.12-1977, "Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants"

1.146 Qualification of Quality Assurance Program Audit Personnel for Nuclear Power Plants (August 1980), which endorsed ANSI N45.2.23-1978, "Qualification of Quality Assurance Program Audit Personnel for Nuclear Power Plants"

These regulatory guides are being withdrawn because they have become obsolete. The ANSI standards endorsed by these guides were incorporated into ANSI/ASME NQA-1-1983, "Quality Assurance Program Requirements for Nuclear Facilities." ANSI/ASME NQA-1-1983 was endorsed by Revision 3 of Regulatory Guide 1.28, "Quality Assurance Program Requirements (Design and Construction)," which was issued in August 1985.

The withdrawal of these regulatory guides does not alter any prior or existing licensing commitments based on their use. Copies of these guides will continue to be available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 91-18103 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. DPR–61, and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

During the upcoming refueling outage, CYAPCO will begin to use Zircaloy-clad fuel. The proposed amendment would revise the Technical Specifications to reflect the conversion to a Zircaloy-clad fuel assembly design and the prohibition of three loop operation for Modes 1 and 2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 30, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–600–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 27, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18099 Filed 7–30–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

10 CFR 50.71(e)(4) requires that licensees submit a revision of the Final Safety Analysis Report (FSAR) no less frequently than annually that reflects all changes up to a maximum of 6 months prior to the date of filing. This regulation would require the submittal of the update of the FitzPatrick FSAR by July 22, 1991.

10 CFR 50.54(a)(3) requires, in part, that licensees submit changes to the quality assurance description included or referenced in the FSAR at least annually provided these changes do not reduce the commitments in the program description previously accepted by the NRC. This regulation would require the submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR by July 22, 1991.

III

By letter dated June 28, 1991, and supplemented by letter dated July 12, 1991, the licensee requested a one-time schedular exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Specifically, the licensee requested that it be permitted to delay the annual update of the FSAR from July 22, 1991, to January 22, 1992, which is a six-month delay. Also, the licensee requested that it be permitted to delay the submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR from July 22, 1991, to January 22, 1992, which is a six-month delay.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The requested exemption is administrative and would not affect plant equipment, operation, or procedures. The FSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the FSAR is annually updated, the license amendment process and the reporting requirements of 10 CFR 50.59(b)(2), 10 CFR 50.72, and 10 CFR 50.73 continue to provide the NRC with adequate and timely notification of changes to the plant and its licensing basis. Furthermore, the requested exemption from the schedular requirement of 10 CFR 50.54(a)(3) for annual submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR applies only to those changes that do not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do reduce the commitments still must be approved by the NRC prior to implementation.

The current licensing workload for the FitzPatrick plant, in addition to difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions, have contributed to the need for exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Furthermore, additional time is necessary to ensure that extensive improvements, designed to enhance the quality and clarity of the FSAR, are incorporated into the next update. These improvements include the complete revision of chapter 14, "Safety Analysis," and the upgrading of many FSAR system drawings.

The licensing workload for the FitzPatrick plant includes the following issues:

1. Individual Plant Evaluation (Generic Letter 88–20)
2. Mark I Containment Hardened Vent
3. Service Water System Evaluation (Generic Letter 89–13)
4. Station Blackout Analysis
5. ATWS Rule diversity
6. Motor Operated Valve Operability (Generic Letter 89–10)
7. Thermal Hydraulic Stability
8. Integranular Stress Corrosion Cracking (Generic Letter 88–01)
9. Spent Fuel Pool Expansion
10. Licensing Actions Required for Refueling
11. Power Uprate
12. 24 Month Operating Cycle

The stated licensing activities are important to the continued safe and efficient operation of the FitzPatrick Plant and have therefore received priority over the annual updates of the FSAR and the quality assurance program description contained in the FSAR, which are administrative requirements.

An increased burden on the FitzPatrick licensing staff has resulted from difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions. The licensee has made every effort to fill these vacancies as soon as they occurred. In spite of this, vacancies to date in 1991 have exceeded one-third of the authorized licensing engineering positions. The licensee has initiated corrective actions to compensate for this shortage of qualified personnel by hiring three contract engineers and two summer interns. These additional personnel should have a positive impact on the efforts to reduce the current FitzPatrick licensing workload.

Schedular relief is also requested to provide additional time to complete a total revision of FSAR chapter 14, "Safety Analysis," and to facilitate other FSAR improvements. The objective of the safety analyses in chapter 14 of the FSAR is to evaluate the ability of the plant to mitigate the consequences of a postulated accident without undue hazard to the health and safety of the public. The revisions to this chapter will result in the following improvements:

1. The transient response figures will be enlarged for legibility and to make them more suitable for licensed operator training.
2. The transient and accident analyses for the fuel reloads will be added.
3. The existing (cycle 1) analyses will be retained since they are the original licensing basis of the FitzPatrick plant.
4. The format will be revised to facilitate updates required by future reload cores.

Another FSAR improvement which requires additional time to implement is the replacement of many of the FSAR flow diagrams with new drawings which are consistent with current computer generated Operating Procedure (OP) and Process and Instrument (P&ID) drawings. The new OP, P&ID, and FSAR drawings incorporate differing levels of detail overlaid on a common base drawing using computer aided drafting techniques. This improves the consistency of all major plant drawings used for plant operator training.

The licensee has made a good faith effor to comply with the regulations by initiating corrective actions, both short term and long term, to improve its submittals and ensure that similar exemptions will not be necessary in the future. Therefore, the exemption would only provide temporary relief from the applicable regulations. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(v).

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) The exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present as described in section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants a one-time exemption, as described in section III above from 10 CFR 50.71(e)(4) from the requirement to submit the annual revision of the FitzPatrick FSAR on July 22, 1991. This revision shall be submitted by January 22, 1992. Furthermore, the Commission hereby grants a one-time exemption, as described in section III above from the 10 CFR 50.54(a)(3) requirement to submit

the annual changes to the quality assurance program description contained in the FitzPatrick FSAR on July 22, 1991. These changes shall be submitted by January 22, 1992.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption would have no significant impact on the quality of the human environment (56 FR 33948, July 24, 1991).

A copy of the licensee's request for exemption dated June 28, 1991, and the supplement letter dated July 12, 1991, are available for public inspection at the Commission Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC, and at the Reference and Documents Department, Penfield Library, State University College of New York, Oswego, New York. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention, Director, Division of Reactor Projects—I/II.

This exemption is effective upon issuance.

Dated in Rockville, Maryland this 24th day of July 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18100 Filed 7–30–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 2, 1991, (55 FR 12973). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1991, will be published in a forthcoming notice.

Schedule A

No Schedule A authorities were established or revoked during June.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

Department of Agriculture

One Executive Assistant to the Secretary. Effective June 6, 1991.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 25, 1991.

One Confidential Assistant to the Assistant Secretary for Economics. Effective June 27, 1991.

Agency for International Development

One Special Assistant to the Administrator. Effective June 6, 1991.

Department of Commerce

One Director, Office of Space Commerce to the Deputy Secretary. Effective June 3, 1991.

One Confidential Assistant to the Chief Financial Officer, Office of the Assistant Secretary for Administration. Effective June 7, 1991.

One Congressional Liaison Assistant to the Deputy Assistant Secretary, Office of Legislative and Intergovernmental Affairs. Effective June 13, 1991.

Department of Defense

One Personal and Confidential Assistant to the Defense Advisory, United States Mission to NATO, Brussels, Belgium. Effective June 26, 1991.

One Confidential Assistant to the Under Secretary of Defense for Acquisition. Effective June 26, 1991.

Department of Education

One Special Assistant to the Assistant Secretary, Office for Civil Rights. Effective June 22, 1991.

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education. Effective June 27, 1991.

Department of Energy

One Special Assistant to the Director, Division of Public and Intergovernmental Affairs, Office of External Affairs. Effective June 6, 1991.

One Small Business Specialist to the Director, Office of Small and Disadvantaged Business Utilization. Effective June 6, 1991.

One Staff Assistant to the Secretary. Effective June 13, 1991.

One Staff Assistant to the Chief of Staff and Counselor, Office of the Chairman. Effective June 19, 1991.

One Special Assistant to the Assistant Secretary, Office of Conservation and Renewable Energy. Effective June 27, 1991.

Department of Transportation

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective June 26, 1991.

Federal Emergency Management Agency

One Special Assistant to the Associate Director, National Preparedness Directorate. Effective June 13, 1991.

One Special Assistant to the Associate Director, State and Local Programs and Support Directorate. Effective June 22, 1991.

Federal Mine Safety and Health Review Commission

One Confidential Assistant to a Commissioner. Effective June 27, 1991.

Department of Health and Human Services

One Special Assistant for Media Affairs to the Surgeon General, Public Health Service. Effective June 26, 1991.

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Administration for Children and Families. Effective June 27, 1991.

Department of Housing and Urban Development

One Staff Assistant to the Deputy Assistant Secretary, Office of Public Affairs. Effective June 27, 1991.

One Special Assistant to the Assistant Secretary for Administration. Effective June 28, 1991.

Department of the Interior

One Congressional Liaison Specialist to the Director, Office of Surface Mining, Reclamation and Enforcement. Effective June 13, 1991.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective June 14, 1991.

One Special Assistant to the Commissioner of Reclamation, Bureau of Reclamation. Effective June 27, 1991.

One Special Assistant to the Director, Minerals Management Service. Effective June 28, 1991.

International Trade Commission

One Staff Assistant to a Commissioner. Effective June 13, 1991.

Department of Justice

One Special Assistant to the Assistant Attorney General, Civil Division. Effective June 6, 1991.

One Special Assistant to the Director, Office of Congressional and Public Affairs, Office of Justice Programs. Effective June 12, 1991.

One Confidential Assistant to the Assistant Attorney General, Office of Justice Programs. Effective June 12, 1991.

One Special Assistant to the Assistant Commissioner, Refuge, Asylum and Parole. Effective June 19, 1991.

One Special Assistant to the Director of Congressional Affairs, Immigration and Naturalization Service. Effective June 25, 1991.

Office of National Drug Control Policy

One Confidential Assistant to the Special Assistant to the Director. Effective June 11, 1991.

One Legislative Assistant to the Director of Congressional Relations. Effective June 19, 1991.

One Special Assistant to the Director. Effective June 13, 1991.

Small Business Administration

One Public Affairs Advisor to the Administrator. Effective June 6, 1991.

One Special Assistant for External Affairs to the Chief of Staff, Office of the Administrator. Effective June 6, 1991.

One Special Assistant to the Administrator. Effective June 6, 1991.

One Special Assistant to the Associate Administrator for Business Development. Effective June 13, 1991.

One Director of International Trade to the Associate Deputy Administrator for Special Programs. Effective June 19, 1991.

Department of State

One Member to the Director, Policy Planning Staff. Effective June 19, 1991.

Department of the Treasury

One Staff Assistant to the Superintendent, Philadelphia Mint. Effective June 6, 1991.

One Special Assistant (Personnel) to the Secretary. Effective June 13, 1991.

One Special Assistant to the Chief Counsel, Office of Thrift Supervision. Effective June 25, 1991.

One Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison. Effective June 26, 1991.

United States Information Agency

One White House Liaison Officer to the Director. Effective June 19, 1991.

One Staff Assistant to the Director, Office of Public Liaison. Effective June 28, 1991.

Department of Veterans Affairs

One Special Assistant to the Secretary. Effective June 13, 1991.

One Special Assistant to the Deputy Assistant Secretary for Policy. Effective June 13, 1991.

One Special Assistant to the Assistant Secretary for Finance and Information Resources Management. Effective June 27, 1991.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 27, 1991.

One Special Assistant to the Assistant Secretary for Policy and Planning. Effective June 27, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–18023 Filed 7–30–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29488; International Series Release No. 300; File No. SR–Amex–91–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Fees for Proprietary Trading

July 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is amending its transaction charge schedule to provide a discount for proprietary trades effected by members and member organizations in the securities of Canadian companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In November, 1990, the Exchange's Board of Governors approved the introduction of a revised transaction charge schedule which included, among other things, the imposition for the first time of a fee for proprietary trading on the part of members and member organizations. The revised fee scheudle became effective on January 17, 1991.[1]

During the past several months that this new schedule has been in place, there has been a change in the regulatory climate applicable to certain Canadian issuers which may enhance the opportunity for arbitrage trading between Canadian and U.S. markets. On May 30, 1991, the Commission approved the Multijurisdictional Disclosure System (the "MJDS"), permitting Canadian issuers to use Canadian disclosure documents in making certain filings with the Commission. The Amex anticipates that the MJDS will encourage and facilitate cross-border securities transactions and hope that it will encourage more Canadian issuers to list on U.S. exchanges.

The Exchange recognizes that the fee for proprietary trading imposed on members and member organizations might discourage intermarket arbitrage, the existence of which also makes the Exchange market attractive to Canadian issuers. Accordingly, the Exchange is providing to members and member organizations a fifty percent (50%) discount in transaction charges for proprietary trades effected in the securities of Canadian issuers traded on the Amex.[2]

[1] See Securities Exchange Act Release No. 28794 (January 17, 1991), 56 FR 2964 (January 25, 1991) (notice of filing and immediate effectiveness of File No. SR–Amex–90–36).

[2] Currently, the applicable equity transaction charge for member firm proprietary transactions is

Continued

The Exchange's revised transaction charge schedule is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–91–17 and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18083 Filed 7–30–91; 8:45 am]

BILLING CODE 8010–01–M

culated by adding together a share-based charge and a value-based charge which are set forth in a trading scale developed by the Exchange. See Securities Exchange Act Release No. 28794 (note 1, *supra*) for a further description of the transaction charge schedule applicable to member firm proprietary trades.

[Release No. 34–29482; File No. SR–CBOE–91–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Modification of Fees Imposed on Members

July 24, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on July 23, 1991, the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the fees imposed on Exchange members by (i) increasing the Member Orientation Fee from $100 to $200; (ii) implementing a new FOCUS report filing fee of $25 per filing; and (iii) implementing new fees and increasing existing fees to recover electrician costs associated with the expense of installing and moving certain systems-related circuitry on the Exchange's floor due to member operations on the trading floor. In addition, the CBOE proposes to establish a three-month pilot program to provide a 50% rebate on transaction and trade match fees for Standard & Poor's 500 Index option ("SPX") customers whose "box" trades total 500 or more contracts for the four sides of the trade.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Effective July 1, 1991, the CBOE proposes to amend the fees imposed on Exchange members by (i) increasing the Member Orientation Fee from $100 to $200; (ii) implementing a new FOCUS report filing fee of $25 per filing; and (iii) implementing new fees and increasing existing fees to recover electrician costs associated with the expense of installing and moving certain systems-related circuitry on the Exchange's floor due to member operations on the trading floor. These costs involve installing and moving Quotron terminals and data links between the CBOE trading floor and the Exchange's Communications Center ("CC"). More specifically, the new charges, ranging from $10 to $200, will include vendor data line, data circuit disconnection fees, and Quotron terminal installation, disconnection and relocation fees. In addition, the Exchange's existing fees for data circuit relocation to the trading floor, data circuit installation to the trading floor and data circuit installation between the trading floor and the CC will be increased, respectively, as follows: (i) From $125 to $300; (ii) from $200 to $250; and (iii) from $200 to $250.

[1] The CBOE amended its proposal to define a "box" trade as a four-sided option spread involving a long call and a short put at one strike price as well as short call and a long put at another strike price. *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated July 23, 1991.

The CBOE also proposes to implement a three-month pilot program, from July 1, 1991, through September 30, 1991, to provide a 50% rebate on transaction and trade match fees for SPX customers whose "box" [2] trades total 500 or more contracts for the four sides of the trade. The rebate will be available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the amendment of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18084 Filed 7–30–91; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* footnote 1, *supra.*

[Release No. 34–29481; File No. SR–DTC–91–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Expanded Use of the Seg 100 Account

July 24, 1991.

On May 31, 1991, The Depository Trust Company ("DTC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would expand DTC's use of the Segregation Account No. 100 ("Seg 100 Account") to include segregation of securities with specialized ownership restrictions based on the residence, domicile, or citizenship of the beneficial owner. Notice of the proposed rule change appeared in the **Federal Register** on June 19, 1991.[2] No comments were received. This order approves the proposal.

I. Background

In 1988, the Commission approved a proposal establishing the procedures for DTC's Seg 100 Account.[3] Currently, participants may deposit into the Seg 100 Account shares of certain United States ("U.S.") communication and maritime issues that have special ownership restrictions.[4] Prior to implementing the Seg 100 procedures, foreign-owned shares of these issues could not be deposited with DTC because DTC did not have a mechanism for identifying the percentage of foreign-owned or restricted shares.

Under the laws of some foreign jurisdictions, investors purchasing specific securities issued in those jurisdictions or indirectly investing in securities issued in those jurisdictions [5] may lose tax benefits if the number of shares beneficially owned by citizens or residents of a particular political or geographical region exceeds a specified percentage of all shares issued and outstanding.[6] In order to monitor the number of such securities that are beneficially owned by persons that are subject to the ownership restrictions (primarily noncitizens or nonresidents of the issuing jurisdiction), the issuer or transfer agent will require the presenter to certify that the securities are not beneficially owned by persons in a restricted group before it will register the securities in the name of the presenter.

Prior to this proposal, DTC did not have a mechanism for assessing the status or identity of beneficial owners of such restricted securities and could not certify that the beneficial owners of the securities were not in a restricted group. DTC, therefore, would not permit participants to deposit securities with specialized ownership restrictions (with the exception of U.S. communication and maritime issues for which the Seg 100 account was created) into their DTC

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29296 (June 13, 1991), 56 FR 28189.

[3] Securities Exchange Act Release No. 25988 (August 10, 1988), 53 FR 30893 (File No. SR–DTC–88–09) (notice of filing and immediate effectiveness of proposed rule change implementing Seg 100); see also, Securities Exchange Act Release No. 27348 (October 6, 1989), 54 FR 43010 (File No. SR–DTC–89–17) (notice of filing and immediate effectiveness of proposed rule change clarifying procedures relating to Seg 100).

[4] The laws of the United States restrict the amount of stock of certain communications and maritime issues that may be owned by persons that are not U.S. citizens. Under the provisions of the Shipping Act of 1916 and the Federal Communications Act of 1934, aggregate shares beneficially owned by non-U.S. citizens may not exceed 25% (for maritime issues) and 20% (for communications issues) of certain stock issues. Shipping Act of 1916, 46 U.S.C. 842 (1916) and Federal Communications Act of 1934, 47 U.S.C. 310 (1934).

[5] *E.g.*, investors purchasing shares of U.S. investment companies (*i.e.*, mutual funds) whose primary investments are in foreign issued securities.

[6] In the case of mutual funds, the tax incentives that exist in the nature of ownership restrictions are intended to promote offshore investment in funds held or traded by the foreign jurisdiction. Telephone conversation between Patricia H. Trainor, Associate Counsel, DTC, and Sonia G. Burnett, Attorney, Division of Market Regulation ("Division"), Commission (May 23, 1991).

accounts. The proposed rule change will expand the use of the Seg–100 Account and the class of securities that are eligible for deposit at DTC.[7] DTC participants may deposit securities that have special ownership restrictions based on the beneficial owner's residence, domicile, or citizenship and instruct DTC to transfer those securities to the Seg 100 Account.

II. Description

Under the proposal, DTC will recognize only ownership restrictions that are imposed pursuant to the laws of the United States ("U.S."), the jurisdiction in which the securities are issued, or the jurisdiction in which the U.S. issued securities invest. Consistent with the current Seg 100 procedures, at the time DTC makes an issue with specialized ownership restrictions eligible for deposit, DTC will announce to participants the CUSIP [8] number of the securities and the issuer's description of the type of ownership restrictions.[9] This notification will alert participants that they must enter a segregation instruction at the time of the deposit.

Upon deposit of new securities that have specialized ownership restrictions to its DTC account, a participant will identify the securities with a segregation institution entered through DTC's Participant Terminal System ("PTS").[10] The securities segregated in the participant's Seg 100 Account will be reflected as such on the participant's daily activity statement. In all other respects, Seg 100 transactions will be processed as are other transactions in the participant's general account.

DTC will report periodically to the issuer or transfer agent the aggregate number of shares of each CUSIP deposited in each participant's Seg 100 Account. The transfer agent will advise DTC if any transfer to a participant's Seg 100 Account caused the applicable restriction for a particular CUSIP to be exceeded and of the number of shares by which the aggregate position held at DTC must be reduced. DTC will reverse the credit in participants' accounts on a last in first out basis until the number of restricted shares registered in the name of DTC's nominee, Cede & Co.,[11] are within the specified limit. The affected participants will be required to withdraw those shares from their DTC accounts.

DTC will not monitor compliance with the statutory restrictions. DTC will, however, take steps necessary to ensure that securities are withdrawn from DTC if the transfer agent notifies DTC that securities transferred to the name of Cede & Co. have caused the statutory restriction to be exceeded.[12]

III. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. In addition, the proposal will further encourage the goal of immobilization of securities and the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

Section 17A(a)(1) of the Act states that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary costs on investors and on persons facilitating transactions on behalf of investors.[13] Additionally, that section expressly encourages the use of automation to improve efficiency, effectiveness, and safety with respect to the clearing and settling of securities transactions. Moreover, section 17A(b)(3)(F) states that clearing agency rules must provide for the prompt and efficient processing of securities transactions.[14]

The Commission believes that allowing DTC participants to deposit securities that have special ownership restrictions based on the beneficial owner's residence, domicile, or citizenship into the Seg 100 Account will encourage DTC participants to immobilize those securities at DTC. By facilitating immobilization of securities, which reduces transfer activity, the expanded use of Seg 100 Accounts both improves efficiency, effectiveness, and safety and offers substantial savings to secondary market participants.[15]

The goal of prompt and accurate clearance and settlement of securities transactions and the use of automated system in pursuit of this goal are expressly contemplated in section 17A(a)(1) of the Act.[16] Specifically, sections 17A(a)(1) (B) and (C) articulate findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and that inefficient procedures for clearance and settlement impose unnecessary costs on investors and person facilitating transactions by and acting on behalf of investors.

Furthermore, section 17A(a)(2) of the Act directs the Commission to establish a safe and efficient national clearance and settlement system.[17] DTC's proposed rule change will offer the benefits of centralized, automated book-entry clearance and settlement of securities with ownership restrictions. The Commission believes that making this and other such services available for participants that invest in such securities will further the goal of perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

For the foregoing reasons, the Commission finds that DTC's proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that DTC's proposed rule change (SR–DTC–91–13) be, and hereby is, approved.

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[7] Prior to instituting the Seg–100 function, DTC's procedures operated to assure that only shares of such issues held by DTC were those that were owned beneficially by U.S. citizens. Securities Exchange Act Release No. 25988 (August 10, 1988), 53 FR 30893.

[8] "CUSIP" is an acronym for Committee on Uniform Securities Identification Procedures ("Committee"). The Committee developed a uniform securities numbering system under the direction of the American Bankers Association. Identifying securities issues by CUSIP number is the industry standard in the U.S.

[9] DTC will inform participants of each issue with specialized ownership restrictions by Important Notice as the issue is made eligible for deposit at DTC.

The first restricted specialized ownership issue that DTC will make eligible for deposit is The Singapore Fund, Inc. ("Fund"). In order to qualify for certain tax exemptions granted by The Singapore Tax Exemption Scheme for Offshore Fund Management, not more than 5% of the issued share capital of the Fund may be beneficially owned directly or indirectly by residents of Singapore. Prospectus, The Singapore Fund, Inc. (July 24, 1990).

[10] *E.g.,* a participant will enter an "F" in the serial number field for each line item to segregate an ownership restricted security. DTC will review the instruction to ensure that the participant holds a sufficient position. If the participant's position is sufficient, DTC will convert the "F" to serial number 100 and will update the participant's account.

[11] As with all securities deposited at DTC, upon deposit the securities are registered in the name of DTC's nominee, Cede & Co. DTC does not have a mechanism for identifying the beneficial owner of securities on deposit.

[12] *E.g.,* if DTC requests a participant to withdraw an overage from DTC and the overage is not promptly withdrawn, DTC will notify the issuer of the identity of the participant and the number of the participant's shares to be withdrawn.

[13] 15 U.S.C. 78q–1(a)(1).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] For an analysis of the cost saving advantages associated with the immobilization of securities and book-entry settlement, see Division, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems (June 14, 1985).

[16] 15 U.S.C. 78q–1(a)(1).

[17] 15 U.S.C. 78q–1(a)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18081 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29479; File No. SR-GSCC-91-02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Temporary Approval of a Proposed Rule Change Concerning Modifications to Billing Procedures

July 24, 1991.

On April 25, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-GSCC-91-02) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would extend GSCC's current authority to bill members in advance for the member's anticipated business during the following month.[2] Notice of the proposal was published in the Federal Register on June 5, 1991.[3] No comments were received. This order approves the proposed rule change, on a temporary basis, until July 31, 1992.

I. Description

The proposed rule change would extend GSCC's advance billing procedure for an additional twelve months. The procedure allows GSCC to collect in advance anticipated charges for the next succeeding month based upon a member's past use of comparison and netting services. GSCC computes the anticipated charges based on the member's actual use during the previous month. On, or before, the fifth business day of the month GSCC bills members for the member's anticipated usage and any adjustments necessary to reflect the actual charges for the previous month. For example, GSCC would bill a member on or before the fifth day of August for the member's anticipated usage of GSCC services during September. The August billing also would reflect a credit or additional charges necessary to reflect the member's actual usage during July.

Prior to approval of GSCC's advance billing procedure, GSCC would bill members on or before the fifth business day of the month for charges accrued during the preceding month.

II. Discussion

The Commission believes that the proposed rule change is consistent with section 17A of the Act. Specifically, the Commission believes it is consistent with section 17A(b)(3)(D) because it provides for the equitable allocation of dues, fees and charges among GSCC's members.

The Commission believes that the proposal will help ensure the financial soundness of GSCC by accelerating GSCC's monthly cash-flow while GSCC continues to implement operational and procedural changes. GSCC has expended substantial funds in developing and implementing a system for comparison and netting of member trades in U.S. Government securities.

GSCC's previous billing procedure resulted in GSCC financing its members' operational costs associated with comparison and netting activities until payment was received from members.[4] In addition, over the past 24 months, the U.S. Government securities market has experienced periods of low trading volume. GSCC, therefore, has processed fewer trades than expected. The Commission believes that during GSCC's developmental period, lower than expected trading volume coupled with the financing of GSCC's development costs potentially may adversely affect GSCC's comparison and netting activities. The Commission believes, therefore, that GSCC's advanced billing procedure should be extended for an additional twelve months to help ensure that GSCC remains in a financially sound cash flow position.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-GSCC-91-02, be, and hereby is, approved on a temporary basis until July 31, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18082 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29475; File No. SR-PSE-91-22]

Self-Regulating Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Exchange's Lead Market Maker System Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend for one-year its Lead Market Maker ("LMM") System pilot program. The Exchange's LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. In a separate filing, the Exchange has proposed amendments to its LMM system, but the Commission at this time only is considering an extension of the existing LMM system.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

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[1] 15 U.S.C. 78s(b).

[2] On December 22, 1989, GSCC filed a proposed rule change (SR-GSCC-89-15) requesting approval of the advance billing procedure. The Commission approved the proposed rule change on a temporary basis until July 31, 1990. Pursuant to GSCC's request, the Commission subsequently approved the advance billing procedure for an additional year. See Securities Exchange Act Release Nos. 27587 (January 4, 1990), 55 FR 1131; and 28315 (August 6, 1990), 55 FR 32719).

[3] Securities Exchange Release No. 29250 (May 29, 1991), 56 FR 25709.

[4] See Securities Exchange Act Release No. 27587 (January 4, 1990), 55 FR 1131.

[1] See Securities Exchange Act Release No. 29065 (April 5, 1991), 56 FR 14959 (File No. SR-PSE-91-08). The Commission is awaiting a response from the Exchange on several outstanding issues before proceeding with this filing.

prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish an LMM system in order to enhance the ability of the Exchange to compete in a multiple trading environment.[2] The Exchange's LMM system is designed primarily for new options classes and option classes with comparatively low volume. Under the existing pilot program, members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of market makers that trade in the same options class. In addition to the normal obligations of a market maker, the LMM must assume additional obligations designed to strengthen the market making in the designated options classes. The LMM, among other things, is responsible for ensuring the accurate dissemination of market quotations, determining the algorithm for the PSE's Auto-Quote System, assuring that each market quotation is honored consistent with minimum obligations established by Exchange rules, and must participate in applicable automatic execution systems. Moreover, an LMM must be present at the trading post for his LMM-designated options class throughout every trading day.

The PSE believes, based on the pilot's performance over the past year, the LMM system has improved the PSE's options markets, thereby enhancing the Exchange's competitiveness. Moreover, the Exchange indicates that it has experienced an increase in the number of participants in the program. The Exchange, rather than seeking permanent approval of the pilot program, however, proposes a one-year extension in order to be able to evaluate better the effectiveness, impact, and merits of the LMM program as well as the benefits to the public that inure from the operation of the pilot program.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate transactions, enhance competition, and will promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act in order that the program does not expire. The Commission finds that the proposed rule change to extend the pilot program for an additional year is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and requirements thereunder.[3] The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, or extended again on a pilot basis, the PSE must provide the Commission with a report on the operation of the pilot program by March 31, 1992.

Specifically, before requesting permanent approval or further extension of the pilot program the PSE must submit by March 31, 1992 a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMM's involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or has there been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has not indicated that there have been any problems associated with the operation of the LMM system. In addition, because the Commission has not received any adverse comments concerning the Exchange's pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 21, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR–PSE–91–22) is approved and, accordingly, the Lead Market Maker pilot program is extended until July 31, 1992.

[2] See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18048 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29480; File No. SR-Phlx-91-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Required Staffing of the Equity Floor

July 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Equity Floor Procedure Advice ("EFPA") E-E-1—Required Staffing of Equity Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed advice is to govern the staffing requirements of the Exchange's equity floor. The advice requires that each specialist and floor brokerage unit have a firm representative present on the trading floor thirty (30) minutes prior to the opening of trading as well as thirty (30) minutes after the close of trading.

The proposed advice would further require that the firm representative be authorized to make appropriate changes and corrections to trades made or guaranteed by such specialist unit or floor brokerage unit.

The following fine schedule would be imposed for violations of the above-proposed staffing requirements:

1st Occurrence—Warning
2nd Occurrence—$100.00
3rd Occurrence—$250.00
4th and Thereafter—Sanction is discretionary with Business Conduct Committee

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-29 and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18047 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18249; Int'l Series Release No. 299; 812-7406]

Credit Local de France—CAECL, S.A., and CLF Finance Company; Application

July 24, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Credit Local de France—CAECL, S.A. ("Credit Local"), a corporation organized under the laws of the French Republic and the CLF Finance Company ("CLF Finance"), a finance corporation organized under the laws of the State of Delaware as a wholly-owned subsidiary of Credit Local.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for an exemption from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act exempting each of them from all provisions of the 1940 Act. The requested exemption would permit applicants to issue and sell in the United States dollar denominated commercial paper notes ("Commercial Paper") and dollar denominated debt securities of nine months or longer ("Long Term Debt").

FILING DATE: The application was filed on September 25, 1989, and amended on August 24, 1990, February 20, 1991, and July 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC. 20549; Applicants, c/o Gerrit Gillis, Mudge Rose Guthrie Alexander & Ferndon, 180 Maiden Lane, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272–7324, or Stephanie M. Monaco, Branch Chief, (202) 272–3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. Credit Local was established in 1982 under French corporate law as a stock corporation ("societe anonyme"), by the Republic of France (the "State") as a successor to Caisse d'Aide a l' Equipement des Collectivites Locales ("CAECL"), an instrumentality of the State, to provide financial resources for local development through credit and financial transactions. Such transactions principally consist of the extension of medium and long-term credit to a variety of public authorities, municipalities, groups of municipalities, departments, overseas territories, public institutions and organizations generally enjoying the guarantee of local authorities, as well as private entities involved in the development, ownership and/or operation of projects intended to benefit these local government entities. Credit Local additionally has the status of a "specialized financial institution" under French banking law, one of six categories of credit establishments, or banking institutions, under the French Banking Act of 1984.

2. Credit Local is the major source of financing for local development in France, accounting for 44% of long term loans to, or for the benefit of, the local sector in 1989. Credit Local was also France's second largest bond issuer (second only to the State) in 1989.

3. As of December 31, 1989, Credit Local had total assets of approximately French Francs ("FF") 214.5 billion (U.S. $37.1 billion), approximately 88.3% of which consisted of customer loans. For the fiscal year ended December 31, 1989, Credit Local had net income (after provisions for income taxes, general and administrative expenses, and net allocation of reserves) of FF 899.0 million (U.S. $155.3 million).

4. The State, directly or through government-controlled entities, including Caisse des Depots et Consignations, an instrumentality of the State and one of the world's largest financial institutions ("CDC"), controls in excess of 72.5% of Credit Local's equity capital. In addition to its equity capital, Credit Local's principal sources of funds are domestic borrowings and proceeds from the issuance and sale of its bonds in French and foreign markets. Credit Local's bonds denominated in French Francs and in other currencies are respectively listed on the Bourse de Paris and the Luxembourg Exchange, and presently have the highest rating of both Moody's Investor Service (Aaa) and Standard & Poor's Corporation (AAA). As of December 31, 1989, Credit Local had approximately FF 161.2 billion (U.S. $27.9 billion) principal amount of bonds outstanding, an amount approximately equal to 71% of its total liabilities and shareholders' equity.

5. Credit Local carries on virtually all of the banking activities carried on by a traditional full service bank in France, but with a more limited customer base comprised of governmental entities and private entities involved in local development. Credit Local is barred from accepting from the general public demand deposits or deposits of less than two years. However, it is permitted to, and does, accept demand and other short-term deposits from other banking and financial institutions.

6. Credit Local operates under the supervision of the National Court of Accounts ("Cour des Comptes") and benefits from the State networks ("Comptables Publics") for the payment and recovery of its loans. Credit Local has two boards, a Supervisory Board ("Counseil de Surveillance"), responsible for the overall supervision of Credit Local, and a Directorate ("Directoire"), responsible for executive management, including strategy and operations. Credit Local also has six monitors who are elected by shareholders for three-year terms to act in an advisory capacity on the Supervisory Board to ensure that Credit Local's activities are in accordance with its public purpose mission. Such monitors attend Supervisory Board meetings in a non-voting capacity. Six of the twelve members of the Supervisory Board of Credit Local are State governmental representatives and three are representatives of instrumentalities of the State. Five of its six monitors are representatives of the State, its instrumentalities, or local governments. In addition, a formal representative of the State ("Commissaire du Gouvernement") is appointed by the Ministry of the Economy, Finance and Budget to attend all meetings of Credit Local's Directorate, its Supervisory Board, and its shareholders to ensure that Credit Local's activities are carried out in accordance with its public interest mission and applicable law. To that end, the Commissaire du Gouvernement has veto power over any decision made by Credit Local's Directorate, Supervisory Board or shareholders.

7. As a specialized financial institution, Credit Local is subject to virtually all of the rules and regulations of the various bank regulatory bodies in France applicable to French banking institutions. These include the following:

a. *Licensing Requirements*—All French credit establishments are subject to licensing requirements, including requirements with regard to an applicant's legal structure, capitalization, program of activities, technical and financial means, the quality of its members and guarantors, and the professional and moral qualifications of prospective management. License applications are considered and determined by the Committee on Credit Establishments, which also has revocation authority.

b. *Restrictions on Non-banking Activities*—Licensed credit establishments may not engage in non-banking activities on a regular basis, other than a limited number of non-banking activities determined by the Bank Regulatory Committee. Regulations limit aggregate revenues from such non-banking activities to 10% of total net revenues from banking activities.

c. *Permanent Resources Ratio*—Beginning December 31, 1991, all credit establishments will be required to maintain a minimum ratio of 60% between amounts representing shareholder equity and related items and amounts representing certain fixed and long-term assets.

d. *Risk Coverage Ratio*—Credit establishments must maintain a minimum ratio of 5% between amounts representing net shareholder equity and the sum of the weighted values of various categories of risks. While the required ratio is presently set at 5%, France is one of 10 nations to approve the report of the European Economic Community's ("E.E.C.") Cooke Committee which would require credit establishments of

E.E.C. member states to maintain, by year end 1992, total capital amounting to at least 8% of risk-adjusted assets. France will implement at least the minimum standard of capital adequacy proposed by the Cooke Committee. Credit Local's capital adequacy as of December 31, 1989 was 21.57%.

e. *Diversification of Risks*—The aggregate of a credit establishment's loans and a portion of certain other credits ("risques") to a single customer may not exceed 40% of the credit establishment's net shareholders' equity. This ratio only applies, however, if the aggregate of the credit establishment's risques with a single customer exceeds (i) 5% of the credit establishment's total risques with all customers or (ii) 50% of the total amount of loans received by such customer. If a credit establishment has risques with any customer exceeding 15% of the credit establishment's net shareholders' equity, the aggregate amount of risques with all such customers may not exceed eight times the credit establishment's shareholders' equity.

f. *Liquidity Ratio*—A liquidity ratio requires all credit establishments to maintain a weighted total of certain short-term and liquid assets at least equal to the weighted total of its demand and short-term liabilities regardless of the currency in which they are denominated.

g. *Solvency Ratio*—Each French credit establishment must maintain a solvency ratio such that shareholders' equity is equal to at least 8% of weighted risks.

h. *Reserve Requirements*—Credit establishments are required to maintain on deposit in non-interest bearing reserve accounts with the Bank of France a percentage of various categories of demand and short-term deposits. These percentages, which are fixed by the Bank of France and calculated monthly, are currently set at 5.5% of demand deposits, 2.0% of passbook account deposits, and 0.5% of various kinds of time deposits with maturities up to two years.

i. *Limitations on Interest*—Credit Local's banking operations are also significantly affected by monetary policies established from time to time by the Ministry of the Economy, Finance and Budget and implemented by the Bank of France. At present, such policies include a prohibition of interest on all demand deposits and on deposits with a maturity of less than one month. Banking operations, particularly the fixing of short-term interest rates, are also affected in practice by the Bank of France's fixing of the rates at which it will intervene in the French domestic interbank market.

j. *Restrictions on Investments*—Credit establishments are subject to retrictions on equity investments. With limited exceptions, such investments may not exceed either of the following ratios: (i) 15% between the amount of each participation and the credit establishments own shareholders' equity; of (ii) 60% between all participations combined and the credit establishment's own shareholders' equity.

k. *Accounting Rules*—Credit establishments are subject to special accounting rules, including: specific methods of presenting financial statements; a requirement to consolidate with other entities controlled singly or jointly by them or in which they control at least 20% of the voting rights; a requirement that the fiscal year correspond to the calendar year; a requirement that audited accounts be available no later than May 31 of the following year; a requirement that financial statements be filed regularly with the Banking Commission; and a requirement that financial statements be published in a legal publication.

l. *Shareholder and Interbank Assistance to Troubled Institutions:* The Bank of France has the right to call on shareholders of troubled credit establishments to fund the credit establishment in an amount which may exceed their initial capital contribution to such credit establishment. Moreover, when warranted to protect the interests of depositors and other third parties, or to assure the functioning of the banking system or preserve the reputation of the financial market, the Bank of France may call on other credit establishments to provide necessary financial assistance.

8. In addition to regulation under French law by French authorities, Credit Local, is also subject to regulations promulgated by the EEC establishing certain minimum requirements (e.g., capital adequacy ratios) which must be applied by member states before they authorize a credit institution to commence operations.

9. CLF Finance is a wholly-owned finance subsidiary to Credit Local established under the laws of the State of Delaware. CLF Finance was established solely to make offerings in the United States of Commercial Paper and Long-Term Debt to assist Credit Local in the financing of its business. CLF Finance will not publicly offer its common stock or any other equity security.

10. Credit Local de France, CAECL S.A., New York agency (the "New York Agency") is an agency of Credit Local established under the New York State Banking Law. The New York Agency was established primarily to provide credit enhancement facilities, by way of letters of credit, to United States municipal bond issuers, as well as liquidity facilities which are frequently incident to such letters of credit. The New York Agency was also established to provide medium and long term loans to large infrastructure projects or commercial projects which are generally designed to promote a public purpose.[1]

[1] The New York Agency is not an applicant because, in the opinion of counsel, for the limited purpose of issuing its securities, it qualifies as a "bank" under section 2(a)(5)(C) of the 1940 Act, and is excepted from the registration requirements of the 1940 Act under Investment Company Act Release No. 17681 (August 17, 1990).

11. Applicants seek an order under section 6(c) of the 1940 Act exempting them from all provisions of the 1940 Act to permit them to issue and sell Commercial Paper and Long-Term Debt in the United States. Net proceeds of the issuance of Commercial Paper and Long-Term Debt by Credit Local will be utilized in furtherance of its public purpose. Net proceeds of the issuance of Commercial Paper and Long Term Debt by CLF Finance will be advanced to, or invested in, only Credit Local or entities controlled by Credit Local, including its branches or agencies, or temporary investments of a kind permitted for "finance subsidiaries" under rule 3a-5(a) under the 1940 Act.

12. Each applicant represents that the issuance and sale by either of them of any Commercial Paper will comply with the exemption from registration under the Securities Act of 1933 (the "1933 Act"), afforded by either section 3(a)(3) of the 1933 Act or section 4(2) of the 1933 Act, including regulation D or rule 144A promulgated thereunder or, if carrying the additional guarantee of the New York Agency, the exemption afforded by section 3(a)(2) of the 1933 Act. Each applicant further represents that the issuance and sale by either of them of any Long-Term debt will take the form of one or more privately negotiated transactions structured to comply with the exemption from registration under the 1933 Act afforded by section 4(2) of the 1933 Act, including regulation D or rule 144A promulgated thereunder or, if carrying the additional guarantee of the New York Agency, the exemption afforded by section 3(a)(2) of the 1933 Act, or pursuant to a registration statement filed under the 1933 Act.

13. Each applicant represents that it will not offer, issue or sell any of its Commercial Paper or Long-Term Debt prior to receiving an opinion from United States counsel to the effect that the proposed offering is exempt or that a registration statement with respect to such debt has been declared effective under the 1933 Act. The applicants do not request that the Commission review or approve of counsel's opinion regarding the availability of an exemption for the Commercial Paper or Long-Term Debt under the 1933 Act.

14. Each applicant further represents that prior to its issuance of Commercial Paper or Long-Term Debt the Commercial Paper or Long-Term Debt will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. No such rating shall be required, however, for placements of applicants' Long-Term

Debt made pursuant to an exemption under section 4(2) of the 1933 Act, including regulation D or rule 144A thereunder, or pursuant to an exemption under section 3(a)(2) of the 1933 Act if such Long-Term Debt is additionally guaranteed by the New York Agency.

15. Each applicant represents that each dealer in its Commercial Paper will furnish to each purchaser thereof, at or prior to the time of purchase, a memorandum (the "Dealer Memorandum") (i) describing the business of Credit Local, and, in the case of Commercial Paper issued by CLF Finance, also describing its business, and (ii) providing the most recent financial information for Credit Local and, in the case of CLF Finance, also providing the most recent financial information for CLF Finance based, in each case, to the extent required, on the respective audited financial statements of each. Credit Local's financial information will include its most recent fiscal year-end balance sheet and statement of income for the entire fiscal year, updated as necessary, accompanied by a brief description of the material differences in the accounting principles applied by Credit Local's statutory accountants and generally accepted accounting principles as used in the United States. Such documents will be updated promptly to reflect material changes in the financial status of Credit Local, and in the case of CLF Finance, also updated to reflect material changes in its financial status, and will be at least as comprehensive as memoranda customarily used in offering commercial paper and/or medium or long term debt in the United States. Any offering of Long-Term Debt will be effected on the basis of disclosure documents at least as comprehensive in their description of the applicants, their respective businesses and financial statements, as the Dealer Memorandum. However, in the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration and under an indenture complying with and qualifying under the Trust Indenture Act of 1939, as amended.

Applicants' Legal Conclusions

1. Credit Local is submitting an application for an order exempting it from all provisions of the 1940 Act and covering the offer and sale in the United States of its debt securities, as further described in the application, because of the uncertainty that exists as to whether an entity such as Credit Local could be classified as an "investment company" under the 1940 Act despite its performance of virtually all activities of a traditional commercial bank in France other than the acceptance of demand deposits from the public at large and the fact that it is subject to virtually all of the rules and regulations of the French banking regulatory authorities which are applicable to traditional full service banks in France, and despite its public purpose and institutionalized relationship with, and supervision by departments and agencies of, the State. In addition, CLF Finance's right to receive repayment of the advances made to Credit Local or entities controlled by Credit Local, which would constitute virtually all of CLF Finance's assets, could be deemed to be "investment securities" under the 1940 Act. Since CLF Finance does not qualify as a "finance subsidiary of a foreign bank" under rule 6c–9(b)(1), it may be deemed to be an "investment company" under the 1940 Act.

2. Applicants believe that (a) the banking activities which Credit Local performs and the extensive regulation to which Credit Local is subject under French banking laws, and (b) the public purposes Credit Local serves, the ownership, control and supervision of Credit Local by the French government and Credit Local's status as a major financial institution, each provides an appropriate basis on which the Commission may grant relief to Credit Local and CLF Finance under section 6(c) of the 1940 Act.

3. Applicants further believe that the policy considerations and rationale which formed the basis for the adoption of rule 6c–9 promulgated under the 1940 Act extend equally to Credit Local and CLF Finance, since the only factor which precludes reliance by the applicants upon rule 6c–9 is the prohibition under French law against the acceptance by specialized financial institutions such as Credit Local of demand deposits or deposits of less than two years from the public at large.

4. Applicants contend that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to the Requested Relief

Applicants agree to the following as conditions to the requested relief:

1. Any Commercial Paper or Long-Term Debt issued by either applicant will be direct obligations of the applicable applicant.

2. Any Commercial Paper or Long-Term Debt issued by CLF Finance will be unconditionally guaranteed by Credit Local and, under certain circumstances, described below, also by the New York Agency as to the payment of principal, interest and premium and sinking fund payments, if any, on such debt securities (except that the guarantee may be subordinated in right of payment to other debt of Credit Local). Such guarantees will be full, complete and unconditional obligations of Credit Local for which its full faith and credit will be absolutely pledged (whether directly guaranteed by Credit Local or additionally guaranteed by the New York Agency). Securities issued by Credit Local or CLF Finance which will bear the additional separate guarantee of the New York Agency will only be issued under circumstances where the exemption provided for by section 3(a)(2) of the 1933 Act for securities "issued or guaranteed by a bank" is considered necessary to provide a basis for an exemption from the registration requirements of the 1933 Act for the issuance of securities by Credit Local or CLF Finance.

3. Credit Local's and, if applicable, the New York Agency's respective guarantees will provide that in the event of a default in payment of principal, interest and premium and sinking fund payments, if any, in respect of any Commercial Paper or Long-Term Debt issued by CLF Finance, the holders of such securities may institute legal proceedings directly against Credit Local and, if applicable, the New York Agency, to enforce the guarantee without first proceeding against CLF Finance.

4. Credit Local will submit to the jurisdiction of the New York State and United States Federal courts sitting in the City of New York for the purpose of any suit, action, or proceeding arising out of its offering of Commercial Paper or Long-Term Debt in the United States, or arising from its role as guarantor of the payment of principal, interest, and premium and sinking fund payments, if any, of the Commercial Paper or Long-Term Debt issued by CLF Finance in the United States. In that connection, Credit Local will appoint Credit Local de France, New York Agency, 9 West 57th Street, New York, New York 10019, or a corporation with an office in the City of New York engaged in providing corporate services for lawyers, as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdictdion shall be irrevocable for as long as Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance in reliance upon the order being sought hereby is outstanding in the United States. No such submission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such Commercial Paper or Long-Term Debt to bring suit in any court which may have jurisdiction over Credit Local by virtue of the offer or sale of its Commercial Paper or Long-Term Debt or otherwise. The agent for service of process will not be a trustee for the holders of any Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance or have any responsibilities or duties to act for such holders as would a trustee.

5. Except as provided in condition no. 7 below with respect to temporary investments, CLF Finance will advance to, or invest in, only Credit Local or entities controlled by Credit Local, including its branches or agencies, at least 85% of any cash or cash equivalents that it raises through an offering of Commercial Paper or Long-Term Debt or through other borrowings. Such advance or investment will occur as soon as practicable, but in no event later than six months after CLF Finance's receipt of such cash or cash equivalents.

6. Substantially all of CLF Finance's assets will consist of its right to receive repayment from Credit Local and entities controlled by Credit Local. The remaining portion of its assets will consist of funds held to pay administrative costs which it will incur in connection with its issuance of Commercial Paper or Long-Term Debt.

7. CLF Finance will not invest in, reinvest in, own, hold or trade in securities other than government securities (as defined in the 1940 Act), securities of Credit Local or entities controlled by Credit Local, including its branches or agencies, or debt securities (including repurchase agreements) that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

8. CLF Finance is and will remain a wholly-owned subsidiary of Credit Local the primary purpose of which is to finance the operations of Credit Local and entities controlled by Credit Local.

9. Although the exemption from registration under the 1940 Act provided by rule 6c–9 promulgated under the 1940 Act is not technically available to the applicants, each of the applicants agree to comply with each of the substantive requirements for an exemption from the provisions of the 1940 Act under rule 6c–9 as presently in effect or under the proposed amendments to rule 6c–9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18046 Filed 7–30–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1436]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A Meeting; Meeting

The Department of State announces that Study Group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, August 22, 1991, in Conference Room 1105, beginning at 9:30 a.m., at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for this meeting will cover (1) activities of the various working parties of the CCITT Study Group III's Angust 27–September 12, 1991 meeting in Geneva, such as private leased circuits, telephone accounting, one stop shopping, mobile services, directory services, packet switching, and other matters leading to general tariff principles; (2) preparatory activities for upcoming meetings of CCITT Study Group I; (3) preparatory activities for the ad hoc group for CCITT Resolution No. 18; and (4) the future schedule of work activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. 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 arrangements are made five (5) days in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, (202) 647–2592, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: July 12, 1991.

Earl S. Barbely,

Director, Telecommunications, and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–18030 Filed 7–30–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Iowa to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC–7, P.O. Box 25082, Oklahoma City, OK 73125–4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680–3296; (FTS 747–3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register**, Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of Artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, **Federal Register**, Vol. 53, No. 121, page 23718, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, **Federal Register**, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted. In the December 19, 1989, **Federal Register**, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 6, 1990, **Federal Register**, Vol. 55, No. 151, page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted. In the June 18, 1991, **Federal Register**, Vol. 56, No. 117, page 27989, we advised that Arizona was identified as a state from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Iowa is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska	Nebraska
Arizona	Nevada
Arkansas	New Jersey
Florida	New Mexico
Georgia	North Dakota
Illinois	Oklahoma
Indiana	Oregon
Iowa	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Maine	Texas
Michigan	Virgin Islands
Minnesota	Washington
Missouri	Wyoming

Issued in Oklahoma City on July 21, 1991.

Joseph R. Standell,

Assistant Chief Counsel for the Aeronautical Center.

[FR Doc. 91-18074 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Emergency Order No. 15]

Florida East Coast Railway Co.; Emergency Order Requiring Use of Train Borne Audible Warning Devices

The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels issuance of this Emergency Order requiring that the Florida East Coast Railway Company (FEC) sound audible warning devices on lead locomotives of trains approaching public highway-rail grade crossings, and that FEC revoke any operating rules bulletins that restrict the use of these devices at such crossings.

Authority

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. The FEC is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury." These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." 45 U.S.C. 432(a).

Background

FRA has long identified the train borne audible warning device, commonly referred to as a train whistle, as an important feature in the safe operation of a train. One use of these whistles has been to complement other warning devices to promote safety at highway-rail grade crossings. FRA locomotive safety regulations require that each lead locomotive of a train be equipped with a device that can produce a minimum sound level in the direction of travel. 49 CFR 229.129. FRA's Railroad Noise Emission Standards, based on standards issued by the Environmental Protection Agency, specifically exempt audible warning devices such as "horns, whistles, or bells when operated for the purpose of safety." 49 CFR 210.3(b)(3).

Grade crossing collisions between trains and motor vehicles differ in severity from those that occur on the highways. A crash at a highway-rail crossing is eleven times more likely to result in a fatality, and five and a half times more likely to result in a disabling injury than a collision between two motor vehicles. Approximately 700 lives are lost and 2,400 people seriously injured each year in grade crossing accidents nationwide.

In addition to the threat to motorists, highway-rail crossing accidents can result in death and injury to railroad employees, particularly in collisions with large trucks or other heavy equipment. Collisions and emergency applications of train brakes greatly increase the risk of derailment and consequent injury or death to rail passengers and train crew. Moreover, the presence of hazardous material in the train consist or truck cargo can endanger anyone near the right-of-way.

A highway-rail grade crossing presents a unique traffic environment for motorists, and many drivers do not cross railroad tracks often enough to be familiar with the warning devices designed for their safety. More than 50 percent of highway-rail collisions occur at crossings equipped with bells, flashing lights, or gates. The train whistle enhances the safety effect of these other devices by giving the motorists an indication of a train's proximity.

Motorists are often unaware that trains cannot stop as quickly as motor vehicles to avoid a collision. It takes a 100 car train traveling 30 miles per hour approximately half a mile to come to a stop. At fifty miles per hour that train's stopping distance increases to one and a third miles. The average freight locomotive weighs between 140 and 200 tons, compared to the average car weight of approximately 1 to 2 tons. Any motor vehicle, even a large truck, would be crushed when colliding with the force of a moving train.

In response to the risks of death or injury at grade crossings, FRA will soon initiate a proceeding to collect nationwide data on highway-rail grade crossing safety, including the effect of the use of train borne audible warning devices.

The Florida Whistle Ban

Effective July 1, 1984, a Florida statute authorized counties and municipalities to restrict the nighttime sounding of train whistles on trains operated by intrastate railroads. The law authorizes local governments to ban the use of train borne audible warning devices between the hours of 10 p.m. and 6 a.m. by trains approaching highway-rail crossings that are equipped with train-activated flashing lights, bells, crossing gates, and highway signs indicating that train whistles will not be sounded at night. Fla. Stat. § 351.03(4)(a) (1984). Since enactment of this law, at least eight counties and twelve cities have passed whistle ban ordinances. As detailed below, the result has been an alarming increase in highway-rail grade crossing accidents, with a concomitant increase in fatalities and injuries.

In August 1990, FRA issued a study of the effect of the Florida train whistle ban through 1989. The study compared the FEC's post-ban accident record at crossings subject to a ban with four control groups to determine the impact of the ban and to eliminate variables that may otherwise have affected the results. The study indicated a strong correlation between nighttime bans and the number of accidents at highway-rail crossings subject to bans.

Using the first control group, a comparison of FEC's pre-ban and post-ban accident records was made. FRA found a 195 percent increase in accidents. Based on the experience of the other control groups and the pre-ban trend, it was estimated that 49 post-ban accidents would have been expected. In fact, however, 115 post-ban accidents occurred, which is an increase of 167 percent over the number that would have been consistent with the pre-ban trend, leaving 66 crossing accidents statistically unexplained. Nineteen people died and fifty-nine people were injured in the 115 crossing incidents after establishment of the bans. Proportionally, at least 11 of the fatalities and 34 of the injuries can be attributed to the 66 unexplained accidents.

With the second control group comparison, FRA determined that the pre- and post-ban daytime accident rates remained virtually unchanged for the same highway-rail crossings at which the whistle ban was in effect during nighttime hours.

The third control group showed that at the 89 FEC crossings where the bans were not imposed, the number of

nighttime accidents increased by only 23 percent.

Finally, FRA compared the 1984 through 1989 accident record of the FEC, which is required to comply with local whistle sounding ordinances, with that of the parallel rail line of CSX Transportation Company (CSX), which is not subject to such ordinances because it operates interstate. By December 31, 1989, 511 of the FEC's 600 gate-equipped crossings were affected by whistle bans. Accident data from the same period was available for 224 similarly equipped CSX crossings in the 6 counties in which both railroads operate. FRA found that FEC's nighttime accident rate at impacted crossings increased 195 percent after whistle bans were imposed. At similarly equipped CSX crossings, the number of accidents increased 67 percent.

The only identifiable difference between the crossings subject to the ban and the control groups was the whistle ban itself. Malfunctioning of safety controls at grade crossings would affect both daytime and nighttime accidents rates. An increase in rail traffic might account for a partial increase, but the average annual locomotive miles reported by the FEC increased only 22.3 percent during the period studied. Increased use of highways should also have resulted in higher accident rates at CSX crossings, at crossings in daytime, and at crossings unaffected by the bans.

In August of 1990, in an effort to develop further information and to advise local authorities of the risks apparently posed by the ordinances, FRA provided copies of its study to officials of each county and municipality with bans in effect, to the Florida Department of Transportation, and to fifteen members of the state legislature. No county or municipality acted to repeal or modify its whistle ban ordinance in light of the report. The Florida state legislature also did not act in response to FRA's findings. In fact, the number of FEC highway-rail crossings subject to the ban actually increased to 537.

Nor, so far as FRA has been advised, did state and local authorities take other actions to compensate for the hazard introduced by the whistle bans, such as increased law enforcement, installation of immovable highway dividers, grade separation at high traffic crossings, or closure of low use crossings.

FRA has continued to monitor accident data for FEC crossings. Analysis of the 1990 data shows a continuation of the post-ban trend. There were 23 nighttime accidents at crossings subject to bans, but only one accident at the FEC's remaining 65 grade crossings. The 55 highway-rail crossing accidents reported by the FEC resulted in 15 deaths and 20 injuries. Six of these fatalities and seven injuries occurred at crossings during the ban period of 10 p.m. to 6 a.m.

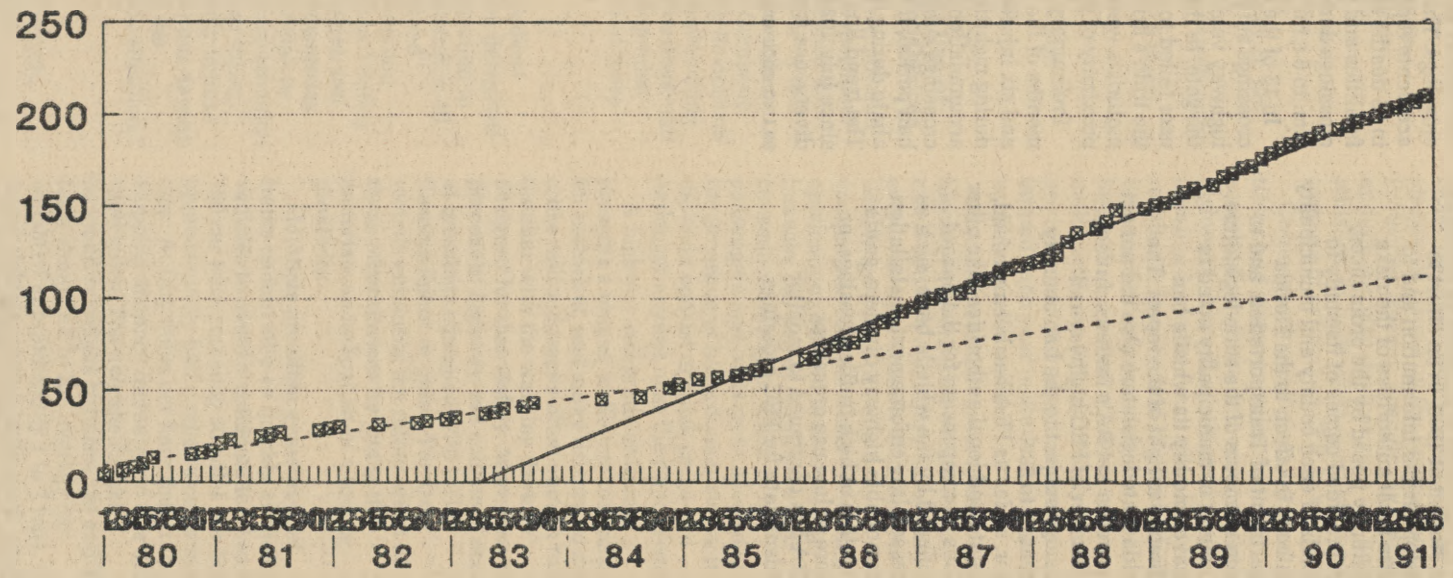
In 13 of the nighttime accidents at crossings subject to the bans, the highway vehicle went around or through the gate. In the other ten, the highway user failed to clear the crossing prior to the train's arrival, suggesting the motorists were unaware of the proximity of the train.

Preliminary 1991 data for the first six months of the year shows six fatalities and six injuries at whistle ban crossings during nighttime hours. The accumulation of nighttime accidents at crossings subject to the bans in the post-ban period, illustrated below, did not abate during the first six months of 1991. The trend line of accumulated accidents since July 1984 still reflects a major divergence from the pre-ban trend.

BILLING CODE 4910-06-M

FEC Crossing Accidents

Impacted Crossings (10PM-6AM)



First Ordinance: July 1984
Source: Federal Railroad Administration
1991 data is preliminary.

BILLING CODE 4910-06-C

The Florida ban confuses the public's understanding of grade crossing warning devices. The local ordinances require that intrastate railroads comply with whistle bans while interstate carriers are exempt. This distinction means, for example, that at a CSX grade crossing, locomotive borne audible warning devices are used, but at a similar FEC crossing a short distance away, these devices are not sounded. Motorists will not know whether or not they can expect to hear a train whistle when a train nears a highway-rail crossing. This confusion is further compounded by the existence of whistle ban ordinances in certain counties and municipalities and their absence in others.

FRA is concerned with issues of noise pollution. As noted, FRA enforces noise control regulations on the railroad industry. While the sound of a train whistle can be disturbing to people who live by highway-rail crossings, that same warning note can save lives. The FEC's alarming post-ban grade crossing accident record mandates FRA action despite the inconvenience to people living near the railroad right-of-way.

Preemption

This Emergency Order addresses the same subject matter addressed by the Florida statute and the county and municipal ordinances and, therefore, pursuant to section 205 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 434, preempts state and local requirements pertaining to the sounding of train borne audible warning devices at the highway-rail crossings of the FEC.

Finding and Order

Based on FRA's investigation, I have determined that, given the unsafe conditions at highway-rail grade crossings over which motorists cross the FEC in the State of Florida, the continued failure of the FEC to sound its train borne audible warning devices at night as provided in its operating rules creates an emergency involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432, delegated to me by the Secretary of Transportation (49 CFR 1.49(m)), it is *Ordered*, effective 10 p.m., July 26, 1991:

That the Florida East Coast Railway Company shall sound its train borne audible warning devices whenever a train approaches a public highway-rail grade crossing, consistent with its operating rules. The pattern of the sounding will be two long notes, a short note, and one long note of the whistle. This pattern can be repeated or the last sound prolonged until the lead locomotive has passed through the crossing.

That the Florida East Coast Railway Company shall revoke any operating rules bulletin that restricts the sounding of train borne audible warning devices on trains approaching highway-rail grade crossings.

Relief

The FEC may obtain relief from this Order by either of the following:

1. By filing a written notification with the Docket Clerk, Federal Railroad Administration, that a highway-rail crossing, or any number of highway-rail crossings, is no longer subject to a municipal or county ordinance that would limit the sounding of train borne audible warning devices. Such filing must include a written representation that the railroad has revoked any restrictive operating rules bulletins and will continue to retain in force its operating rule requiring sounding of locomotive audible warning devices.

2. By filing in writing with the Docket Clerk, Federal Railroad Administration, evidence that sufficient safety measures are planned at a highway-rail crossing, or any number of highway-rail crossings, to alleviate the risk of injury and death created by the failure to use train borne audible warning devices. The measures to be taken at each crossing must be specifically identified, and supported with safety data and/or engineering studies that demonstrate that the planned measures will be effective and will be in place within thirty days of FRA approval of the plans.

Within thirty days of receipt of the notice described in paragraph 2, above, FRA will review the measures planned for each identified highway-rail crossing and evaluate the safety improvements and supporting documentation. FRA will then make a written finding whether the Order will be lifted, in whole or in part. If FRA does not lift the Order, the written response will specifically describe what additional measures need to be taken to abate the hazard. If FRA lifts the Order, this lifting will take effect on the date the planned crossing measures are completed and begin functioning.

Penalties

Each train movement in violation of this Order shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Notice

This Emergency Order was hand delivered to the Florida East Coast Railway Company on July 26, 1991. In addition, copies were provided this day by mail or facsimile to the Governor of Florida, the Florida Department of Transportation, St. Johns County, St. Lucie County, Brevard County, Indian River County, Martin County, Palm Beach County, County of Ft. Lauderdale, Dade County, and the cities and towns of Jacksonville, St. Augustine, Ormond Beach, Holly Hill, Daytona Beach, South Daytona, Port Orange, New Smyrna Beach, Malabar, Edgewater, Melbourne, Palm Bay, Titusville, Cocoa, Rockledge, Vero Beach, Sebastian, Fort Pierce, Stuart, Riviera Beach, West Palm Beach, Tequesta, Boynton Beach, Delray Beach, Hypoluxo, North Palm Beach, Lantana, Lake Worth, Boca Raton, Deerfield Beach, Pompano Beach, Oakland Park, Wilton Manors, Fort Lauderdale, Dania, Hollywood, and Hallandale.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found 49 CFR part 211 (see § 211.47, .71–.75).

Issued in Washington, DC, on July 26, 1991.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 91–18140 Filed 7–30–91; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. LVM 89–01; Notice 11]

Passenger Automobile Average Fuel Economy Standards; Proposed Denial of Petitions for Exemption from Maserati Automobiles, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed denial of petitions for low volume exemption from average fuel economy standards.

SUMMARY: This notice proposes to deny petitions filed by Maserati Automobiles, Inc. (MAI), requesting a low volume exemption from the generally applicable passenger automobile fuel economy standards, and seeking establishment of alternative standards for model years (MY) 1992, 1993, 1994, and 1995. MAI is the exclusive U.S. importer for Maserati S.r.l. (Maserati), a company which manufacturers cars in Italy. The agency proposes to deny MAI's petitions since Maserati's production will exceed 10,000 passenger automobiles and thus make

that company ineligible to qualify as a low volume manufacturer.

DATES: Comments must be received on or before September 30, 1991.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the energy crisis created by the oil embargo of 1973–1974, and to the level of oil imports. Congress included a provision in that Act establishing an automobile fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Compliance with CAFE standards is determined by averaging the fuel economy ratings of the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard. The standards for passenger automobiles for MYs 1992 through 1995 are at present designated in the Cost Savings Act as 27.5 miles per gallon (mpg) of each of these years.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures, whether or not in the U.S., fewer than 10,000 passenger automobiles in the second model year before the model year for which an application is made. An exemption applies to a model year only if the manufacturer manufacturers (whether or not in the U.S.) fewer than 10,000 automobiles in that model year. In determining maximum feasible average fuel economy, the agency is required by section 502(d) of the Cost Savings Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

The Petitions

In a submission dated April 14, 1989, MAI petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1990, 1991, and 1992. MAI requested an alternate standard of 19.1 mpg for MY 1990, 18.7 mpg for 1991, and 17.8 mpg for 1992. In a **Federal Register** notice dated June 22, 1990 (55 FR 25767), the agency rejected MAI's petitions for exemption from the generally applicable CAFE standards for several years, including MYs 1990 and 1991. The petitions were untimely for MYs 1990 and 1991 and the agency concluded that MAI did not show "good cause" for the late filing of the petitions. However, in the June 1990 notice, the agency acknowledged that the petition for MY 1992 was timely filed and stated that it would separately address MAI's petition for MY 1992.

In a submission dated July 31, 1990, MAI petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1993, 1994, 1995. MAI requested an alternate standard of 15.5 mpg for MY 1993, 15.2 mpg for MY 1994, and 15.1 mpg for MY 1995. The petition for exemption was timely for each of MYs 1993, 1994, and 1995.

The information provided by MAI in its petition included the following:

MAI is a wholly-owned subsidiary of DeTomaso Industries, Inc. ("DTI"), a Maryland corporation that is publicly traded over-the-counter in the United States. DTI does not manufacture any automobiles, but it controls (i.e., owns 84% of) Officine Alfieri Maserati, S.p.A. (OAM), which controls (i.e., owns 51% of) Maserati S.r.l. (Maserati) that has facilities in Italy that produce Maserati automobiles* * *

Maserati assembles, on a contract basis, Innocenti automobiles (approximate annual production: 10,000 vehicles) and, commencing sometime in 1990, will be assembling Fiat Panda automobiles on the same basis (estimated annual production: 35,000).

MAI argued that these Innocenti and Fiat Panda automobiles should not be counted towards the 10,000 vehicle limitation since Maserati is not considered the manufacturer of the vehicles by the Italian government, the vehicles are not built to comply with U.S. requirements, and no company is authorized to import such automobiles into the United States. MAI concluded it was eligible for an exemption for each of MYs 1993, 1994, and 1995 since, "under sections 502(c) and 503(d) of the Cost Savings Act, the Innocenti and Fiat automobiles are not to be counted towards Maserati's 10,000-vehicle limit."

MAI's petition also indicated that Fiat owns 49 percent of Maserati, as of January 1, 1990.

Agency Analysis

Section 502(c) of the Cost Savings Act limits eligibility for low volume exemptions to those manufacturers "who manufactured (whether or not the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made * * *". Section 501(9) defines the term "manufacture," except for purposes of section 502(c), as meaning "to produce or assemble in the customs territory of the United States, or to import." A broader definition of "manufacture," derived from section 502(c)'s phrase "manufactured (whether or not in the United States)," applies for purposes of determining eligibility for a low volume exemption under section 502(c). Therefore, in considering whether MAI is eligible for a low volume exemption, the agency must count all of the cars manufactured by Maserati worldwide, and not merely those imported into the U.S. by MAI.

NHTSA notes that, in considering whether a petitioning manufacturer is eligible for a low volume exemption, there is also an issue of whether cars manufactured by other manufacturers within the same control relationship as the petitioner should be counted toward the 10,000 car limitation. Section 503(c) provides that "(a)ny reference in this part to automobiles manufactured by a manufacturer shall be deemed * * * to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer * * *" Thus, under section 503(c), the automobiles produced by all manufacturers within a control relationship are placed into one fleet for purposes of compliance with fuel economy standards. The agency addressed this issue of manufacturer eligibility in a notice published in the **Federal Register** (55 FR 38822) on September 21, 1990, in connection with

low volume petitions submitted by Ferrari. The agency tentatively concluded that all cars produced worldwide by all manufacturers within the same control relationship as the petitioning manufacturer should be counted for purposes of low volume exemption eligibility.

In analyzing how this issue affects Maserati/MAI, there is a factual issue of whether Fiat "controls" Maserati, within the meaning of section 503(c) of the Act. If Maserati were considered to be controlled by Fiat, it would clearly be ineligible for a low volume exemption (under the agency's tentative interpretation), since Fiat manufactures far more than 10,000 automobiles each year.

In a letter dated January 16, 1990, Lance R. Tunick, Esq., on behalf of MAI, argued that Fiat does not control Maserati. He noted that while Fiat owns 49 percent of Maserati, another corporation, unrelated to Fiat, owns 51 percent.

NHTSA believes that the issue of whether Fiat controls Maserati should be addressed in the context of the purpose of section 503(c) (i.e., grouping together vehicles produced by related manufacturers) and the overall statutory scheme. Where a company owns 51 percent of a manufacturer and another company owns 49 percent, the 51 percent owner clearly controls the manufacturer. There is an issue of whether the 49 percent owner might also be considered to control the manufacturer. NHTSA notes that if two unrelated manufacturers were deemed to control a third manufacturer under section 503(c), that section could be read as requiring the automobiles of all three manufacturers to be placed into one fleet. The agency believes that such a result would clearly be inconsistent with the statutory scheme, since the fleets of two unrelated major manufacturers could be combined simply as a result of sponsoring a joint venture. Therefore, NHTSA does not believe that a manufacturer should be considered to be controlled by more than one manufacturer under section 503(c), except in a vertical control relationship (such as where manufacturer A controls manufacturer B which controls manufacturer C).

NHTSA therefore agrees with MAI that if one company owns 51 percent of a manufacturer and another, unrelated company has a 49 percent share, the company which owns 51 percent has a controlling interest, for purposes of section 503(c), and the company which owns 49 percent does not control the manufacturer. Thus, Maserati's cars would not be combined (under the agency's tentative interpretation) with those of Fiat for purposes of determining eligibility for a low volume exemption.

There remains the issue of how many cars Maserati itself should be considered to manufacture for purposes of determining section 502(c) eligibility. As discussed below, NHTSA has tentatively concluded that all cars manufactured by Maserati should be counted, including those which it assembles for Innocenti and Fiat. Under this approach, Maserati is not eligible for a low volume exemption since it manufactures more than 10,000 cars each year.

As indicated above, MAI argued that the Innocenti and Fiat automobiles assembled by Maserati should not be counted toward the 10,000 car limitation since (1) Maserati is not considered the manufacturer of these automobiles by the Italian government (Innocenti and Fiat are), and (2) none of these automobiles comply with U.S. requirements or are authorized to be imported into the U.S.

NHTSA does not consider these arguments to be persuasive. MAI's second argument is clearly inconsistent with the special definition of "manufacturer" that applies for purposes of section 502(c). In considering manufacturers' worldwide production for purposes of low volume exemption eligibility, the agency necessarily counts cars that are produced for markets other than the U.S. Such cars typically do not meet U.S. requirements and are not authorized by the manufacturer to be imported into the U.S.

With respect to MAI's first point, the agency notes that, for purposes of applying section 502(c), the determination of whether Maserati is considered a manufacturer of the vehicles in question must be decided under the criteria of the Cost Savings Act, and not Italian law. Since Maserati "assembles" the vehicles, it is clearly a manufacturer of the vehicles under the Cost Savings Act.

NHTSA recognizes that a vehicle may have more than one manufacturer. It is possible, for example, that Innocenti and Fiat might also be considered manufacturers of the vehicles as well as Maserati.

The agency notes that, in an interpretation letter dated February 19, 1987 (name of addressee withheld for confidentiality purposes), it concluded that where more than one company can be considered the manufacturer of a vehicle and the issue of which company is manufacturer of the vehicle for CAFE purposes is not resolved by section 503(c) or regulations issued under section 501(8), the manufacturers can determine by agreement which of them will count a vehicle as its own. NHTSA does not, however, believe that this interpretation is relevant to the issue of counting vehicles for purposes of low volume exemption eligibility. For purposes of determining compliance with CAFE standards, it is important that each vehicle be included in only one manufacturer's fleet. However, there is no reason to resolve which manufacturer should include a vehicle in its fleet prior to considering eligibility for a low volume exemption. Moreover, in this case, since the vehicles which might also be considered to be manufactured by Innocenti and Fiat are not imported into the United States, the issue of attribution is irrelevant.

The legislative history of section 502(c) demonstrates that Congress authorized low volume exemptions to provide relief for small manufacturers. For example, the House Report discussed this provision under the heading "small manufacturers." H.R. Rep. No. 94–340, 94th Cong., 1st Sess. 90 (1975). The Conference Report, in describing the Senate version of this provision, described it as providing the Secretary authority to exempt "small (less than 10,000 vehicles per year) manufacturers" from passenger car standards. S. Rep. No. 94–516, 94th Cong., 1st Sess. 151 (1975).

NHTSA does not believe there is any reason to exclude any vehicles manufactured by a manufacturer from consideration for purposes of low volume exemption eligibility. Congress decided to limit eligibility for low volume exemptions to small manufacturers, using the number of vehicles a company manufactures (worldwide) per year as the measure of whether a company is small. Since Congress chose magnitude of annual worldwide production as the test for whether a manufacturer is small, NHTSA believes it is necessary and appropriate to confide all of a manufacturer's production in making that inquiry.

Accordingly, NHTSA believes that its inquiry concerning eligibility is over once it is established that a company manufactures more than 10,000 vehicles. Maserati's petition indicates that, as of model year 1990, it manufactures close to 50,000 vehicles per year.

For the reasons discussed above, this agency tentatively concludes that MAI is not eligible for an exemption for MYs 1992, 1993, 1994, and 1995. NHTSA therefore proposes to deny MAI's petition for exemption from the generally applicable CAFE standard for

those years. If Maserati ceases to manufacture vehicles for Innocenti and Fiat, or if there are other changes that affect its eligibility, it may reapply for an exemption.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receving the comments, the docket supervisor will return the postcard by mail.

Issued on: July 26, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-18073 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 22-91];

Treasury Notes of July 31, 1993, Series AD-1993

July 18, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,500,000,000 of United States securities, designated Treasury Notes of July 31, 1993, Series AD-1993 (CUSIP No. 912827 B6 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1991, and will accrue interest from that date, payable on a semiannual basis on January 31, 1992, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches. and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, July 23, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 10 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, July 22, 1991, and received no later than Wednesday, July 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to

submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Wednesday, July 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, July 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18138 Filed 7-26-91; 3:22 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 23-91]

Treasury Notes of July 31, 1996, Series R-1996

July 18, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of July 31, 1996, Series R-1996 (CUSIP No. 912827 B7 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1991, and will accrue interest from that date, payable on a semiannual basis on January 31, 1992, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, July 24, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 23, 1991, and received no later than Wednesday, July 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, July 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the

order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, July 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18139 Filed 7-26-91; 3:22 pm]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Resplendence of the Spanish Monarchy: Renaissance Tapestries and Armor" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about October 11, 1991, to on or about January 5, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 26, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-18211 Filed 7-30-91; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

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).

RURAL TELEPHONE BANK
Board of Directors Meeting
DEPARTMENT OF AGRICULTURE

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 1 p.m., Wednesday, August 7, 1991.

PLACE: Room 212 E-Administration Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank (202) 382–9552.

Agenda

I. Call to Order.
II. Approving Minutes of the May 1 and 2, 1991, RTB Board meeting.
III. Loans Approved in Third Quarter FY 1991.
IV. Financial Statements for Third Quarter FY 1991.
V. Requests for Waiver of Prepayment Premiums.
VI. Sunshine Act—Final Rule.
VII. Election of RTB Board Members.
  a. Requirement for Election Before November 1992.
  b. Proposed resolution to Amend Date for Election.
VIII. Prepayment Premium—Clarification of the Statutory Requirements.
IX. Federal Credit Reform Update.
X. Committee on Privatization—Formation of Committee to Consider Issues Involved in Privatizing the RTB.
XI. Tabled Resolution from the February 7, 1991, RTB Board Meeting Concerning Processing of RTB Loans.
XII. Date and Location of Next RTB Board Meeting.
XIII. Adjournment.

Dated: July 26, 1991.

Blaine D. Stockton, Jr.,

Assistant Secretary, Rural Telephone Bank.

[FR Doc. 91–18208 Filed 7–31–91; 2:27 pm]

BILLING CODE 3410–15–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 2, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18323 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 9, 1991.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18324 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRAINING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 16, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18325 Filed 7–29–91; 3:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 23, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18326 Filed 7–29–91; 3:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18327 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 5, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–18210 Filed 7–26–91; 4:49 pm]

BILLING CODE 6210–01–M

UNITED STATES NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE
Executive Committee Meeting

DATE AND TIME: August 29 and 30, 1991
9:00 to 5:00 p.m.
9:00 to 4:00 p.m.

PLACE: Canterbury Hotel, 1733 N Street, N.W., Washington, D.C. 20036.

STATUS: Open.

MATTERS TO BE DISCUSSED:
Recap of White House Conference
Discussion of Conference Recommendations and Implementation Process
Report, Committee on Library and Information Services for Native Americans
FY 1992 Budget and Technical Amendments
NCLIS Old Business
NCLIS New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS, Suite 310, 1111 18th Street, N.W., Washington, D.C. 20036. (202) 254–3100.

Dated: July 26, 1991.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 91–18270 Filed 7–29–91; 2:14 p.m.]

BILLING CODE 7527–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 29, August 5, 12, and 19, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 29

Tuesday, July 30

8:45 a.m.
Consideration of Commission's Options in Yankee Rowe Matters (Closed—Ex. 10)
10:00 a.m.
Briefing on International Nuclear Reactor Safety (Closed—Ex. 1)

Wednesday, July 31

1:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Commission Decision Regarding Yankee Rowe Reactor Vessel (Tentative)

Thursday, August 1

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 5—Tentative

Monday, August 5

10:00 a.m.
Briefing on AEOD Programs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.
Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)
11:30 a.m.
Affirmation/Discussion on Vote (Public Meeting) (if needed)

Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.
Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by NRC Staff on International Programs (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

July 26, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–18277 Filed 7–29–91; 215 p.m.]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on July 26, 1991, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on August 8, 1991, in Washington, DC, consideration of 1) a filing with the Postal Rate Commission for a walk sequence discount for third-class mail and 2) the Postal Rate Commission's Decision in Docket No. R90–1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Hughes.

The Board 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 discussion of these matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 522b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 522(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, these discussions are exempt because they are likely to specifically concern participation of the Postal Service in civil actions or proceedings involving a determination on the record after an opportunity for hearing. The Board further determined that the public interest does not require that the Board's discussion of the matters 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 meeting may properly be closed to public observation, pursuant to section 552b(c)(3) and (10) of title 5, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 91–18316 Filed 7–29–91; 3:21 pm]

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federal register

Wednesday
July 31, 1991

Part II

Department of Defense

48 CFR Chapter 2

Defense Federal Acquisition Regulations; Revision of Chapter; Final Rules and Interim Rules

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Department of Defense Acquisition Regulations; Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rules and interim rules.

SUMMARY: The Secretary of Defense's July 1989 Defense Management Report to the President concluded that much of the stifling burden of Department of Defense (DoD) regulatory guidance, including the Defense Federal Acquisition Regulation Supplement (DFARS), was self-imposed. As a result, the DoD formed a Regulatory Relief Task Force to review DFARS and lower level supplements and recommend revisions. Subsequently, the Defense Acquisition Regulations System, under the direction of the Director of Defense Procurement, conducted an in-depth analysis of DFARS to: Eliminate text and clauses that were unnecessary (e.g., duplicated FAR or other directives, added no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and ultimately rewrite the remaining text and clauses in plain English. The 1991 edition of DFARS is the product of these efforts. It replaces the 1988 edition, including all appendices and supplements.

DATES: *Effective Date:* December 31, 1991. For discussion on Interim Rules, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Lucile Hughes (703) 697–7266, Defense Acquisition Regulations System, OUSD(A), Pentagon, Washington, DC 20301–3000.

SUPPLEMENTARY INFORMATION:

A. Background

The rewritten DFARS was published in the **Federal Register** as a proposed rule in four increments. The first increment was published August 14, 1990 (55 FR 33218); the second increment, September 28, 1990 (55 FR 39788); the third increment, October 31, 1990 (55 FR 45904); and the fourth increment, February 14, 1991 (56 FR 6056). Comments were received from a multitude of interested parties, including individuals, industry associations, business concerns, DoD organizations, other Federal agencies, and representatives of the Canadian government. A total of 265 letters offering comments were received on the four increments. All comments were considered in developing this final rule.

The 1991 edition includes some interim rules which were all published independently and separately from the four increments of proposed rules. Unless otherwise stated in the following summaries, these interim rules are not finalized by this notice but are published in their interim form. For example, Part 211, Acquisition and Distribution of Commercial Products, is an interim rule, not yet finalized, which was published for public comment April 23, 1991 (56 FR 18610). Part 211 is published in this notice in its interim version. The 1991 edition will be revised to include the final version of such interim rules as they are finalized.

A summary of the revisions made to the proposed rules as a result of public comments and other changes follows:

Part 201, Federal Acquisition Regulations System. Section 201.301 has been revised as a result of further consideration of the controls necessary to implement section 25(d) of the OFPP Act and to preclude a reemergence of the regulatory burdens eliminated under the DFARS rewrite effort. Section 201.301 requires the Director of Defense Procurement's approval of: class deviations; policies, procedures, clauses, and forms which have a significant impact on the public; individual deviations in certain categories; and department/agency plans for control of all clauses other than those prescribed by FAR or DFARS. Section 201.303 has been modified slightly to clarify the DFARS numbering explanation. All references in part 201, and throughout DFARS, to the Deputy Assistant Secretary of Defense (Procurement) have been changed to the Director of Defense Procurement. Subpart 201.6 has been modified to add a requirement for the contracting officer representative to maintain a file on each contract assigned.

Part 202, Definitions of Words and Terms. The definition of "contracting activities" has been revised and updated. A definition of "departments and agencies" has been added. The definition of "Department of Defense" has been revised. Definitions of "executive agency" and "head of the agency" have been added. A definition of "senior procurement executive" has been substituted for "senior acquisition executive" and revised.

Part 203, Improper Business Practices and Personal Conflicts of Interest. A reference to DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities, has been added to various reporting requirements in this part. Subpart 203.1 has been revised to reflect the prohibition suspensions imposed by section 507 of the Ethics Reform Act of 1989 and section 815 of the fiscal 1991 DoD Authorization Act. Subpart 203.5 and the clause at 252.203–7001 have been revised to limit the 10 U.S.C. 2408 prohibition on employment of convicted felons to prime contractors and first-tier subcontractors. A definition of "negotiation" has been added to the clause at 252.203–7000.

Part 204, Administrative Matters. Most of subpart 204.4, Safeguarding Classified Information Within Industry, has been moved to subpart 239.74. The clause at 252.204–7000, Telecommunications Security Equipment, Devices, Techniques, and Services, has been moved to 252.239–7016. A number of minor editorial and technical changes have been made throughout the part and part 253.

Part 205, Publicizing Contract Actions. Section 205.303 has been revised to clarify the requirements for public announcement of contract awards.

Part 206, Competition Requirements. Limitations on use of the authority at FAR 6.302–4, International agreement, for other than full and open competition have been added at 206.302–4(c), as a result of section 817 of the FY 1990 Defense Authorization Act. Section 206.304, amending the J&A approval level for contract actions over $10 million, has been added as a result of section 818 of the FY 1990 Defense Authorization Act.

Part 207, Acquisition Planning. Section 207.103 has been revised to clarify when written acquisition plans are required. Subpart 207.3 has been deleted because the subject matter is adequately covered in the FAR, and in DoDD 4100.5 and DoDI 4100.33.

Part 208, Required Sources of Supplies and Services. Subpart 208.3, Acquisition of Utility Services, has been moved to part 241. Unusual and compelling urgency has been added at 208.7003–1(a) as an exception to acquisition from the integrated material management manager. Subsection 208.7004–10 has been added to clarify the handling of the administrative costs of coordinated acquisition. The definition at 208.7201 of "planned producer" has been revised. A list of the existing authorities for industrial planning actions has been added at 208.7203. Palladium sponge has been added to the list of refined precious metals at 208.7304.

Part 209, Contractor Qualifications. Factors for consideration by the debarring official in a debarment decision have been deleted as they are being moved to FAR. The clause at 252.209–7001, Disclosure of Ownership

or Control by a Foreign Government that Supports Terrorism, has been revised to add Iraq and North Korea and delete South Yemen from the list of countries that must be disclosed. The clause at 252.209–7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, has been revised to apply also to subcontractors subject to on-site inspection under a treaty similar to INF.

Part 210, Specifications, Standards, and Other Purchase Descriptions. Section 210.002 has been revised by deleting guidance on acquisition streamlining that duplicates information contained in DoDI 5000.2.

Part 211, Acquisition and Distribution of Commercial Products. This part is an interim rule, published in the Federal Register on April 23, 1991 (56 FR 18610). This part was not published in any of the four proposed rule increments but is included in the 1991 DFARS edition in its interim form.

Part 212, Contract Delivery or Performance. Subpart 212.1, Delivery or Performance Schedules, has been deleted as unnecessary. Other minor revisions have been made for technical and editorial clarity.

Part 213, Small Purchase and Other Simplified Purchase Procedures. Subpart 213.1, General, has been deleted as unnecessary. Other minor revisions have been made for technical and editorial clarity.

Part 214, Sealed Bidding. No significant revisions.

Part 215, Contracting by Negotiation. References to $100,000 in the text and in the clause at 252.215–7000, Pricing Adjustments, have been deleted since the threshold for cost or pricing data has been increased to $500,000. The requirement for field pricing reports for fixed price proposals exceeding $250,000 from offerors with significant estimating system deficiencies has been deleted due to the increase in the threshold for cost or pricing data. Industrial Modernization Incentive Program coverage has been updated for consistency with the DoD Directive and Guide. Language on estimated data prices, currently in DFARS but deleted in the proposed rule, has been restored. Section 215.1003 has been deleted as it is covered by FAR 15.1003. Section 215.1001 has been added to emphasize that acquisitions processed under small purchase procedures are exempt from the requirement for preaward notification of unsuccessful offerors. Other minor revisions have been made for technical and editorial clarity. An exception to the contracting officer's authority to make the determinations required by FAR 215.608 has been added.

Part 216, Types of Contracts. A requirement has been added at 216.203–4–70(a) and (b) for approval at a level above the contracting officer to exceed an adjustment of ten percent in the clauses at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, and 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items. Added language at 216.301–3 permitting the contracting officer to execute the required determinations and findings. Removed language at 215.403(c) on use of fixed-price incentive contracts. Section 216.702, Basic agreements, has been deleted because such agreements are rarely used. Other minor revisions have been made for technical and editorial clarity.

Part 217, Special Contracting Methods. Added guidance at 217.401 encouraging use of small disadvantaged business concerns when leader company contracting is being considered. Deleted the Liquidated Damages clause at 252.217–7009, which was to be used in master agreements for repair and alteration of vessels, and replace it with the Default clause in the current DFARS. Revised the prescription for use of the provision at 252.217–7026, Identification of Sources of Supply, to permit use of substantially the same provisions.

Part 219, Small Business and Small Disadvantaged Business Concerns. The threshold at 219.201(c)(9) for small business specialist review of acquisitions was revised from $25,000 to $10,000. The responsibility (219.201(c)(7)) for appointing a small business technical advisor was delegated to the head of a contracting activity. Several small business specialist duties were added at 219.201(d). Reporting requirements were added at 219.202–5. Evaluation preference procedures were revised to clarify applicability to eligible products under the Trade Agreements Act. The form number of the new form required by 219.201(c)(9)(B) has been added and a copy of the form has been included in part 253. Other minor revisions have been made for technical and editorial clarity.

Part 220, Labor Surplus Area Concerns. This part was proposed for deletion and is deleted.

Part 222, Application of Labor Laws to Government Acquisitions. Guidance on the administrative determination process for Contract Work Hour and Safety Standards Act liquidated damages has been added at subpart 222.3. Guidance on application of Davis Bacon Act and Service Contract Act to installation support contracts has been added at 222.402–70. A requirement for head of the contracting activity approval of a contracting officer's certification under FAR 22.608–4(b)(1) has been added at 222.608–4(b). The clause at 252.222–7000, Wage Determination, has been deleted because it was in conflict with Department of Labor regulations.

Part 223, Environment, Conservation, Occupational Safety, and Drug-Free Workplace. A new clause has been added as 252.223–7001, Hazard Warning Labels.

Part 224, Protection of Privacy and Freedom of Information. No significant changes.

Part 225, Foreign Acquisition. Definitions of "domestic concern," "foreign concern," and "nonqualifying country" have been added at 225.000–70. Table 25–1 has been added to provide examples of offer evaluation under the Buy American Act. Subsection 225.802–70 has been revised to require coordination with the contract administration office instead of the overseas commander. Restrictions on acquisition of night vision tubes, carbonyl iron powders, and anchor and mooring chain have been added to subpart 225.70 as a result of new or revised statutory restrictions. Prescriptions for use of some of the clauses have been revised. Numerous other minor revisions have been made for technical and editorial clarity.

Part 226, Other Socioeconomic Programs. No significant changes.

Part 227, Patents, Data, and Copyrights. This part was not published in any of the four proposed rule increments as major revisions are in process under DAR Case 90–438. Part 227 is included in the 1991 DFARS edition without change from the current DFARS edition except for minor numbering changes to conform with the 1991 edition numbering prescription.

Part 228, Bonds and Insurance. The definition of "self-insurance" at 228.001 has been deleted as it is covered by FAR. The policy on use of bid guarantees at 228.101 has been deleted because FAR is clear. Section 228.170 and the provision at 252.228–7004, Bonds or Other Security, have been revised to provide for a time period for return of executed bonds. The clause at 252.228–7002, Aircraft Flight Risks, has been revised to include a new paragraph on the Disputes clause. Guidance on treatment of liability insurance for construction contract subcontractors has been revised at 228.304(2). Section 228.311 has been added to provide the prescriptions for use within DoD of the clause at FAR 52.228–7, Insurance—

Liability to Third Persons, and the provision at FAR 52.228–6, Insurance—Immunity from Tort Liability.

Part 229, Taxes. No significant changes.

Part 230, Cost Accounting Standards. No changes.

Part 231, Contract Cost Principles and Procedures. The prescription for the clause at 252.231–7000, Supplemental Cost Principles, has been moved from subpart 231.70 to 231.100–70 because the clause applies to contracts with noncommercial as well as commercial entities. Subsections 231.205–1 and 231.205–38 have been removed as additional language has been added to FAR. A definition of "proposal" has been added to the clause at 252.231–7001, Penalties for Unallowable Costs. Other minor revisions have been made for technical and editorial clarity.

Part 232, Contract Financing. Undefinitized orders under indefinite delivery contracts were added to the list of contract actions at 232.102–70 for which the contracting officer may establish provisional delivery payments. Language has been added at 232.108 to address contract finance office responsibilities. Information requirements listed at 232.172–2 for financial reviews have been revised. Language on customary progress payments for small disadvantaged businesses has been added at 232.501–1(a) and 232.502–1(b). Language on the proper use of customary flexible progress payments has been added at 232.502–1–71. Other minor revisions have been made for technical and editorial clarity.

Part 233, Protests, Disputes, and Appeals. The prohibition at 233.210 on price adjustments under shipbuilding contracts has been moved to 243.105(a) to clarify that it applies to all price adjustments and not just to disputed changes. Section 233.7000 and the clause at 252.233–7000, Certification of Claims and Requests for Adjustment or Relief, have been revised to clarify the circumstances under which the certification is required and when a certification under the Contract Disputes Act will satisfy the certification requirements of 10 U.S.C. 2410.

Part 234, Major System Acquisition. The clause in the proposed rule at 252.234–7000, Cost/Schedule Control Systems, has been rewritten into a separate provision and a contract clause.

Part 235, Research and Development Contracting. The cost sharing policy language at 235.003 has been deleted as guidance is being added to FAR. Approval requirements at 235.006 for use of fixed price type contracts for development program efforts have been revised. The lists of clauses at 235.015–71(i) to be used in short form research contracts have been updated and revised. The prescription for and clause at 252.235–7000, Distribution of Final Scientific or Technical Report, have been deleted as the clause is being moved to FAR. Other minor revisions have been made in the text and the clauses for technical and editorial clarity.

Part 236, Construction and Architect-Engineer Contracts. A definition of "network analysis system" has been added at 236.102. A solicitation provision was added as 252.236–7008, Contract Prices—Bidding Schedules. Other minor revisions have been made for technical and editorial clarity.

Part 237, Service Contracting. Subpart 237.74, Communications Services, has been moved to subpart 239.74, Telecommunications Services. The clauses prescribed by subpart 237.74 (252.237–7016 through 252.237–7029) have been moved to 252.239–7002 through 252.239–7015. Subpart 237.75, Audit Services, has been moved to 237.203–70. The level of authorization at 237.203(d)(iii) for personal service contracts for contract field services has been changed from Deputy Assistant Secretary of Defense for Procurement to agency heads. Coverage on master agreements, which was added to DFARS by Defense Acquisition Circular 88–18, has been added at 237.270. Other minor revisions have been made for technical and editorial clarity.

Part 239, Acquisition of Information Resources. Subpart 239.74, Telecommunications Services, has been added. It includes language which was moved from subparts 204.4 and 237.74. Subpart 239.74 prescribes use of clauses at 252.239–7002 through 252.239–7015 (moved from 252.237–7016 through 252.237–7029) and the clause at 252.239–7016 (moved from 252.204–7000). The clauses at 252.239–7001, Rights in Privacy Safeguards, and 252.239–7002, Access to Contractor Facilities and Records—Privacy Safeguards Inspection, have been deleted since the FIRMR clause at 201.39.5202–5 adequately serves these purposes. Other minor revisions have been made for technical and editorial clarity.

Part 241, Acquisition of Utility Services. The definition of "dual franchise area" has been changed to "dual service area" and has been revised.

Part 242, Contract Administration. The list of contracts at 242.203(a) which can be retained for contract administration has been revised. One function has been added at 242.302(b) to those functions listed at FAR 42.302(b) which the contract administration office performs only when authorized by the contracting office. Language has been added at 242.705–1(b)(3) to ensure that costs questioned by DCAA auditors are properly resolved and discussed in the negotiation memorandum and that the contractor is notified of any unallowable costs. The threshold at 242.7002–1 for instituting a formal cost monitoring program has been increased from $50 million to $100 million. Language has also been added to permit monitoring, if appropriate, under the $100 million threshold. The disposition instructions at 242.7102 for voluntary refunds have been revised. Other minor revisions have been made for technical and editorial clarity.

Part 243, Contract Modifications. A prohibition on price adjustments under shipbuilding contracts has been added at 243.105. Guidance on definitization of change orders has been added at 243.204(b). Other minor revisions have been made for technical and editorial clarity.

Part 244, Subcontracting Policies and Procedures. No significant changes.

Part 245, Government Property. A definition of "agency peculiar property" has been added for use within DoD. The definition of "industrial plant equipment" has been revised. Section 245.306 on reviews of special tooling has been deleted since a forthcoming property manual will adequately cover this subject. The guidance at 245.403 on rental charges for use of special tooling and special test equipment has been revised. Subsection 245.505–6 has been revised to make it clear that industrial plant equipment must be reported on DD form 1342 when no longer required for the purpose authorized. Subsection 245.603–70 has been revised to allow contractors to withdraw property from inventory schedules and notify the affected screening activities. Instructions on completion of DD Form 1342, DoD Property Record, have been added at 245.606–70. Subsection 245.607–1(a) has been revised to allow contractors to make a single entry on the inventory schedule when a pre-inventory scrap recommendation is made by the plant clearance officer and the inventory is considered without value. Subsection 245.608–4 on limited screening of surplus property has been deleted. Section 245.613 has been revised to require determinations by the plant clearance officer for abandonment or destruction of property. The instructions in subpart 245.71 on use of the DD Form 1149 have been revised to permit its use for shipment of ir dustrial

plant equipment for donations. Section 245.7302 has been deleted because it is adequately covered elsewhere. Numerous other revisions have been made for technical and editorial clarity.

Part 246, Quality Assurance. Definitions of "metrology," "quality," "quality assurance," "quality audit," and "quality program" have been added at 246.101. The definitions at 246.407 of "critical nonconformance" and "minor nonconformance" have been revised. Other minor revisions have been made for technical and editorial clarity.

Part 247, Transportation. The clause in the proposed rule at 252.247–7003, Changes, has been deleted. The clause in the proposed rule at 252.247–7023, Extent of Transportation of Supplies by Sea, has been broken out into a solicitation provision and two clauses, now numbered 252.247–7022, 252.247–7023, and 252.247–7024.

Part 248, Value Engineering. No significant changes.

Part 249, Termination of Contracts. No significant changes.

Part 250, Extraordinary Contractual Actions. No significant changes.

Part 251, Use of Government Sources by Contractors. Section 251.100 has been deleted as there is no reason to limit application of part 251 to supplies delivered in the United States. Section 251.103 has been deleted as the FAR is being changed to adopt this language. Other minor revisions have been made for technical and editorial clarity.

Part 252, Solicitation Provisions and Contract Clauses. Revisions in provisions and clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 253, Forms. Revisions in forms are identified in the discussion of the part which prescribes use of the form.

Part 270, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales. Part 270, Acquisition of Computer Resources, has been moved to part 239. Part 271 has been redesignated as part 270. This redesignated part 270 was not published in any of the four proposed rule increments since major revisions are still under active consideration. This part is included in the 1991 DFARS edition substantially as it appears in the current DFARS edition, except for editorial and numbering changes.

Part 271, Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data. Moved in its entirety to part 270.

Appendix A, Armed Services Board of Contract Appeals. Was not published in one of the four proposed rule increments but no change from appendix A to current DFARS.

Appendix B, Coordinated Acquisition Assignments. This is a new appendix. It was published in the third proposed rule increment. No changes.

Appendix C, Contractor Purchasing System Reviews. This is a new appendix which replaces DFARS Supplement Number 1. It was published in the fourth proposed rule increment. C–205.6 has been revised to provide additional guidance on material estimating reviews. Guidance on value analysis has been added as C–205.7. Other minor revisions have been made for technical and editorial clarity.

Appendix D, Component Breakout. This is a new appendix, published in the fourth proposed rule increment. The text of the current appendix D, Notice of Hearing Under Gratuities Clause, has been deleted. There are no changes from the proposed rule.

Appendix E, DoD Spare Parts Breakout Program. This is a new appendix which replaces DFARS Supplement Number 6. It was not published in one of the four proposed rule increments.

Appendix F, Material Inspection and Receiving Report. This is appendix I, which was published in the second proposed rule increment and has been redesignated as appendix F. Minor revisions have been made for technical and editorial clarity.

Appendix G, Activity Address Numbers. This is appendix N, which was not published in one of the four proposed rule increments, but is redesignated as appendix G.

Appendix I, Material Inspection and Receiving Report. Redesignated as appendix F.

Appendix Q, Department of Defense Foreign Tax Relief Program. Proposed for deletion in the first proposed rule increment and is deleted.

Appendix R, Code of Federal Regulations (Title 41, Public Contracts, Property Management). Proposed for deletion in the third proposed rule increment and is deleted.

Appendix T, International Agreements. Proposed for deletion in the fourth proposed rule increment and is deleted.

DAR Supplement Number 1, Contractor Purchasing System Review (CPSR) Program. Deleted. Text moved to appendix C.

ASPR Supplement Number 2, Contract File Maintenance, Closeout, and Disposition. Deleted.

ASPR Supplement Number 3, Property Administration. Deleted.

ASPR Supplement Number 4, Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists. Deleted.

ASPR Supplement Number 5, Procurement of Utility Services. Deleted. Text moved to DFARS part 241.

DAR Supplement Number 6, DoD Replenishment Parts Breakout Program. Deleted. Text moved to DFARS appendix E.

Armed Services Pricing Manual. Retained without change.

Small Purchase Manual. Deleted by DAC 88–11.

B. Regulatory Flexibility Act

Parts 202–209, 211–214, 216, 222, 224, 227–231, 233, 234, 236, 243, 247–251, 270, 271, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and appendices A through T. These rules do not constitute significant revisions within the meaning of Public Law 98–577; therefore, the Regulatory Flexibility Act does not apply.

Parts 201, 210, 215, 217, 219, 223, 225, 226, 232, 235, 237, 239, 241, 242, 244, 245, 246, the provisions/clauses in part 252 prescribed by these parts, and the instructions in part 253 on forms prescribed by these parts. These rules will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and with few exceptions, the procedural changes are internal agency operating procedures. All comments received in response to publication of the proposed rules were considered in developing these final rules. No comments were received which addressed the Regulatory Flexibility statement.

Part 220 and the clauses in Part 252 prescribed by Part 220. The deletion of part 220 and the clauses in 252.220–7000 and 252.220–7001 was published in the **Federal Register** for public comment on March 22, 1990 (55 FR 10637), as amended April 6, 1990 (55 FR 12870), and subsequently on August 14, 1990 (55 FR 33218). A Regulatory Flexibility Analysis was not performed because we were unable to quantify the economic impact on small entities. No comments were received which addressed the Regulatory Flexibility statements.

C. Paperwork Reduction Act

Parts 201–217, 222–228, 230, 231, 233–235, 237–246, 248–251, 270, 271, the provisions/clauses in part 252 prescribed by these parts, the

instructions in part 253 on forms prescribed by these parts, and appendices A through T. These rules do not change or impose any record keeping or information collection requirements beyond that for which OMB approval has previously been obtained.

Part 219. The Paperwork Reduction Act applies. We deleted the combined small business-labor surplus areas set-asides (DFARS 219.502–70 and the clauses at 252.219–7001 and 252.219–7002). A reduction of 402 hours was approved for OMB #0704–0218 on August 27, 1990.

Part 220. The deletion of part 220 results in a reduction of 201 hours under OMB control number 0704–0260, which was approved by OMB on August 31, 1990.

Part 229. The clause at 252.229–7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations was deleted. A reduction of 372 hours was approved under OMB control number 0704–0249 on August 31, 1990.

Part 232. The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains an information collection requirement requiring OMB approval under 44 U.S.C. 3501, *et seq.* OMB granted approval on February 28, 1991, for a 3-year period ending February 28, 1994, under OMB Control Number 0704–0321.

Part 236. OMB Clearance No. 0704–0255 (expires February 28, 1994) is for 660 hours, and applies to the following clauses:

252.236–7002 Obstruction of Navigable Waterways (formerly 252.236–7006, Misplaced Material)
252.236–7003 Payment for Mobilization and Preparatory Work

The following clauses containing paperwork burden were deleted:

252.236–7005 Salvage Materials and Equipment
252.236–7012 Contractor-Prepared Network Analysis System
252.236–7013 Government-Prepared Network Analysis System
252.236–7017 Approved Construction Plant

Paperwork burden hours were reduced from 280,000 to 660.

Part 247. These rules, through elimination of some clauses and reduction of burdensome requirements in one clause, reduce the burden currently approved for this part. A request for clearance to reflect the reduced burden is being processed to OMB for approval.

List of Subjects in 48 CFR Parts 201 through 253, 270 and 271.

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Adoption of Amendments

Title 48 of the Code of Federal Regulations, chapter 2, is revised to read as follows:

CHAPTER 2—DEPARTMENT OF DEFENSE

Subchapter A—General

Part
201 Federal Acquisition Regulations System
202 Definitions of words and terms
203 Improper business practices and personal conflicts of interest
204 Administrative matters

Subchapter B—Acquisition Planning

205 Publicizing contract actions
206 Competition requirements
207 Acquisition planning
208 Required sources of supplies and services
209 Contractor qualifications
210 Specifications, standards, and other purchase descriptions
211 Acquisition and distribution of commercial products
212 Contract delivery or performance

Subchapter C—Contracting Methods and Contract Types

213 Small purchase and other simplified purchase procedures
214 Sealed bidding
215 Contracting by negotiation
216 Types of contracts
217 Special contracting methods

Subchapter D—Socioeconomic Programs

219 Small business and small disadvantaged business concerns
222 Application of labor laws to government acquisitions
223 Environment, conservation, occupational safety, and drug-free workplace
224 Protection of privacy and freedom of information
225 Foreign acquisition
226 Other socioeconomic programs

Subchapter E—General Contracting Requirements

227 Patents, data, and copyrights
228 Bonds and insurance
229 Taxes
230 Cost accounting standards
231 Contract cost principles and procedures
232 Contract financing
233 Protests, disputes, and appeals

Subchapter F—Special Categories of Contracting

234 Major system acquisition
235 Research and development contracting
236 Construction and architect-engineer contracts
237 Service contracting
239 Acquisition of information resources
241 Acquisition of utility services

Subchapter G—Contract Management

242 Contract administration
243 Contract modifications
244 Subcontracting policies and procedures
245 Government property
246 Quality assurance
247 Transportation
248 Value engineering
249 Termination of contracts
250 Extraordinary contractual actions
251 Use of government sources by contractors

Subchapter H—Clauses and Forms

252 Solicitation Provisions and Contract Clauses
253 Forms

Subchapter I—Agency Supplementary Regulations

270 Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales

Appendix A—Armed Services Board of Contract Appeals

Appendix B—Coordinated Acquisition Assignments

Appendix C—Contractor Purchasing System Reviews

Appendix D—Component Breakout

Appendix E—DoD Spare Parts Breakout Program

Appendix F—Material Inspection and Receiving Report

Appendix G—Activity Address Numbers

Note: Although the text of Manuals and Supplements to the Defense FAR Supplement are not published in the Code of Federal Regulations, they were listed for the convenience of the user. All of the Supplements have been deleted. The only manuals which remain in effect are: Armed Services Pricing Manual (1986) and Armed Services Pricing Manual, Volume 2, Price Analysis (1987).

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.
201.104 Issuance.
201.104–3 Copies.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.
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201.603–3 Appointment.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104 Issuance.

201.104–3 Copies.

Copies of the DFARS in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325. Purchase of a copy of DFARS includes a subscription for Defense Acquisition Circulars.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201–1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Directive 5000.35, Defense Acquisition Regulatory System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A), Pentagon, Washington, DC 20301–3000; datafax (703) 697–9845:

I. Problem: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating regulatory change.

II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation, which addresses the requirements of 201.402(3). The justification should be in the form of a memorandum for the USD(A)DP.

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense.

(b) When **Federal Register** publication is required for any policy, procedure, clause, or form, the department or agency requesting USD(A) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(*1*)(*i*).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70. Its subdivisions would be numbered 219.501–70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1–1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1— DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501–70
19.501–1	219.501–1	219.501–1–70
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70)
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70)

201.304 Agency control and compliance procedures.

Departments/agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1) Approval of the USD(A) is required, before inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter, or clause book, of any policy, procedure, clause, or form which—

(i) Has a significant effect beyond the internal operating procedures of the agency; or

(ii) Has a significant cost or administrative impact on contractors or offerors.

(2) The USD(A) has delegated authority to the USD(A)DP to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1) of this section.

(3) Approval of USD(A)DP is required for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter or clause book.

(4) Each department and agency shall develop and, upon approval by USD(A)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments/agencies submit requests for the USD(A) and USD(A)DP approvals required by this section through the Director of the DAR Council.

(6) Revisions to the DFARS are issued through Defense Acquisition Circulars or Departmental Letters.

(i) Defense Acquisition Circulars—

(A) Are issued on a quarterly basis to all recipients of the DFARS.

(B) Are published in the **Federal Register.**

(C) Include, in addition to DFARS revisions, policies, directives, and informational items.

(D) Include the effective dates for use of the revisions, policies, or directives. The effective date means the date on which the revisions, policies, or directives must be applied. Unless stated otherwise in the circular, any new or revised clauses, provisions, or forms must be included in solicitations issued on or after that date.

(ii) Departmental Letters—

(A) Are issued as necessary to the departments and agencies when time is of essence in disseminating a revision, policy, or directive.

(B) Are effective until the revision, policy, or directive is superseded by publication of the material in a Federal Acquisition Circular, Defense Acquisition Circular, or other directive or is specifically withdrawn.

Subpart 201.4—Deviations from the FAR

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition, USD(A)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations; or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) Individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraphs (1) or (2), as appropriate. Submit deviations which require USD(A)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the **Federal Register** and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.

201.602-2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer's representative (COR)—

(1) Must be a Government employee, unless otherwise authorized in agency regulations.

(2) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines.

(3) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office.

(4) May not be delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

(5) Must be designated in writing, and a copy furnished the contractor and the contract administration office,—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

(6) Must maintain a file for each contract assigned. This file must include, as a minimum—

(i) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(ii) Documentation of actions taken in accordance with the delegation of authority.

201.602-70 Contract clause.

Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

201.603 Selection, appointment, and termination of appointment.

201.603-3 Appointment.

Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

PART 202—DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 202.1—Definitions

202.101 Definitions.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 202.1—Definitions

202.101 Definitions.

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

Department of Defense

Real Estate and Facilities Directorate, Washington Headquarters Services

Army

Contract Support Agency
Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
Armament Munitions and Chemical Command
Missile Command
Laboratory Command
Communications-Electronics Command
Troop Support Agency
Troop Support Command
Tank-Automotive Command
Aviation Systems Command
Training and Doctrine Command
Test and Evaluation Command
Forces Command
Health Services Command
Military District of Washington
U.S. Army, Europe
National Guard Bureau
Corps of Engineers
Information Systems Command
Medical Research and Development Command
U.S. Army, Pacific
Military Traffic Management Command
Strategic Defense Command
Eighth U.S. Army
Depot System Command
Intelligence and Security Command
U.S. Army South
Defense Supply Service—Washington
Directorate of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army
U.S. Army Special Operations Command

Navy

Deputate, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Directorate of Procurement Policy, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Naval Air Systems Command
Space and Naval Warfare Systems Command
Naval Facilities Engineering Command
Naval Sea Systems Command
Naval Supply Systems Command
Ships Parts Control Center
Navy Aviation Supply Office
Office of Naval Research
Military Sealift Command
Strategic Systems Programs
Headquarters, U.S. Marine Corps
U.S. Marine Corps Research, Development, and Acquisition Command
Installations and Logistics, Headquarters, U.S Marine Corps

Air Force

Office of the Deputy Assistant Secretary (Contracting)
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
Space Command
Electronic Security Command

Defense Advanced Research Projects Agency

Office of the Deputy Director, Management

Defense Communications Agency

Headquarters, Defense Communications Agency
Defense Commercial Communications Office

Defense Intelligence Agency

Office of Procurement

Defense Logistics Agency

Office of the Executive Director, Contract Management
Office of the Executive Director, Contracting
Defense Supply Centers
Defense Personnel Support Center

Defense Mapping Agency

Headquarters, Logistics Office

Defense Nuclear Agency

Headquarters, Defense Nuclear Agency

National Security Agency

Headquarters, National Security Agency

On-Site Inspection Agency

Headquarters, On-Site Inspection Agency

Strategic Defense Initiative Organization

Headquarters, Strategic Defense Initiative Organization

United States Special Operations Command

Headquarters, United States Special Operations Command

Contracting officer's representative means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Communications Agency, the Defense Intelligence Agency, the Defense Investigative Service, the Defense Logistics Agency, the Defense Mapping Agency, the Defense Nuclear Agency, the National Security Agency, the On-Site Inspection Agency, the Strategic Defense Initiative Organization, and the United States Special Operations Command.

Department of Defense (DoD), as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

Executive agency means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

Head of the agency, means for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition), and the Director of Defense Procurement, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense.

Senior procurement executive, means for DoD—

Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition);

Department of the Army—Assistant Secretary of the Army (Research, Development and Acquisition);

Department of the Navy—Assistant Secretary of the Navy (Shipbuilding and Logistics);

Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the

Under Secretary of Defense (Acquisition).

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 203.1—Safeguards

203.103 Independent pricing.
203.103–2 Evaluating the certification.
203.104 Procurement integrity.
203.104–4 Definitions.
203.104–5 Disclosure of proprietary and source selection information.
203.170 Statutory prohibitions on compensation to former DoD employees.
203.170–1 Policy.
203.170–2 Reporting requirements.
203.170–3 Penalties.
203.170–4 Contract clause.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.
203.502–2 General.
203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.
203.570–1 Scope.
203.570–2 Policy.
203.570–3 Waiver.
203.570–4 Reporting.
203.570–5 Contract clause.

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.
203.7001 Procedures.
203.7002 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 203.1—Safeguards

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b)(3) The contracting officer also shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.104 Procurement integrity.

203.104–4 Definitions.

(c)(2) Each order under a basic ordering agreement is a separate procurement action.

203.104–5 Disclosure of proprietary and source selection information.

(e)(4) For purposes of FAR 3.104–5(e)(4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

203.170 Statutory prohibitions on compensation to former DoD employees.

203.170–1 Policy.

(a) 10 U.S.C. 2397b prohibits DoD officials who left DoD service on or after April 16, 1987, and who, while serving with the DoD, performed acquisition related functions in connection with a major defense contractor, from accepting compensation from that contractor for a period of two years after the officials have left service with the DoD. Additional DoD implementation of the statute is in DoD Directive 5500.7, Standards of Conduct. (See the clause at 252.203–7000, Statutory Prohibition on Compensation to Former Department of Defense Employees, for definition of terms.)

(b) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989, to November 30, 1990. Section 815 of the 1991 DoD Authorization Act (Pub. L. 101–510) continued the suspension from December 1, 1990, through May 31, 1991. During the period of the suspension, the clause which appeared at 252.203–7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, was inserted in solicitations and contracts, but the provision of the clause that prohibited the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating that provision, were not applied.

203.170–2 Reporting requirements.

Paragraph (c) of the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, requires major defense contractors to report on the employment of certain former DoD employees.

203.170–3 Penalties.

(a) Major defense contractors are subject to the following penalties for knowing failure to comply with the statute, the contractual prohibition, or the reporting requirements—

(1) Civil fines up to $500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.

(2) Liquidated damages in the amount of either $100,000 or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the Designated Agency Ethics Official.

203.170–4 Contract clause.

Use the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, in all solicitations and contracts expected to exceed $100,000.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Report suspected violations of the Anti-Kickback Act in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.502–2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.

203.570–1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408.

203.570–2 Policy.

(a) Contractors or subcontractors shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract; or,

(2) On its board of directors; or

(3) As a consultant, agent, or representative.

(b) The period covered by the prohibition in paragraph (a) of this subsection is for five years from the date of conviction unless waived in the interest of national security by the agency head or designee.

203.570–3 Waiver.

(a) The contracting officer shall—

(1) Review any request for waiver; and

(2) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(3) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(b) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

203.570–4 Reporting.

When a Defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570–2, the contracting officer shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.570–5 Contract clause.

Use the clause at 252.203–7001, Special Prohibition on Employment, in all solicitations and contracts, except those which use the small purchase procedures of FAR part 13.

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense for Acquisition.

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that—

(1) Are suitable to the size of the company and the extent of their involvement in Government contracting,

(2) Promote such standards,

(3) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(4) Ensure corrective measures are promptly instituted and carried out.

203.7001 Procedures.

(a) A contractor's system of management controls should provide for—

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate;

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded a DoD contract of $5 million or more must display DoD Hotline Posters prepared by the DoD Office of the Inspector General unless—

(1) The contract will be performed in a foreign country; or

(2) The contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

203.7002 Contract clause.

Use the clause at 252.203–7002, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed $5 million, except when performance will take place in a foreign country.

PART 204—ADMINISTRATIVE MATTERS

Sec.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

Subpart 204.2—Contract Distribution

204.201 Procedures.
204.202 Agency distribution requirements.

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.
204.404 Contract clause.
204.404–70 Additional contract clause.

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.
204.601 Record requirements.
204.602 Federal Procurement Data System.
204.603 Solicitation provision.
204.603–70 Commercial and Government entity (CAGE) codes.
204.670 Defense Contract Action Data System (DCADS).
204.670–1 Definitions.
204.670–2 Reportable contracting actions.
204.670–3 Contracting office responsibilities.
204.670–4 Contract administration office responsibilities.
204.670–5 Departmental data collection point responsibilities.
204.670–6 Types of DD Form 350 reports.

204.670–7 Report formats.
204.670–8 Security classification.
204.670–9 Individual contract reporting of actions $25,000 or less.

Subpart 204.8—Contract Files

204.802 Contract files.
204.804 Closeout of contract files.
204.804–1 Closeout by the office administering the contract.
204.804–2 Closeout of the contracting office files if another office administers the contract.
204.805 Disposal of contract files.

Subpart 204.9—Information Reporting to the Internal Revenue Service

204.902 General.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.
204.7001 Policy.
204.7002 Procedures.
204.7003 Basic PII number.
204.7004 Supplementary PII numbers.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.
204.7101 Definitions.
204.7102 Policy.
204.7103 Contract line items.
204.7103–1 Criteria for establishing.
204.7103–2 Numbering procedures.
204.7104 Contract subline items.
204.7104–1 Criteria for establishing.
204.7104–2 Numbering procedures.
204.7105 Contract exhibits and attachments.
204.7106 Contract modifications.
204.7107 Contract accounting classification reference number (ACRN).

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.
204.7201 Definitions.
204.7202 General.
204.7202–1 CAGE codes.
204.7202–2 CEC codes.
204.7202–3 Taxpayer identification numbers.
204.7202–4 Locally developed coding systems.
204.7203 Responsibilities of contracting officers.
204.7204 Maintenance.
204.7204–1 Maintenance of the CAGE file.
204.7204–2 Maintenance of the CEC code.
204.7205 Novation agreements, mergers and sales of assets.
204.7206 Using CAGE codes to identify agents and brokers.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

(a)(i) Include the contracting officer's telephone number on contracts and modifications.

(ii) The contracting officer may sign bilateral modifications of a letter contract before signature by the contractor.

Subpart 204.2—Contract Distribution.

204.201 Procedures.

The procuring contracting officer (PCO) retains the original signed contract for the official contract file. Administrative contracting officers and terminations contracting officers provide the original of each modification to the PCO for retention in the official contract file. Unless otherwise directed by department/agency procedures, the office issuing the orders maintains the original of orders under basic ordering agreements and the original of provisioning orders.

(e)(i) Distribute one copy of each of the following types of contracts or modifications to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices)—

(A) Cost reimbursement;

(B) Time-and-materials;

(C) Labor-hour;

(D) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability; and

(E) Any other contract that requires audit service.

(ii) If there is a question as to the appropriate DCAA field audit office, request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.

(f) Provide two copies to offices performing contract administration support functions.

204.202 Agency distribution requirements.

(1) Distribute copies of contracts as follows—

(i) Four copies to the contract administration office (send simultaneously with the copy furnished under FAR 4.201(b));

(ii) One copy to each consignee indicated in the contract. A transshipping terminal is not a consignee.

(A) Inventory control points that have an automated uniform inventory control point data base that interfaces with consignees may use their automated procedure rather than sending a written copy of the contract. However, when inspection is required at destination, send a written copy to the consignee.

(B) The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of contract documents in Defense Subsistence Region, Europe;

(iii) Two copies to the military interdepartmental purchase request requiring activity in the case of coordinated acquisition; and

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or payment office (see DLAH 4105.4, DoD Directory of Contract Administration Services Components).

(2) The activity executing a contract modification shall furnish a copy of the basic contract and all modifications to—

(i) The new and old payment office when adding or changing a payment office;

(ii) The new contract administration office, a new consignee or other activity, based on the extent to which each activity is concerned with the basic contract and modifications.

(3) Distribution of modifications issued to provide initial or amended shipping instructions under 204.7004(c)(3)(iii) and 204.7004(f) may be limited to the following—

(i) Contractor, one copy;

(ii) Receiving activity, one copy each;

(iii) Contract administration office, one copy;

(iv) Payment office, one copy; and

(v) Contract administration office automatic data processing point, one copy.

(4) Distribution of modifications generated by automated means (computer programs) may be limited to the following—

(i) Contractor, one copy;

(ii) Contract administration office, one copy;

(iii) New payment office, one copy;

(iv) Procuring contracting office, one copy;

(v) Funding activities, one copy to each; and

(vi) Consignee, one copy to each.

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

Subpart 239.74 contains policy and procedures for securing telecommunications between Government agencies and contractors and subcontractors.

204.404 Contract clause.

204.404–70 Additional contract clause.

Use the clause at 252.204–7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.

The Defense Contract Action Data System (DCADS) (see 204.670) is the DoD reporting system which supports the uniform reporting requirements for—

(1) DD Form 350, Individual Contracting Action Report; and

(2) DD Form 1057, Monthly Summary of Actions $25,000 or Less.

204.601 Record requirements.

(a) The DCADS meets these record retention requirements.

(d) The Directorate for Information, Operation, and Reports (DIOR), of the Washington Headquarters Services (WHS) transmits required DoD information to the Federal Procurement Data System.

204.602 Federal Procurement Data System.

(c) DoD uses the DD Form 350, Individual Contracting Action Report, in lieu of the SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report. DoD uses the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, in lieu of the SF 281, FPDS Summary Contract Action Report ($25,000 or Less).

204.603 Solicitation provision.

204.603-70 Commercial and Government entity (CAGE) codes.

When the CAGE codes for the prospective offerors are not available to the contracting office, use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting.

204.670 Defense Contract Action Data System (DCADS)

204.670-1 Definitions.

As used in this section and 253.204-70 and 253.204-71—

(a) *Contract administration office* means an office, other than the contracting office, which awards or executes contracting actions on behalf of the contracting office, including actions relating to the settlement of terminated contracts.

(b) *Contracting action* means any written action obligating or deobligating funds in connection with the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants or cooperative agreements. The term includes, but is not limited to—

(1) Definitive contracts, including notices of award;

(2) Letter contracts;

(3) Purchase orders;

(4) Orders under existing contracts or agreements, e.g.—

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164 by installation transportation offices;

(ii) Calls against blanket purchase agreements;

(iii) Job orders;

(iv) Task orders;

(v) Delivery orders;

(vi) Communication services authorizations; and

(vii) Notices of termination or cancellation.

(5) Contract modifications, e.g.—

(i) Change orders;

(ii) Supplemental agreements;

(iii) Funding actions; and

(iv) Option exercises.

(c) *Departmental data collection points* are—

(1) For the Army (including Corps of Engineers Civil Works): U.S. Army Contracting Support Agency, ATTN: OSA(RDA)SFRD-KS, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(2) For the Navy: As directed by NAVSUP-026.

(3) For the Air Force: As directed by SAF/AQCP.

(4) For the Defense Logistics Agency: As directed by Headquarters, Defense Logistics Agency.

(5) For other DoD contracting activities: U.S. Army Contracting Support Agency, ATTN: OSA(RDA)SFRD-KS, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(d) *United States and outlying areas* is defined in Federal Information Processing Standard Publication (FIPS PUB) 55-2, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas. Outlying areas are—

(1) American Samoa;
(2) The Federated States of Micronesia;
(3) Guam;
(4) The Marshall Islands;
(5) Northern Mariana Islands;
(6) The Trust Territory of Palau;
(7) Puerto Rico;
(8) The U.S. Minor Outlying Islands; and
(9) The U.S. Virgin Islands.

204.670-2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for—

(1) All contracting actions that obligate or deobligate more than $25,000; and

(2) All contracting actions that obligate or deobligate $25,000 or less if the action is in a designated industry group under the small business competitiveness demonstration program (See 204.670-9 and FAR subpart 19.10).

(b) Except as provided in paragraph (c) of this subsection, complete a DD Form 1057 for all contracting actions which obligate or deobligate $25,000 or less, including contracting actions reported on a DD Form 350 under paragraph (a)(2) of this subsection.

(c) The following contracting actions are not subject to reporting on either the DD Form 350 or DD Form 1057—

(1) Transactions that cite only nonappropriated funds (Funds held in trust accounts for foreign governments shall be treated as appropriated funds.);

(2) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the contracting action;

(3) Orders from GSA stock and the GSA Consolidated Purchase Program;

(4) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office's (RSMO) BOAs;

(5) Requisitions transferring supplies within or among the departments or agencies; and

(6) Pursuant to 204.670-6(b), orders placed by other contracting activities against indefinite delivery contracts awarded by the—

(i) Military Sealift Command;

(ii) Defense Fuel Supply Center for petroleum and petroleum products; or

(iii) Defense General Supply Center for petroleum products.

204.670-3 Contracting office responsibilities.

(a) For DD Form 350, contracting offices—

(1) Prepare the appropriate type of DD Form 350 (see 204.670-5), in accordance with the instructions in 253.204-70, on all reportable contracting actions (see 204.670-2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 in the required format within three working days after the date on which the dollars were actually obligated or deobligated in the required format (see 204.670-7). Submit all contracting actions for the calendar month to the departmental data collection point (see 204.670-1(c)) before the close of the reporting month, in accordance with departmental/agency procedures, except—

(i) For Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the due date is

ten working days when permitted by the departmental data collection point;

(ii) For actions executed in the month of September, due dates may be extended ten calendar days when permitted by the departmental data collection point; and

(iii) For actions accomplished by a contract administration office, the due date is three working days after the receipt of the contractual instrument annotated "DD FORM 350 REPORTING COPY."

(3) Prepare and submit a corrected or cancelling DD Form 350 as required in accordance with departmental data collection point instructions.

(4) Establish a control system for assigning report numbers to DD Forms 350 (Block A2 of the DD Form 350). The number shall have four positions and may be any combination of alpha or numeric characters. 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 activity in order to prevent duplication of report numbers.

(5) Maintain a copy of the DD Form 350 in the contract file, as required by department/agency regulations.

(b) For DD Form 1057, contracting offices—

(1) Prepare a DD Form 1057, in accordance with the instructions in 253.204–71, covering reportable contracting actions (see 204.670–2(b)), including actions accomplished by contract administration offices on behalf of the contracting office. An installation, base, or other activity may have more than one contracting office code to separate the various types of acquisitions, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Each contracting office code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 in the required format within three working days after the cutoff of the reporting month in the required format (see 204.670–7 for alternate formats). Contracting offices are authorized to cutoff the reporting month no earlier than the 25th calendar day. For September only, the cutoff date shall not be later than September 30. Submit the DD Form 1057 to the departmental data collection point to arrive before the close of the reporting month as directed by the department/agency supplement.

(3) Unless otherwise instructed by the departmental data collection point, do not submit revised DD Form 1057 reports. Include any required corrections or adjustments in following month's report.

204.670–4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 or DD Form 1057 reporting must submit an annotated copy of the contractual instrument to the contracting office so that the contracting office can submit the required report.

(a) For DD Form 350, annotate in the heading of the contractual instrument in large block letters "DD FORM 350 REPORTING COPY." Send the annotated copy to the contracting office within one working day after the action date.

(b) For DD Form 1057, annotate in the heading of the contractual instrument in large block letters "DD FORM 1057 REPORTING COPY." Send the annotated copy with the normal distribution.

204.670–5 Departmental data collection point responsibilities.

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS–DIOR with the majority agreement of the departments/agencies and prescribed by the Director of Defense Procurement;

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days.

(d) Report control symbols DD–P&L(M) 1014 and DD–P&L(M) 1015, respectively apply to reports submitted to WHS–DIOR for DD Form 250 actions and DD Form 1057 actions.

204.670–6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per contracting action.

(b) A consolidated report is one DD Form 350 report which combines several contracting actions. Prepare consolidated reports for—

(1) Awards to individuals in support of dependent schools, e.g., principals and teachers. Consolidate these transactions monthly and report the cumulative dollar amount on one DD Form 350.

(2) Military Airlift Command awards for international airlift services. The Command reports these at the end of each operating month with one DD Form 350 for each airlift contract.

(3) Military Sealift Command awards of indefinite delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(4) Defense Fuel Supply Center or Defense General Supply Center indefinite delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(5) Orders placed by the military departments for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. The military departments consolidate the orders monthly and report the cumulative dollar amounts on one DD Form 350 in accordance with departmental regulations. Defense Logistics Agency activities submit single rather than consolidated reports.

(6) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental regulations.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Block B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions is under $25,000, report the under $25,000 portion on a DD Form 1057 in lieu of a DD Form 350.

(2) The contracting action includes more than one type of contract (Block C5 on the DD Form 350) and the type with the least dollar value exceeds $500,000. Prepare a separate DD Form 350 for each contract type.

204.670–7 Report formats.

Contracting offices submit the signed original DD Forms 350 and 1057, unless the data collection point approves use of an automated facsimile or electronic equivalent containing the information.

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents Classified contracts are not

exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if security reasons indicate that it is necessary to modify coding of all or any individual blocks on the DD Form 350. If such contact cannot be made for security reasons, obtain instructions from the Office of the Deputy Under Secretary of Defense for Security Policy, Attn: Deputy Director for Information Security and Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

204.670–9 Individual contract reporting of actions $25,000 or less.

Under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10), contract actions of $25,000 or less in four designated industry groups (for Army, includes dredging) must be reported in the same manner as if the action were in excess of $25,000.

(a) Report contract actions of $25,000 or less in the designated industry groups on both the DD Form 350 and the DD Form 1057.

(b) The following contracting actions are not subject to the additional DD Form 350 reporting, although they must still be reported on the DD Form 1057—

(1) Contracting actions of $500 or less;

(2) Foreign military sales;

(3) Orders or modifications under a Federal supply schedule;

(4) Actions with another Federal agency;

(5) Actions with non-U.S. business firms; and

(6) Actions where the place of performance is other than the United States and its outlying areas.

Subpart 204.8—Contract Files

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) *Authenticated copies* means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) *Conformed copies* means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59–65 on the PK9. If the contracting office must do a major closeout action that will take longer than three months after the date shown in Block 9d of the DD Form 1594, or in columns 59–65 of the PK9—

(1) The closeout date for file purposes will be the date in Block 10e of the DD Form 1594 or the date of the closeout statement executed when the MILSCAP PK9 is received.

(2) The contracting office shall notify the contract administration office of the revised closeout date by either sending a copy of the completed DD Form 1594 or by preparing a MILSCAP Format Identifier PKZ, Contract Closeout Extension.

204.804–1 Closeout by the office administering the contract.

(1) For contracting offices administering their own contracts, locally developed forms or statement of completion may be used instead of the DD Form 1594, Contract Completion Statement. Whichever method is used, the form shall be retained in the official contract file.

(2) For contracts valued above the small purchase threshold, prepare a DD Form 1597, Contract Closeout Check List, (or agency equivalent) to ensure that all required contract actions have been satisfactorily accomplished.

204.804–2 Closeout of the contracting office files if another office administers the contract.

(1) When an office, other than the contracting office, administers the contract, it shall—

(i) Provide the contracting office an interim contract completion statement when the contract is physically completed and accepted. This notice may be in the form of either a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9, Contract Physical Completion. When the DD Form 1594 is used, the contracting officer—

(A) Annotates Block 8, Remarks, with—

(*1*) "Notice of Physical Completion;"

(*2*) Final acceptance date;

(*3*) Signature of a responsible official; and

(*4*) Date signed.

(B) Does not complete Blocks 9 (b), (c), and (d) at this time;

(ii) Prepare a DD Form 1597, Contract Closeout Check List, if necessary, to determine that all the required actions have been done;

(iii) Initiate DD Form 1593, Contract Administration Completion Record, if necessary to obtain statements from other organizational elements that they have completed the actions they are responsible for; and

(iv) Upon final payment—

(A) Process the DD Form 1594 with Blocks 1 through 9 completed or the MILSCAP Format Identifier PK9 verifying that all contract administration office actions have been done; and

(B) Send the original of the DD Form 1594 or the MILSCAP Format Identifier PK9 to the contracting office, and file a copy in the official contract file.

(2) If the administrative contracting officer (ACO) cannot closeout a contract within the specified time period (see FAR 4.804–1), the ACO must notify the procuring contracting officer (PCO) within 45 days after the expiration of the time period of—

(i) The reasons for the delay; and

(ii) New target date for closeout. If MILSCAP procedures apply, the ACO shall use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice to the PCO.

(3) If the contract still is not closed out by the new target date, the ACO shall again notify the PCO with the reasons for delay and new target date. If MILSCAP procedures apply, continue to use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice.

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the General Accounting Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials

that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certification of cost or pricing data (see FAR 15.804–2), for six years. If it is impossible to determine the final payment date in order to measure the six year period, retain the files for nine years.

Subpart 204.9—Information Reporting to the Internal Revenue Service

204.902 General.

(b) DoD uses the DD Form 350, Individual Contract Action Report, (see 204.670) to meet these reporting requirements.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.

This subpart prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. This subpart—

(a) Does not apply to solicitations or contracts issued by the Defense Commercial Communications Office of the Defense Communications Agency; and

(b) Is optional for solicitations and contracts that will be completely administered by the purchasing office or the consignee, except that—

(1) The procurement instrument identification (PII) number, including supplemental modification numbers, shall not exceed 19 characters (excluding hyphens); and

(2) The number shall begin with the purchasing office identifier and the fiscal year in accordance with 204.7003(a) (1) and (2) and appendix G.

204.7001 Policy.

(a) Use the uniform PII numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument.

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letters "I" or "O," except as noted in 204.7003(a)(1)(i) (J) and (K)."

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023–90–D–0009. If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary Number N00023–90–F–0120).

204.7003 Basic PII number.

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first of the six positions, in upper case letters, identify the department/agency and office issuing the instrument.

(i) Department/agency identification:

(A) Department of the Army—DA

(B) Department of the Navy (except Marine Corps)—N

(C) Department of the Air Force F—

(D) Defense Communications Agency—DCA

(E) Defense Logistics Agency—DLA

(F) Defense Nuclear Agency—DNA

(G) Defense Mapping Agency—DMA

(H) Miscellaneous Defense Activities—MDA

(I) Marine Corps—M

(J) Strategic Defense Initiative Office—SDIO

(K) On Site Inspection Agency—OSIA

(L) Defense Commissary Agency—DECA

(ii) Issuing office identification. The remaining positions are the alpha-numeric characters that identify the issuing office. These characters are in appendix G.

(iii) Use all six positions. If necessary, enter zeros between the department/agency identifier and the issuing office identifier.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the PII number was assigned.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

(i) Blanket purchase agreements—A

(ii) Invitations for bids—B

(iii) Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD—C

(iv) Indefinite delivery contracts—D

(v) Facilities contracts—E

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F

(vii) Basic ordering agreements—G

(viii) Agreements, including basic agreements and loan agreements, but excluding basic purchasing agreements, basic ordering agreements, and leases—H

(ix) Do not use—I

(x) Reserved—J

(xi) Short form research contract—K

(xii) Lease agreement—L

(xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M

(xiv) Notice of intent to purchase—N

(xv) Do not use—O

(xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P

(xvii) Request for quotation—manual—Q

(xviii) Request for proposal—R

(xix) Sales contract—S

(xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T

(xxi) See T—U

(xxii) See P—V

(xxiii) See M—W

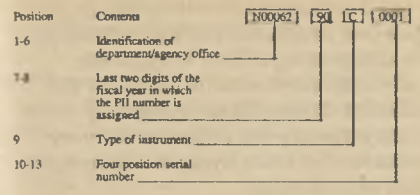
(xxiv) Reserved for departmental use—X

(xxv) Imprest fund—Y

(xxvi) Reserved for departmental use—Z

(4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—



204.7004 Supplementary PII numbers.

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

(1) Amendments to solicitations;

(2) Modifications to contracts and agreements, including provisioned item orders; and

(3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062–91–R–1234–0001.

(c) *Modifications to contracts and agreements.*

(1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.

(2) *Position 1.* Identify the office issuing the modification—

(i) Contract administration office—A

(ii) Contracting office—P

(3) *Positions 2 through 3.* These are the first two digits in a serial number. They may be either alpha or numeric. Use the letters K, L, M, N, P, Q, S, T, U, V, W, X, Y, or Z only in the second position and only in the following circumstances—

(i) Use K, L, M, N, P, and Q in the second position only if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S, and only S, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has either FOB origin or destination delivery terms; and

(B) The price changes.

(iii) Use T, U, V, W, X, or Y, and only those characters, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has FOB origin delivery terms; and

(B) The price does not change.

(iv) Only use Z in the second position to identify a modification which definitizes a letter contract.

(4) *Positions 4 through 6.* These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section. Examples of proper numbering for positions 2–6 (the first position will be either "A" or "P") are as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001–99999	K0001–K9999	S0001–S9999
then	KA001–KZ999	SA001–SZ999
A0001–A9999	L0001–L9999	T0001–T9999
B0001–B9999	LA001–LZ999	TA001–TZ999
and so on to	M0001–M9999	U0001–U9999
H0001–H9999	MA001–MZ999	UA001–UZ999
then	N0001–N9999	V0001–V9999
J0001–J9999	NA001–NZ999	VA001–VZ999
then	P0001–P9999	W0001–W9999
R0001–R9999	PA001–PZ999	WA001–WZ999
then	Q0001–Q9999	X0001–X9999
AA001–HZ999	QA001–QZ999	XA001–XZ999
then		Y0001–Y9999
JA001–JZ999		YA001–YZ999
RA001–RZ999		

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* (1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office by appendix G. Do not use the letters A or P in the first position. The third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383–91–D–0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100–91–F–0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

204.7101 Definitions.

Accounting classification reference number (ACRN) means a two position alpha or alpha/numeric control code used as a method of relating the long line accounting classification citation number to detailed line item information contained in the schedule when the contract is to be assigned to the Defense Contract Management Command for administration.

Attachment means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

Definitized item, as used in this subpart, means an item for which a firm price has been established in the basic contract or by modification.

Exhibit means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

Undefinitized item, as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers, if practicable;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line and subline items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts, unless—

(1) There are no postaward contract administration functions that the contracting officer will assign to an office listed in the DoD Directory of Contract Administration Services Components;

(2) The contract is an indefinite delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(3) The contract is a communications service authorization issued by the Defense Communications Agency's Office of Defense Commercial Communications.

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all three of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price.* The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10–99 @ $1.00, 100–249 @ $.98, 250+ @ $.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated ("as required" constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(b) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(c) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

204.7103-2 Numbering procedures.

(a) Contract line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers shall be sequential but need not be consecutive.

(b) The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

204.7104 Contract subline items.

204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which

consist of more than one item that requires separate identification.

(a) *Informational subline items.* (1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(b) *Separately identified subline items.* (1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items may be appropriate when items bought under one contract line item number—

(i) Are to be paid from more than one accounting classification;

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103-1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3) (i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204-7002, Payment for Subline Items Not Separately Priced.

204.7104-2 Numbering procedures.

(a) Number subline items by adding either two numeric characters or two alpha characters to the basic contract line item number.

(1) *Information subline item numbers.* Use numeric characters only for information subline items, running 01 through 99. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 000101, 000102, and 000103. Do not use a designation more than once within a contract line item.

(2) *Separately identified subline items.* Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

(i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

(b) Within a given contract line item, the subline item numbers shall be sequential but need not be consecutive.

(c) Exhibits may be used as an alternative to setting forth in the schedule a long list of contract subline items. If exhibits are used, create a contract subline item citing the exhibit's identifier. See 204.7105.

(d) If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If offeror separately prices these functions, then contracting officers may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of 204.7104-1.

(e) The following examples illustrate subline items numbering—

(1) Subline items structured to identify destinations for identical items, identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, Apbi, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACRN:AA.				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	10	EA	$100.00	$1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	15	EA	$100.00	$1,500.00

(2) Subline items structured to identify destinations for identical items, not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACRN:AA.				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	20	EA	$99.00	$1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	30	EA	$98.00	$2,940.09

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

(3) Subline items structured to identify different sizes of an item that are identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1		PR	$38.35	$13,422.50
0013AA	8430-00-655-5541 Size 5N	50			
0013AB	8430-00-655-5544 Size 8N	70			
0013AC	8430-00-655-5551 Size 9N	30			
0013AD	8430-00-655-5535 Size 9R	200			

Note: Unit price and total amount shown at line item level rather than at subline item level.

(4) Subline items structured to identify different sizes of an item that are not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.				
0002AA	First Article	1	LO	NSP	
0002AB	8470-00-141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470-00-141-0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470-00-141-0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

(5) Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item. (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380, Ref No 63504-WZ Armature Motor ACRN: AA				
0001AA	6105-00-635-6568 50380, Ref No 63504-WZ Armature Motor	2	EA	$2,895.87	$5,791.74
0001AB	Packaging	2	EA	289.58	579.16

(6) Subline items structured to identify different accounting classifications for identical items (delivery schedule shall be established for each subline item, not the contract line item).

AJ: 17X150518350315069100000192B000000000000000000
AK: 17X150518370317569100000192B000000000000000000
AL: 17X150519350314369100000192B000000000000000000

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder, KY-312/A5Q-19		EA	$3,037.40	
0002AA	Pulse Decoder, KY-312/A5Q-19 ACRN: AJ	2			6,074.80
0002AB	Pulse Decoder, K1Y-312/A5Q-19 ACRN: AK	6			18,224.40
0002AC	Pulse Decoder, KY-312/A5Q-19 ACRN: AL	2			$6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level.

(7) Subline items structured to identify parts of an assembly (delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea @ $52,061, $104,122 total)				
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type 145 Amps, 220 V DC)	2	EA	NSP	
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

(8) Subline items structured to identify parts of a kit (delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1, (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	
0031BF	Actual Panel Assy LD 542924	50	EA	NSP	

Note: In this example, the prices of subline items 0031AB through 0031BF are included in the Integrator Assembly.

204.7105 Contract exhibits and attachments.

(a) *Use of exhibits.* (1) Exhibits may be used instead of putting a long list of contract line items or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a contract line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

(4) Each exhibit shall apply to only one contract line item or subline item, except—

(i) One exhibit may apply to one or more option line item(s) when the data required under the exhibits is identical in all respects except the period during which the option is to be exercised; and

(ii) An exhibit may apply to more than one contract line item if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract line items.

(5) More than one exhibit may apply to a single contract line item.

(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) *Separately priced.* When data are separately priced, enter the price in only one place in the contract: in either Section B of the contract schedule or on the DD Form 1423. Whichever place, display the price there consistently.

(A) Section B. If the prices are entered in section B of the schedule, detach Blocks 17 and 18 of the DD Form 1423 and file elsewhere in the contract file. If the prices are entered on the DD Form 1423, do not detach Blocks 17 and 18 of the DD Form 1423.

(B) DD Form 1423. If the prices are entered on the DD Form 1423, the price of all separately priced deliverable data items attributable to a line item shall be totalled and included, for information purposes, in parentheses, below the supplies services for that line item, in section B of the schedule.

(ii) *NSP.* Include prices in a priced contract line item or subline item. Detach Blocks 17 and 18 of the DD Form 1423 and retain them elsewhere as required.

(7) The contracting officer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement which has not been established by a contract or exhibit line or subline item.

(b) *Numbering exhibits and attachments.* (1) Use alpha characters to identify exhibits. The alpha characters shall be either single or double capital letters. Do not use the letters I or O.

(2) Exhibit identifiers need not be either consecutive or sequential.

(3) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.

(4) The identifier shall always appear in the first or first and second positions of all applicable exhibit line item numbers.

(5) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number on each page.

(6) Use numbers to identify attachments.

(c) *Numbering exhibit line items and subline items*—(1) *Criteria for establishing.* The criteria for establishing exhibit line items and subline items is the same as those for establishing contract line items and subline items (see 204.7103 and 204.7104, respectively).

(2) *Procedures for numbering.* (i) Number items in an exhibit in a manner similar to contract line items and subline items.

(ii) Number line items using a four position number.

(A) The first position or the first and second position contain the exhibit identifier.

(B) The third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item.

(iii) Assign alpha or numeric characters to the line item on the basis of the same criteria outlined in contract subline items at 204.7104.

(iv) Exhibit line item numbers shall be sequential within the exhibit.

(3) *Examples— (i) Two position serial number for double letter exhibit identifier.*

Cumulative No. of line items	Serial number sequence
1-33	01 thru 09, then OA thru OZ, then
34-67	10 thru 19, then 1A thru 1Z, then
68-101	20 thru 29, then 2A thru 2Z, then
102-135	30 thru 39, then 3A thru 3Z, then
136-169	40 thru 49, then 4A thru 4Z, then
170-203	50 thru 59, then 5A thru 5Z, then
204-237	60 thru 69, then 6A thru 6Z, then
238-271	70 thru 79, then 7A thru 7Z, then
272-305	80 thru 89, then 8A thru 8Z, then
306-339	90 thru 99, then 9A thru 9Z, then
340-373	A0 thru A9, then AA thru AZ, then
374-407	B0 thru B9, then BA thru BZ, then
408-441	C0 thru C9, then CA thru CZ, then
442-475	D0 thru D9, then DA thru DZ, then
476-509	E0 thru E9, then EA thru EZ, then
510-543	F0 thru F9, then FA thru FZ, then
544-577	G0 thru G9, then GA thru GZ, then
578-611	H0 thru H9, then HA thru HZ, then
612-645	J0 thru J9, then JA thru JZ, then
646-679	K0 thru K9, then KA thru KZ, then
680-713	L0 thru L9, then LA thru LZ, then
714-747	M0 thru M9, then MA thru MZ, then
748-781	N0 thru N9, then NA thru NZ, then
782-815	P0 thru P9, then PA thru PZ, then
816-849	Q0 thru Q9, then QA thru QZ then

Cumulative No. of line items	Serial number sequence
850–883	R0 thru R9, then RA thru RZ, then
884–917	S0 thru S9, then SA thru SZ, then
918–951	T0 thru T9, then TA thru TZ, then
952–985	U0 thru U9, then UA thru UZ, then
986–1019	V0 thru V9, then VA thru VZ, then
1020–1053	W0 thru W9, then WA thru WZ, then
1054–1087	X0 thru X9, then XA thru XZ, then
1088–1121	Y0 thru Y9, then YA thru YZ, then
1122–1155	Z0 thru Z9, then ZA thru ZZ

(ii) *Three position numbers.*

Cumulative No. of line items	Serial number sequence
(ii) Three position numbers.	
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 101Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z and so
136–305	on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BB thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0CZ, and
442–1121	so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z, and
1258–1461	so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ, and
1564–2277	so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZB, then
2312–2345	200 thru 109, then 10A thru 10Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z, and
2414–2617	so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2A9, then 2AA thru 2AZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ, and
2720–3433	so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30Z thru 30Z, and
3502–10403	so on to
10404–10437	900 thru 909, then 90A thru 90Z, then
10438–10471	910 thru 919, then 91A thru 91Z, and
10472–10709	so on to
10710–10743	990 thru 999, then 99A thru 99Z, then
10744–10777	9A0 thru 9A9, then 9AA thru 9AZ, then
10778–10811	9B0 thru 9B9, then 9BA thru 9BZ, and
10812–11525	so on to
11526–11559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) Modifications to existing contract line items or exhibit line items. (1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items.* (A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract or exhibit line item or subline item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items.* In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract or exhibit line item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

204.7107 Contract accounting classification reference number (ACRN).

(a) Contracting offices shall use ACRNs. Assigning the ACRNs is the responsibility of the contracting office issuing a contract, basic ordering agreement, or blanket purchase agreement. This authority shall not be delegated. If more than one office will use the contract (e.g., ordering officers, other contracting officers), the contract must contain instructions for assigning ACRNs.

(b) ACRNs are used to process certain contract data through the Military Standard Contract Administration Procedures (MILSCAP) system. The MILSCAP system uses the ACRN to relate certain contract administration records to the long line accounting classification used to obligate funds on the contract. Among these records are the accounting classification trailer record, the supplies schedules data record, and the services line item data record. ACRNs are also used to associate the various record formats of the contract payment notice as described in chapter 9 of the MILSCAP Manual, DoD 4000.25–5–M.

(c) Procedures for establishing ACRNs. ACRNs consist of a two position alpha or alpha/numeric code assigned to each discrete accounting classification within each contract. Do

not use the letters I and O. In no case shall an ACRN apply to more than one long line accounting classification number.

(d) Using the ACRN in the contract. (1) Show the ACRN as a detached prefix to the long line accounting classification number in the accounting and appropriation data block or, if there are too many numbers to fit reasonably in that block, in section G (Contract Administration Data).

(2) ACRNs need not prefix long line numbers if the long line numbers are present in the contract only for the transportation officer to cite to Government bills of lading.

(3) If the contracting officer is making a modification to a contract and using the same long line numbers, which have had ACRNs assigned to them, the modification need cite only the ACRNs in the accounting and appropriations data block or on the continuation sheets.

(e) Showing the ACRN in the contract. If there is more than one ACRN in a contract, all the ACRNs will appear in several places in the schedule (e.g., ACRN:AA), except this does not apply to cost-reimbursement contracts.

(1) *Ship-to/mark-for block.* Show the ACRN beside the identity code of each activity in the ship-to/mark-for block unless only one accounting classification applies to a line item or subline item. Only one ACRN may be assigned to the same ship-to/mark-for within the same contract line or subline item number unless multiple accounting classifications apply to a single unit so the quantity cannot be divided to relate to a single accounting classification. If this latter circumstance occurs, the contract shall provide sufficient information under the heading Payment Instructions for Multiple Fund Accounting Citations to permit proper payment and funds accounting.

(2) *Supplies/services column.* If only one accounting classification applies to a line item or a subline item, then the ACRN may be shown in the supplies/services column near the item description.

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to:

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or to comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists.

204.7201 Definitions.

(a) *Commercial and Government entity (CAGE) code* means—

(1) A code assigned by the Defense Logistics Services Center (DLSC) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by the Defense Logistics Services Center.

(b) *Contractor identification codes* means any code required by the contracting office for the purpose of identifying the offeror. CAGE codes and contractor establishment codes (CEC) are two examples of contractor identification codes.

204.7202 General.

Various coding systems are in use to identify commercial and government entities. Codes are requested by contracting and contract administration offices for various reasons. This guidance is designed to improve the accuracy of the initial code assignment and to help ensure that the data are maintained accurately and are up-to-date.

204.7202-1 CAGE codes.

(a) CAGE codes are assigned or maintained by the Defense Logistics Services Center (DLSC) to identify commercial and Government activities. Their use is prescribed by 213.505-70(b)(2), 253.204-70(b)(5)(ii)(B) and DoD 4000.25-5-M, Military Standard Contract Administration Procedures (MILSCAP).

(b) CAGE codes have also been known in the past as federal supply codes for manufacturers (FSCM) and federal supply codes for nonmanufacturers (FSCNM).

(c) If the CAGE code is not already available in the contracting office, and the apparent awardee does not respond to the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures in the order listed—

(1) Use the bimonthly H-8 microfiche publication issued by DLSC. (Their address is: DLSC-JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084. Their telephone numbers are: DSN 932-4725, FTS 552-4725, or commercial (616) 961-4725.);

(2) Use the on-line access to the CAGE file through the Defense Logistics Information System;

(3) Use the on-line access to the Defense Logistics Agency CAGE file through the DLA Network or dial-up capability; or

(4) Ask DLSC to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a CAGE Code, (or electronic equivalent) to the address in paragraph (c)(1) of this subsection, ATTN: DLSC-FEB. The contracting activity completes Section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, and the contractor completes Section B. The contracting activity must verify Section B before the form is submitted.

(5) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLSC (DLSC-FEB) at DSN 932-4358, FTS 552-4358, or commercial (616) 961-4358.

204.7202-2 CEC codes.

The CEC is prescribed by 253.204-70(b)(5)(ii)(A), Block B5A for completing the DD Form 350, Individual Contracting Action Report. When the contractor establishment code is not already available within the contracting activity and the apparent awardee did not supply its CEC in response to the provision at FAR 52.204-4, Contractor Establishment Code, use the following procedures in the order listed—

(a) Request the CEC from the contractor;

(b) Look in the Federal Procurement Data Center (FPDC) Contractor Establishment Code file alphabetical listing available from the FPDC, GSA Regional Office Building, room 5652, 7th and D Streets, SW., Washington, DC 20407, (202) 401-1529;

(c)(1) If the listing in paragraph (b) of this subsection has no entry, ask the FPDC contractor for a CEC by—

(i) Telephone (800) 397-4472 or (215) 776-1710/1764/1769/1788.

(ii) Facsimile (215) 398-3688.

(iii) Writing to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18105.

(2) All requesters should provide the following information:

(i) Name of requesting contracting office;

(ii) Contracting office location (city/town; state/country);

(iii) Contracting office area code and commercial telephone number;

(iv) Name of individual making the request;

(v) Total number of requests, if more than one; and

(vi) Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

204.7202-3 Taxpayer identification numbers.

The taxpayer identification number (TIN) is prescribed in FAR Subpart 4.9.

204.7202-4 Locally developed coding systems.

Locally developed coding systems may be used to identify contractors as long as the contracting activity is able to comply with the identification requirements of the activities with which it must share data, e.g., furnish the CAGE code to the contract administration activity.

204.7203 Responsibilities of contracting officers.

(a) The contracting officer shall assist the offeror in obtaining the required contractor identification code(s).

(b) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor identification code.

(c) The contracting officer or designee shall not request a new code assignment until the appropriate microfiche, hardcopy or computer files have been screened in an effort to identify a current code for the entity. If the contracting officer does not have access to the files or listings, then initiate action to obtain the files or listings and any equipment necessary to use those files and/or listings (see 204.7202-1 and 2).

(d) If a CAGE code is being requested, it is the responsibility of the contracting activity to request the assignment of the CAGE code by completing section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code (see 253.303-2051). The prospective contractor will complete section B of the form. The completed form or electronic equivalent will be submitted by the contracting activity to DLSC-FEB for processing and code assignment after the contracting activity has verified the data submitted by the contractor. CAGE codes may be requested at the time the offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

(e) CECs may only be requested by the contracting office and only for the apparent awardee(s).

204.7204 Maintenance.

Maintenance transactions such as changes in name or address are to be submitted to the maintenance activity.

204.7204-1 Maintenance of the CAGE file.

(a) Changes, except name changes, may be submitted in writing—

(1) By the entity identified by the code, using company letterhead, through the contract administration office;

(2) By the contracting office; or

(3) By the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements.)

(4) Using the DD Form 2051, facsimile or electronic equivalent to: Defense Logistics Services Center, DLSC-FEB, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084. Telephone Numbers: DSN 932-4358, FTS 552-4358, commercial (616) 961-4358. Facsimile: (616) 961-4528, 4352, 4265. Bulletin Board: (616) 961-4589, 4527, 5262, 5303; Message: RUEBUAA.

(b) The change-of-name agreement shall be submitted to DLSC-FEB by the contracting officer responsible for execution of the agreement (see FAR 42.12). In the event there are no current contracts in force, each contracting and contract administration office receiving notification of changes from the commercial entity shall forward a copy of the change notice annotated with the CAGE code to the DLSC-FEB unless the change notice indicates that DLSC-FEB has already been notified.

(c) Additional guidance for maintaining CAGE codes is set forth at Volume 7 of DoD 4100.39-M, Defense Integrated Data System (DIDS) Manual.

204.7204-2 Maintenance of the CEC codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18195.

204.7205 Novation agreements, mergers and sales of assets.

Contracting officers shall process and execute novation agreements in accordance with FAR Subpart 42.12, Novation and Change-of-Name Agreements. These actions are independent of code and name assignments made as a result of the occasion which created the need for the novation agreement. The maintenance activity will determine which entity(s) will retain the existing code(s) and which entities will be assigned new codes. The contracting officer responsible for processing the novation agreement shall provide the maintenance activity with the following information:

(a) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations.

(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferor).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes and CEC codes for identification and processing purposes.

(a) A single CAGE code will be assigned to the agent/broker establishment in addition to any codes assigned to the entities represented by the agent/broker, i.e., only one code will be assigned to a specific agent/broker entity regardless of the number of firms represented by that agent/broker.

(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.
205.207 Preparation and transmittal of synopses.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.
205.470-1 Statutory requirement.
205.470-2 Contract clause.

Subpart 205.5—Paid Advertisements

205.502 Authority.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.

(b) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in part 225) and the request is consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i)For small disadvantaged business set-asides under 219.502–270, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(iv) For acquisitions being considered for historically black college and university and minority institution set-aside, state:

This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226–7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: _____ (indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from

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(enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made)."

(v) For broad agency announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302–3, use CBD Numbered Note 13.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

(a) *Public Announcement.* (i) The threshold for DoD awards is $5 million and generally is based on the obligated amount of the action. For example—

(A) Announce delivery orders or modifications which individually obligate $5 million or more.

(B) Do not announce requirements contracts, regardless of their estimated value, since the contract does not obligate funds.

(C) Announce indefinite quantity contracts when $5 million or more is obligated at time of award.

(D) Announce incrementally funded contracts with face values of $5 million or more, even though less than $5 million may be obligated at time of award.

(E) In any event, do not announce the same award twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD–LA– (AR) 1279;

(D) Including, as a minimum, the following—

(*1*) *Contract data.* Contract number, modification number, or delivery order number, amount to be obligated, total cumulative amount of the contract, item description, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(*2*) *Competition information.* Number of solicitations mailed and number of offers received;

(*3*) *Contractor data.* Name, address, place of performance (if different), and socioeconomic status (e.g., small business, small disadvantaged business, labor surplus area);

(*4*) *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

(*5*) *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.

205.470–1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into cooperative agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities.

(b) Contractors receiving defense contracts valued at more than $500,000 must provide cooperative agreement holders, at their request, the information specified in the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders.

205.470–2 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332–1–9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

PART 206—COMPETITION REQUIREMENTS

Sec.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

206.203 Set-asides for small business and labor surplus area concerns.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
206.302–2 Unusual and compelling urgency.
206.302–3 Industrial mobilization; or engineering, development, or research capability.
206.302–3–70 Solicitation provision.
206.302–4 International agreement.
206.302–5 Authorized or required by statute.
206.302–7 Public interest.
206.303 Justifications.
206.303–1 Requirements.
206.303–2 Content.
206.304 Approval of the justification.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(*1*) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the supplies or services; and

(*2*) The current annual requirement and projected needs for the supplies or services;

(C) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(*1*) The determination of future competition; and

(*2*) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(*1*) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(*2*) A comparison of current production capacity with that necessary to meet mobilization requirements;

(*3*) An analysis of the risks of relying on the present source; and

(*4*) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) is in Table 6–1, Determinations and Findings.

TABLE 6–1.—DETERMINATIONS AND FINDINGS

Determinations and Findings
Authority to Exclude a Source

In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____[1]:

(Describe requirement.) Findings The exclusion of _____[1]

Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of $_____ in overall costs for the present and future acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. (Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502–2–70) or as historically black college and university and minority institution set-asides (226.7003).

[1] Identify source being excluded.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.*

(2)(i) Pursuant to section 8059 of Public Law 101–511, departments and agencies shall not enter into a contract for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(*1*) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(*i*) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(*ii*) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(*iii*) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(*2*) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(*3*) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

206.302–2 Unusual and compelling urgency.

(b) *Application.*

The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing "Electronic Warfare QRC Priority."

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if—

(i) The head of the contracting activity prepares a document which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition; and

(ii) The document in paragraph (c)(i) of this subsection is approved by the competition advocate for the contracting activity.

206.302-5 Authorized or required by statute.

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition.

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303-1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

206.303-2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

206.304 Approval of the justification.

(a)(4)(A) For proposed contracts not exceeding $50 million, the senior procurement executive may delegate this authority—

(1) To an officer or employee within the senior procurement executive's organization who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in Grade GS-16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees); or

(2) In the case of the Under Secretary of Defense for Acquisition (USD(A)), to—

(i) An Assistant Secretary of Defense; or

(ii) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

—If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

—If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than rear admiral.

(B) For proposed contracts over $50 million, this authority is not delegable, except in the case of the USD(A) who may delegate as specified in paragraph (a)(4)(A)(2) of this section.

PART 207—ACQUISITION PLANNING

Sec.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.
207.105 Contents of written acquisition plans.
207.106 Additional requirements for major systems.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 FAR subpart 1.3.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.

(c)(i) Military departments and agencies shall prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $5 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $30 million or more for all years or $15 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms "final buy out" and "one-time buy" refer to a single contract which covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(d) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (c)(i) (A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(f) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h)(i) Apply design-to-cost principles—

(A) In all major defense acquisition programs (DoDD 5000.1, Defense Acquisition), unless exempted by the Secretary of Defense; and

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense acquisition programs, to the extent prescribed DoDD 5000.1.

(ii) Consider life-cycle-cost in all acquisitions of systems and equipment.

207.105 Contents of written acquisition plans.

For acquisitions covered by paragraphs 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate.

(a) *Acquisition background and objectives*—(1) *Statement of need.* Include—

(A) Applicability of a decision coordinating paper (DCP), acquisition decision memorandum, Defense Acquisition Board (DAB), and/or internal service reviews. Describe the options in the DCP/acquisition decision memorandum and delineate which option the acquisition plan supports.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule updates to coincide with DAB reviews and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment).

(8) *Acquisition streamlining.*

DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, contain policy direction on acquisition streamlining. See MIL–HDBK 248, Acquisition Streamlining, for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(b) *Plan of action.—(5) Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(6) *Product descriptions.* For development acquisitions, describe the market research efforts planned or undertaken to identify nondevelopmental items, as defined in 210.001, that could satisfy the acquisition objectives.

(12) *Logistics considerations.* (i) Describe the extent of integrated logistics support planning to date, including references to approved plans.

(ii) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, for procedures on standardization and on the DoD Parts Control Program. See MIL–STD–965, Parts Control Program, for procedures on the Standardized Military Drawing Program.

(S–70) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL–HDBK 59, Department of Defense Computer-Aided Logistics Support (CALS) Program Guide, and MIL–STD–1840A, Automated Interchange of Technical Information.

(17) *Other considerations*—(A) *Industrial preparedness (IP).* 10 U.S.C. 2502(a)(1) requires the department or agency to conduct for each major defense acquisition program an analysis of the capabilities of the defense industrial base to develop, maintain, and support the program (see DoDD 4005.1, Industrial Preparedness Program).

(1) Provide the program's IP strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(2) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the plan by text or by reference. If the development of the IP plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(3) If the program involves peacetime and wartime hardware configurations which are supported by logistics support plans, identify their impact on the IP plan.

(B) Ensure compliance with DoDD 4210.15, Hazardous Material Pollution Prevention.

207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A) *(1)* and *(2)* of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

If the equipment will be leased for more than 60 days, the requiring activity must prepare and provide the contracting officer with the justification supporting the decision to lease or purchase.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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Authority: 5 U.S.C., 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

208.001 Priorities for use of Government supply sources.

(a)(1)(v) See subpart 208.70, Coordinated Acquisition.

(2)(iii) Information on General Services Administration (GSA) schedules for maintenance, repair, and rehabilitation of personal property is in the GSA supply catalog. The types of personal property for which GSA, Federal Supply Service has schedule contracts for maintenance, repair, and/or rehabilitation are—

(1) Furniture (office, household, quarters, institutional, and hospital type);

(2) Typewriters (manual, electric, and electronic);

(3) Repair and maintenance of Government owned vehicles; and

(4) Tire retreading and repair (except aircraft).

208.002 Use of other Government supply sources.

(f) Detailed information on strategic and critical materials in excess of national stockpile requirements (e.g., metals, ores, chemicals) is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Bldg #4, suite 100, Arlington, VA 22202.

(g) Acquire helium (Pub. L. 86–777)—

(i) In bulk from—

(A) The Department of Interior (Bureau of Mines); or

(B) Eligible private helium distributors. A list of eligible private helium distributors is maintained by the Bureau of Mines, Helium Field Operations, 1100 South Fillmore Street, Amarillo, TX 79101.

(ii) In cylinders or trailers, from—

(A) The Department of Interior (Bureau of Mines); or

(B) Through GSA Federal Supply Schedule contracts.

Subpart 208.4—Ordering From Federal Supply Schedules

208.404 Using schedules.

(a) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

208.404–1 Mandatory use.

The DoD will not be a mandatory user of any schedule unless individual DoD activities elect to provide annual requirements estimates to GSA and become mandatory users. Examples of areas where this approach may be applied are:

(1) Group 68—gases and chemicals;

(2) Group 26—pneumatic tires and inner tubes;

(3) Maintenance, repair, and/or rehabilitation of personal property; and

(4) "Just-in-time" arrangements for delivery of material directly from vendors to users.

208.404–2 Optional use.

Make maximum use of the schedules. Other procedures may be used if further competition is judged to be in the best interest of the Government in terms of quality, responsiveness, or cost.

208.405 Ordering office responsibilities.

208.405–2 Order placement.

(1) Ordering offices may use DD Form 1155, Order for Supplies or Services, to order items from schedules.

(2) Orders may be placed orally if—

(i) The order does not exceed the small purchase threshold at FAR 13.000;

(ii) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the—

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment.

(iii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds (see FAR 13.4) is authorized when—

(i) The order does not exceed the threshold at FAR 13.404(a); and

(ii) The contractor agrees to the procedure.

Subpart 208.7—Acquisition From the Blind and Other Severely Handicapped

208.705 Procedures.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies or workshops.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

(a) The Coordinated Acquisition Program (commodity assignments are listed in Appendix B); or

(b) The Integrated Materiel Management Program (assignments are in DoD 4140.26–M, Integrated Materiel Management for Consumable Items).

208.7001 Definitions.

For purposes of this subpart—

Acquiring department means the department, agency, or General Services Administration which has contracting responsibility under the Coordinated Acquisition Program.

Integrated materiel management means assignment of acquisition management responsibility to one department, agency, or the General

Service Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

Requiring department means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Assistant Secretary of Defense (Production and Logistics);

(2) To the GSA, through agreement with GSA, by the Assistant Secretary of Defense (Production and Logistics);

(3) Outside the continental United States, by the Unified Commanders; and

(4) For acquisitions to be made in the United States for commodities not assigned under paragraphs (a) (1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2308).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Assistant Secretary of Defense (Production and Logistics)—

(1) To the departments and agencies; and

(2) To the GSA, through agreement with GSA.

208.7002-1 Acquiring department responsibilities.

The acquiring department generally is responsible under coordinated acquisition for—

(a) Operational aspects of acquisition planning (Phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(b) Purchasing;

(c) Performing or assigning contract administration, including follow up and expediting of inspection and transportation; and

(d) Obtaining licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for obtaining licenses or settling claims.)

208.7002-2 Requiring department responsibilities.

The requiring department is responsible for—

(a) Ensuring compliance with the order of priority in FAR 8.001 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action.

(b) Providing the acquiring department—

(1) The complete and certified documentation required by FAR 6.303-2(b). A requiring department official, equivalent to the appropriate level in FAR 6.304, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(2) Any additional supporting data which the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(3) The executed determination and findings required by FAR 6.302-7(c)(1);

(4) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.202(b)(2);

(5) When the requiring department specifies a foreign end product, any determinations required by part 225 or FAR part 25;

(6) A complete definition of the requirements, including a list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data which are available to the acquiring department;

(7) Justification required by FAR 17.205(a) for any option quantities requested;

(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104-9(e)).

208.7003 Applicability.

208.7003-1 Assignments under integrated materiel management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302-2. After such a purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the IMM manager.

(2) Items the IMM manager assigns a supply system code for local purchase;

(3) When purchase by the requiring department is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Necessary for war reserve or war mission requirements, required for unit deployment, or to support the industrial base;

(ii) Directly related to the operation of a weapon system or its support equipment;

(iii) With special security characteristics; or

(iv) Which are dangerous (e.g., explosives, munitions).

(b) When an item assigned for IMM is to be acquired by the requiring department under paragraph (a)(3) of this subsection, the contracting officer must—

(1) Document the contract file with a statement of the specific advantage of local purchase for an acquisition over $100 per line item; and

(2) Obtain a waiver from the IMM manager for an acquisition over $5,000

per line item, if the IMM assignment is to GSA, the Defense Logistics Agency (DLA), or the Army Tank-Automotive Command (TACOM). Submit requests for waiver to—

(i) For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

(ii) For DLA: Director, Defense Logistics Agency, ATTN: DLA–OS, Alexandria, VA 22304–6100.

(iii) For TACOM: U.S. Army Tank-Automotive Command, ATTN: AMSTA–FHC, Warren, MI 48397–5000.

208.7003–2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.001(a)(1) (i) through (vii);

(b) Items obtained under 208.7003–1(a);

(c) Small dollar requirements not in excess of the small purchase threshold in FAR 13.000, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302–6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302–1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different characteristics than previously cataloged items.

208.7004 Procedures.

208.7004–1 Purchase authorization from requiring department.

(a) Requiring departments send their requirements to acquiring departments on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(b) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(c) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(d) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if—

(1) The original MIPR requirements have not been released for solicitation; and

(2) The acquiring department agrees.

208.7004–2 Acceptance by acquiring department.

(a) Acquiring departments formally accept a MIPR by DD Form 448–2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay, and the anticipated date the MIPR will be accepted. The acquiring department must accept MIPRs in writing before expiration of the funds.

(b) The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

(1) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract—

(i) Delivery is from existing inventories of the acquiring department;

(ii) Delivery is by diversion from existing contracts of the acquiring department;

(iii) Production or assembly is through Government work orders in Government-owned plants;

(iv) Production quantities are allocated among users from one or more contracts, and the identification of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(vi) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed price contracts with progress payment clauses); or

(vii) Category II method of funding is not feasible and economical.

(2) Category II method of funding is used in circumstances other than those in paragraph (b)(1) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(c) When the acquiring departments accepts a MIPR for Category I funding—

(1) The DD Form 448–2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(2) The acquiring department will annotate the DD Form 448–2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(3) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery;

(4) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(d) When the MIPR is accepted for Category II funding, a conformed copy of the contract (see 204.802(1)(ii)) is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring department will immediately notify the requiring department of the excess funds by submitting an Acceptance of MIPR (DD Form 448–2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(e) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department shall act quickly to—

(1) Provide the funds by an amendment of the MIPR; or

(2) Reduce the requirements.

(f) The accepting activity of the acquiring department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

208.7004–3 Use of advance MIPRs.

(a) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(b) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(c) The requiring department shall not release an advance MIPR to the acquiring department without obtaining proper internal approval of the requirement.

(d) When advance MIPRs are used, mark "ADVANCE MIPR" prominently on the DD Form 448.

(e) For urgent requirements, the advance MIPR may be transmitted electronically.

(f) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but shall not award contracts on the basis of advance MIPRs.

208.7004–4 Cutoff dates for submission of Category II MIPRs.

(a) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

208.7004–5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations they will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 which will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

208.7004–6 Cancellation of requirements.

(a) *Category I MIPRs.* The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(b) *Category II MIPRs.* The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(1) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(2) If the items to be cancelled have already been placed under contract— (i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall

issue a termination data letter to the requiring department (original and four copies) containing, as a minimum, the information in Table 8–1, Termination Data Letter.

(ii) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(iii) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

TABLE 8–1, TERMINATION DATA LETTER

SUBJECT: Termination Data Re:
Contract No. _____
Termination No. _____
Contract _____
(a) As termination action is now in progress on the above contract, the following information is submitted:
(1) Brief Description of items terminated.
(2) You are notified that the sum of $_____ is available for release under the subject contract. This sum represents the difference between $_____, the value of items terminated under the contract, and $_____, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:
MIPR NO. _____ ACCOUNTING CLASSIFICATION _____ AMOUNT _____
Total available for release at this time $_____
(b) Request you forward an amendment to MIPR _____ on DD Form 448–2 to reflect the reduced quantity and amount of funds available for release.
(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

_____
Contracting Officer

208.7004–7 Termination for default.

(a) When the acquiring department terminates a contract for default, they will ask the requiring department if the supplies or services to be terminated are still required so that repurchase action can be started.

(b) The requiring department will not deobligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(c) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

208.7004–8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

208.7004–9 Status reporting.

(a) The acquiring department will maintain a system of MIPR follow up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow up in order to advise the acquiring department on contract performance.

(b) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(c) Any reimbursement billings, shipping document, contractual documents, project orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.

208.7004–10 Administrative costs.

The acquiring department bears the administrative costs of acquiring supplies for the requiring department. However, when an acquisition responsibility is transferred to another department, funds appropriated or to be appropriated for administrative costs will transfer to the successor acquiring department. The new acquiring department must assume budget cognizance as soon as possible.

208.7005 MIPRs.

Instructions on preparation and use of DD Form 448, Military Interdepartmental Purchase Request, and DD Form 448–2, Acceptance of MIPR, are in 253.208.

208.7006 Coordinated acquisition assignments.

See appendix B for coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.

NASA is authorized by Public Law 85–568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies will—

(a) Cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(b) Not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time services are performed.

208.7102 Procedures.

(a) When contracting or performing field service functions for NASA, the departments and agencies will use their own methods, except when otherwise required by the terms of the agreement.

(b) Departments and agencies normally will use their own funds when contracting for or performing services for NASA and will not cite NASA funds on any defense obligation or payment document.

208.7103 Purchase request and acceptance.

(a) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(b) Except as provided in paragraph (d) of this section, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448–2, Acceptance of MIPR. Forward each DD Form 448–2 in quadruplicate and indicate action status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(c) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7104 Changes in estimated total prices.

When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount, rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

208.7105 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.

As used in this subpart—

Industrial base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States and Canada, which will be available during national emergencies to manufacture and repair items required by the departments.

Industrial preparedness production planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

National emergency means a condition declared by the President or the Congress which authorizes certain emergency action in the national interest, including partial or total mobilization of national resources.

Planned item means any item selected for industrial preparedness planning under the criteria of DoDI 4005.3, Industrial Preparedness Planning.

Planned producer means an industrial firm which has agreed by either non-binding memorandum of understanding or binding contract/contract clause to provide production capacity data, to maintain existing capacity for a negotiated period of time, and to accept contracts for planned items upon the request of the Government.

208.7202 General.

(a) Under the Industrial Preparedness Production Planning (IPPP) program, DoD components and industry work together to ensure essential military items are available during an emergency.

(b) Departments and agencies select weapon systems and items for planning in accordance with DoDI 4005.3, Industrial Preparedness Planning. Planning is conducted only with U.S. or Canadian sources.

(c) The use of privately-owned facilities is preferred to minimize the need for Government investment. Departments and agencies will include Government-owned production facilities in the industrial base only when—

(1) Private industry is unable to provide the facilities necessary to support DoD requirements; or

(2) The facilities are necessary—

(i) For reasons of national security; or

(ii) To ensure a quick response capability to meet fluctuating demands.

208.7203 Authority.

Authority under current contracting procedures to accomplish industrial planning actions includes—

(a) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947, 10 U.S.C. 2667;

(b) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a natural emergency or to achieve industrial mobilization under FAR 6.302–3;

(c) Acquisition under 225.71 of—

(1) Miniature and instrument bearings;

(2) Precision components for mechanical time devices;

(3) High-purity silicon;

(4) High-carbon ferrochrome;

(5) Anti-friction bearings; and

(6) Forgings and welded shipboard anchor chain;

(d) Acquisition of jewel bearings (FAR 8.2);

(e) Use of multiyear contracting (FAR 17.1);

(f) Providing Government production and research property to contractors; and

(g) Use of direct payment for idle facilities or idle capacities reserved for defense mobilization production (FAR 31.205–17(d)).

208.7204 Procedures.

(a) Planned producers shall be solicited for all acquisitions of their planned items, when the acquisition is over the small purchase threshold in FAR 13.000, except as provided in FAR or DFARS.

(b) The contracting officer may contract for industrial planning efforts for selected essential military items. These efforts may include, but are not limited to, the maintenance of Government-owned industrial facilities (real and personal property) or production data packages. These planning efforts may be acquired through an individual service contract or as a line item on a contract for a planned item.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.

As used in this subpart—

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111–5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

Dual pricing evaluation procedure means a procedure where offerors submit two prices for precious metals bearing items—one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

Precious Metals Indicator Code (PMIC) means a single digit, alpha-numeric code assigned to national stock numbered items in The Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoDD 4100.39M, Defense Integrated Data System (DIDS) Procedures Manual, chapter 10, Table 160.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program (PMRP). DoD components shall furnish recovered precious metals contained in the DISC inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest. (See DoDD 4160.22, Recovery and Utilization of Precious Metals.)

208.7303 Procedures.

(a) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(b) When an offeror advises of a precious metals requirement, the contracting officer shall use the procedures in chapter X of DoD 4160.21–M, Defense Utilization and Disposal Manual, to determine availability of required precious metal assets and current government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of the offer which is in the best interest of the Government.

(c) When the clause prescribed by 208.7305 is included in a solicitation, the contracting officer will ensure that section B, Schedule of Supplies or Services and Prices, is structured to—

(1) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and

(2) Use dual pricing evaluation procedures.

208.7304 Refined precious metals.

The following refined precious metals are currently managed by DISC:

Precious metal	National Stock No. (NSN)
Silver Bullion/Granules	9660–00–106–9432
Gold Bullion/Granules	9660–00–042–7733
Platinum Granules	9660–00–042–7768
Platinum Sponge	9660–00–151–4050
Palladium Granules	9660–00–042–7765
Palladium Sponge	9660–01–011–0320
Rhodium Sponge	9660–01–011–2625
Iridium Sponge	9660–01–011–1937
Ruthenium Sponge	9660–01–039–0313

208.7305 Contract clause.

(a) Use the clause at 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

(1) When the contracting officer has determined that the required precious metals are not available from DISC;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions below the small purchase threshold in FAR 13.000.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter X, DoD 4160.21–M, Defense Utilization and Disposal Manual.

PART 209—CONTRACTOR QUALIFICATIONS

Sec.

Subpart 209.1—Responsible Prospective Contractors

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209.104 Standards.
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209.406 Debarment.
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209.406–4 Period of debarment.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty, or similar treaty, due to the actual or potential presence of Soviet inspectors at the contractor's facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

209.103–70 Contract clause.

Use the clause at 252.209–7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts in excess of the small purchase limitation in FAR 13.000, except solicitations and contracts for commercial or commercial-type products (see FAR 11.001).

209.104 Standards.

209.104–1 General standards.

(e) Also, have the necessary safety programs on contractor or subcontractor materials or services.

(g)(i) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(A) Either directly or indirectly—

(1) Has a significant interest in the firm; or

(2) Has a significant interest in the subsidiary, and

(B) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(ii) The Secretary of Defense may waive the prohibition in paragraph (g)(i) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

209.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104–70 Solicitation provision.

Use the provision at 252.209–7001, Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations expected to result in contracts of $100,000 or more.

209.106 Preaward surveys.

209.106–1 Conditions for preaward surveys.

(a) If the contracting officer is unable to make a determination of responsibility for an acquisition, which does not exceed the small purchase limitation in FAR 13.000, because of inconclusive information, contact the cognizant contract administration activity for additional information. If a preaward survey is indicated, include

the rationale in block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

209.106-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DLAH 4105.4, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(a) List additional factors in item H, section III of the SF 1403 and explain them in block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, block 12 of section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in block 23.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209-1(a) for an explanation of the factors in section III, blocks 19 and 20 of the SF 1403.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List requires approval of the following—

Army—Headquarters, U.S. Army Materiel Command, AMCCE-PSE
Navy—Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) (Acquisition Policy, Integrity, and Accountability)
Air Force—Departmental Standardization Office, SAF/AQXL
Defense Advanced Research Projects Agency—Director, Contracts Management Office
Defense Communications Agency—Director, Acquisition Management
Defense Intelligence Agency—Principal Assistant for Acquisition
Defense Logistics Agency—Executive Director, Technical and Logistics Services
Defense Mapping Agency—Director of Acquisition
Defense Nuclear Agency—Director, Acquisition Management
National Security Agency—Director of Procurement
On-Site Inspection Agency—Chief, Acquisition Management
Strategic Defense Initiative Organization—Director

Subpart 209.3—First Article Testing and Approval

209.303 Use.

(d) The contracting officer may require that first articles be manufactured using the same facilities, production processes, methods, and materials to be used for production units under the contract.

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid describing first article requirements exclusively in general terms such as "visual," "dimensional," "workmanship," or "specification compliance."

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

Debarring official. (1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)
Air Force—The Deputy Assistant Secretary (Acquisition)
Defense Advanced Research Projects Agency—The Director
Defense Communications Agency—The General Counsel
Defense Logistics Agency—The Special Assistant for Contracting Integrity
Defense Mapping Agency—The General Counsel
Defense Nuclear Agency—The Director
National Security Agency—The Director
Strategic Defense Initiative Organization—The General Counsel
Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR Subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

209.405 Effect of listing.

Under 10 U.S.C. 2393b, when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a listed contractor can provide the supplies or services;

(2) Urgency requires contracting with a listed contractor;

(3) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the listed contractor.

209.406 Debarment.

209.406-1 General.

(a) When debarment consideration involves a felony conviction and the debarring official decides that debarment is not necessary, the official shall require the contractor to enter into a written agreement which includes—

(i) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by Subpart 203.70; and

(ii) Other requirements the debarring official considers appropriate.

209.406-3 Procedures.

(a) *Investigation and referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2;

(B) FAR 49.106 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204); or

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(1) The contract number;

(2) All office identifying numbers or symbols;

(3) Description of supplies or services;

(4) The amount;

(5) The percentage of completion;

(6) The amount paid the contractor;

(7) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(8) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(1) The contract number;

(2) The amount;

(3) The amounts paid the contractor;

(4) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(5) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding—

(1) Whether to suspend or debar the contractor;

(2) Whether to apply limitations to the suspension or debarment;

(3) The period of any recommended debarment; and

(4) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(1) A copy or extracts of each pertinent contract;

(2) Witness statements or affidavits;

(3) Copies of investigative reports;

(4) Certified copies of indictments, judgments, and sentencing actions; and

(5) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.406-4 Period of debarment.

(a) If a decision is based on a felony conviction, the period generally should be for more than one year. When the debarring official decides not to debar or to debar for one year or less, both that decision and the agreement required by 209.406-1(a) require the written approval of the Secretary concerned or, in the case of the defense agencies, the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition), unless the debarring official determines that the mitigating factors in FAR 9.406-1 are satisfied.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

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210.002 Policy.
210.002-70 Preference for nondevelopmental items.
210.004 Selecting specifications or descriptions for use.
210.008 Identification and availability of specifications.
210.011 Solicitation provisions and contract clauses.
210.011-70 Solicitation provisions and contract clauses.
210.070 Acquiring bills of materials.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

210.001 Definitions.

Bill of materials means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

Nondevelopmental item means—

(1) Any item of supply that is available in the commercial marketplace;

(2) Any previously-developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(3) Any item of supply described in paragraphs (1) or (2) of this definition that requires only minor modification in order to meet the requirements of the contracting agency; or

(4) Any item of supply that is currently being produced that does not meet the requirements of paragraphs (1), (2), or (3) of this definition solely because the item is not yet in use or is not yet available in the commercial marketplace.

Systems means a combination of elements that will function together to

produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems. It also includes modifications to existing systems that involve redesign of the system or subsystems.

210.002 Policy.

(c) All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoD 5000.2, Defense Acquisition Management Policies and Procedures.

210.002-70 Preference for nondevelopmental items.

DoD policy is to fulfill requirements for supplies through acquisition of nondevelopmental items to the maximum extent practicable (10 U.S.C. 2325).

210.004 Selecting specifications or descriptions for use.

(b)(3) When a "brand name or equal" purchase description is used—

(A) The purchase description—

(*1*) Should include a complete common generic identification of the item.

(*2*) Should reference all known acceptable brand name products, to include—

(*i*) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and

(*ii*) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.

(*3*) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.

(*4*) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(*5*) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(B) The solicitation—

(*1*) May require bid samples for "or equal" offers, but not for "brand name" offers.

(*2*) Must provide for full consideration and evaluation of "or equal" offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(*3*) Must include the following immediately after the item description—

Offering:

Manufacturer's Name_____Brand_____Model or Part No._____

(C) The contract shall identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

210.008 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDL).

(d) Also, furnish data item descriptions which are not listed in the AMSDL, except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(g) Contracting activities can obtain copies of the DODISS, the AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL by sending a letter or DD Form 1425, Specifications and Standards Requisition, to the DoD single stock point: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the letter or DD Form 1425—

(i) The requestor's customer number; and

(ii) Complete return mailing address, including any "mark for" instructions.

210.011 Solicitation provisions and contract clauses.

(b) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.210-7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents, and 252.210-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

210.011-70 Solicitation provisions and contract clauses.

(a)(1) When a brand name or equal purchase description is to be included in a solicitation, use the provision at 252.210-7000, Brand Name or Equal.

(2) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.210-7000 to some or all of the components would be impracticable, either do not use the provision or limit its application to specific components.

(b) Use the clause at 252.210-7003, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

(c) Use the provision at 252.210-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

(d) Use the clause at 252.210-7005, Bill of Materials, in solicitations and contracts which require delivery of bill(s) of materials.

210.070 Acquiring bills of materials.

(a) DoDI 4210.8, Department of Defense Bills of Materials, requires acquisition of bills of materials for certain items, when necessary—

(1) To develop materials or components requirements for production and maintenance programs;

(2) For industrial mobilization purposes; or

(3) For other specified purposes.

(b) When a bill of materials is required in accordance with paragraph (a) of this section, include the following in the contract—

(1) An identification of the supplies or parts to be covered by the bill of materials;

(2) The type of bill or bills of materials (detailed, modified, expanded summary, or abbreviated summary as defined in MIL-STD-295, Bills of Materials, Preparation of) to be furnished, with instructions, including a requirement for submission, on DD Form 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property;

(3) The price to be paid the contractor for the bill of materials and any revisions, or a statement that the bill of materials is not separately priced;

(4) The number of copies of each bill of materials to be furnished; and

(5) The delivery dates.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 211.70—Contracting for Commercial Items

211.7000 Scope of subpart.

This subpart implements section 824(b) of Public Law 101–189 by establishing policies, procedures and a simplified uniform contract format for the acquisition of commercial items.

211.7001 Definitions.

As used in this subpart—

(a) *Commercial items* means items regularly used in the course of normal business operations for other than Government purposes which:

(1) Have been sold or licensed to the general public;

(2) Have not been sold or licensed, but have been offered for sale or license to the general public;

(3) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(4) Are described in paragraph (1), (2) or (3) that would require only minor modification in order to meet the requirements of the procuring agency.

(b) *Competition* means the solicitation of offers from more than one potential source where award will be made to the responsive, responsible offeror whose bid or proposal is most advantageous to the Government, price and, where appropriate, other factors considered or, when a solicitation contemplates more than one award, the offerors independently compete for a proportionate share (0 to 100 percent) of the award to be determined by the evaluation criteria specified in the solicitation. The term *competition* includes contracting using full and open competition (see FAR 6.1 and FAR 6.2) and other forms of competition authorized in FAR 6.3.

(c) *Existing or prior sources* means entities that are furnishing or previously furnished items to the Government, in accordance with Government unique product descriptions, drawings or specifications, that are being replaced by commercial items.

(d) *Minor modification* means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

(e) *Subcontractor* means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

(f) *Supplier* means an entity that produces items to its own specifications, designs or drawings for sale to others.

211.7002 Policy.

It is Department of Defense policy to—

(a) Satisfy its requirements, to the maximum extent practicable, through competitive acquisition of commercial items.

(b) Competitively acquire commercial products which best satisfy the Government's requirements, price and other factors considered.

(c) Not require offerors or contractors to submit certified cost or pricing data or require offerors or contractors to obtain certified cost or pricing data from their subcontractors or suppliers when contracting for commercial items under this subpart.

(d) Require prime contractors to include in contracts with their subcontractors or suppliers, as those terms are defined at 211.7001, only the clauses and provisions required by law or executive order to be included in such contracts.

211.7003 Applicability.

211.7003–1 General.

(a) This Subpart shall be used, to the maximum extent practicable, to competitively acquire commercial items.

(b) This Subpart shall not be used to acquire:

(1) Commercial items on a non-competitive basis.

(2) Services (other than the services included in a competitive solicitation for commercial items that are required by the solicitation to be furnished by the successful offeror in direct support of the items being acquired);

(3) Small purchases under FAR part 13 and DFARS part 213.

(4) Bakery and dairy products (See 217.73) and perishable foods;

(5) Petroleum, crude oil, unfinished oils and finished products as defined in FAR 25.108(d)(2);

(6) Items set forth in 225.70 that are subject to Authorization and Appropriations Act Restrictions unless the applicable exceptions set forth in 225.70 apply.

211.7003–2 Existing or prior sources.

(a) The head of a military department or defense agency, or his or her designee, may determine that it is in the Government's interests to permit existing or prior sources of items to participate in a competition for a commercial item when:

(1) A commercial item will replace an item that is being or previously was furnished to the Government in accordance with Government unique product descriptions, drawings or other specifications; and,

(2) The existing or previously furnished item will compete with commercial items under the same terms, conditions and evaluation/award criteria.

(b) The authority and criteria in paragraph (a) of this subsection also apply to minor modifications (as that term is defined at 211.7001) of existing or previously furnished items when the minor modifications are necessary to comply with the Government's solicitation requirements.

(c) The policies, procedures, solicitation provisions and contract clauses applicable to commercial items under this Subpart shall apply also to existing or previously furnished items permitted to participate in a competition conducted under this subpart.

(d) The provision at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, shall be used with its Alternate I when the contracting activity has determined that it is in the Government's interests to permit existing or prior sources to participate in a competition for a commercial item.

211.7004 Requirements.

211.7004–1 Precedence of Part 211.

(a) *General.* (1) Contracting officers shall follow the regulatory text contained in part 211 when acquiring commercial items. Guidance and procedures contained in other FAR and DFARS regulatory text shall also be followed provided that the guidance and procedures do not conflict with the regulatory text in part 211. In the event of a conflict among the part 211 regulatory text and any other FAR or DFARS regulatory text, the part 211 regulatory text shall control and have precedence.

(2) Notwithstanding the prescriptions contained in other FAR or DFARS regulatory text, only the contract clauses, solicitations provisions, representations and certifications and special contract requirements prescribed for use under part 211 shall be included in solicitations and contracts under part 211 unless the contracting officer has determined in writing that additional special contract requirements, contract clauses and solicitation provisions are essential for the protection of the Government's interests in a particular contract.

(3) Supplementation of subpart 211.70 is not authorized without the prior written approval of the Director of Defense Procurement.

(b) *Contract type.* Only firm fixed price contracts, or as provided in paragraph (c) of this subsection, fixed price contracts with economic price adjustment provisions, shall be used to acquire commercial items under this subpart. The term "firm fixed price contracts" includes orders under Indefinite-Delivery contracts (see FAR 16.502 through 16.504 and 16.506) when the prices at which items may be acquired are established as firm fixed prices or fixed prices with economic price adjustment.

(c) *Economic price adjustment.* Solicitations for commercial items shall not require contract performance that is extended beyond customary industry practice for the product to be acquired. Contracting officers may consider the use of fixed price contracts with economic price adjustment provisions, subject to the limitations at FAR 16.203–3, if an extended period of performance cannot be avoided and the other conditions described in FAR 16.203–2 exist. Economic price adjustment provisions shall be tailored to the particular contracting situation.

(d) *Specification requirements.* Commercial items shall be acquired using specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(e) *Contract quality requirements.* Contracting officers shall not require contractors to comply with a Government specified quality assurance system or quality program (see FAR 46.202–3). The contractor shall be required to maintain quality assurance systems adequate to assure that the items to be furnished under the contract conform with all contractual requirements. To the extent practicable, quality assurance systems shall be consistent with the contractor's standard commercial practices.

(f) *Inspection requirements.* (1) Government inspection of items acquired under this Subpart shall be limited to verifying that items tendered for acceptance conform to contractual requirements. Inspection and test prior to tender for acceptance is the contractor's responsibility and shall be performed by the contractor in accordance with the contractor's standard practice. Therefore, solicitations and contracts will not provide for inspections or tests to be performed by the Government prior to the time the items are tendered for acceptance. However, contracting officers may tailor inspection requirements when it is determined that the commercial items to be furnished under the contract have critical applications (see FAR 46.203(c)).

(2) The place or places at which inspection and acceptance will be performed, the acceptance criteria and any associated requirements shall be identified in Section E, Inspection and Acceptance, of the solicitation and contract. These requirements may also be included in the specifications used to acquire the items.

(3) The clause at 252.211–7004, Inspection and Acceptance—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of the clause at 252.211–7004 may be modified appropriately if the contracting officer has determined that the commercial items to be furnished under the contract will have a critical application.

(g) *Packaging and marking.* Commercial items shall be packaged and marked in accordance with the contractor's standard practices unless unique military storage or operational needs require special packaging and marking. Requiring activities shall document the contract file to clearly identify the needs or circumstances which mandate the use of special packaging or marking requirements.

(h) *Technical data, computer software and commercial computer software.* The terms *computer software, computer software documentation, commercial computer software, commercial computer software documentation,* and *technical data* are used in paragraphs (h)(1) through (h)(4) of this subsection to describe the types of technical data or computer software that may be acquired under this Subpart and the conditions placed upon the Government's use of such technical data and computer software. For purposes of paragraphs (h)(1) through (h)(4):

Computer software means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listings, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

Commercial computer software means computer software that has been developed at private expense for the commercial marketplace and is not in the public domain. The term *commercial computer software* includes any commercial computer software that has been modified or will be modified to satisfy requirements expressed in a competitive procurement solicitation.

Computer software documentation means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, that explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

Commercial computer software documentation means the computer software documentation customarily provided to the public at, or subsequent to, the time the commercial computer software is licensed or provided to the public.

Technical data means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer software, financial data, administrative data, or cost or pricing data.

(1) Technical Data (other than Commercial Computer Software Documentation) and Computer Software (other than Commercial Computer Software).

(i) Contracting officers shall not acquire technical data or computer software except:

(A) Technical data or computer software required to maintain and repair commercial items properly when maintenance or repair is not otherwise the contractor's responsibility under the contract;

(B) Technical data or computer software that describe or provide the proper installation, operating or handling procedures for commercial items when such technical data or computer software are not customarily

provided to the public as part of a commercial item's price;

(C) Technical data or computer software that describe the modifications made to commercial items, including the commercial items' related computer software or computer software documentation, in order to meet the requirements of the procurement solicitation;

(D) Technical data or computer software that describe the modifications made to commercial computer software or its related commercial computer software documentation, in order to meet the requirements of the procurement solicitation when the modified commercial computer software and its related documentation are the commercial items being furnished under the contract.

(ii) The Government shall use the technical data and computer software acquired under a contract for commercial items only as provided in paragraph (b) of the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items.

(iii) All technical data to be acquired under the contract shall be listed on DD Form 1423, Contract Data Requirements List.

(2) Commercial Computer Software and Commercial Computer Software Documentation. (i) Contracting officers shall acquire only the commercial computer software and commercial computer software documentation customarily provided to the public. Except as provided in subparagraph (h)(1)(i)(D), contracting officers shall not require offerors or contractors to furnish information related to the commercial computer software or commercial computer software documentation that is not customarily provided to the public.

(ii) Commercial computer software and commercial computer software documentation shall be acquired, to the maximum extent practicable, under the same license provided by the software developer or distributor to the public. Tailored licenses may be included in solicitations for commercial computer software or commercial computer software documentation if the contracting officer has determined, in writing, based upon a thorough market analysis, that the licenses offered to the public are not in the Government's interests (licenses that obligate the licensee to purchase additional quantities of the software, purchase future upgrades of the software or purchase other items or services from the licensor, distributor or any other person as a condition of the license are examples of licenses that may not be in the Government's interests).

(iii) A tailored license shall clearly set forth the conditions under which the Government may use the commercial computer software and any related commercial computer software documentation. Solicitations containing a tailored license must require an offeror who is not the commercial computer software or commercial computer software documentation licensor to obtain, and submit with its offer, the licensor's written agreement to the tailored license as a condition for award. Tailored license agreements shall be included in Section H, "Special Contract Requirements," of the contract.

(iv) The Government shall use commercial computer software or commercial computer software documentation only as provided in paragraph (c) of the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items.

(3) The clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(4) The clauses at 252.211–7016, Technical Data and Computer Software—Withholding of Payment—Commercial Items, and 252.211–7017, Certification of Technical Data Conformity—Commercial Items, shall be included in solicitations and contracts for commercial items when technical data or computer software, including technical data or computer software that describe modifications to commercial computer software or commercial computer software documentation, will be acquired. These clauses shall not be included in solicitations and contracts that will procure only commercial computer software or commercial computer software documentation.

(i) *Certified cost or pricing data.* (1) Contracting officers shall not require offerors to submit certified cost or pricing data or require offerors to obtain certified cost or pricing data from their subcontractors or suppliers when competitively acquiring commercial items including a sole offer received in response to a competitive solicitation if the criteria at 211.7004–1(o) (3) and (4) are satisfied.

(2) Contracting officers shall require prime contractors to submit certified cost or pricing data for contract modifications which result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, unless the price adjustment is exempt from submission and certification requirements as provided at FAR 15.804–3.

(3) For purposes of this Subpart, the phrase "the cost or pricing data" used in FAR 15.804–2(b) means only the cost or pricing data necessary to price the contract modification.

(4) The clauses at 252.211–7010, Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items, and 252.211–7011, Audit of Contract Modifications—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(j) *Warranties*—(1) *Commercial items that are weapon systems.* Contracting officers shall include tailored, cost effective warranties in solicitations and contracts for commercial items that are weapon systems in accordance with the policies and procedures at 246.770. The term "weapon system," as used in 10 U.S.C. 2403 and 246.770, does not include commercial items sold in substantial quantities to the general public.

(2) *Commercial items that are not weapons systems.* Commercial items shall be acquired with the warranties provided to the public as customary trade practice if the customary trade practice warranties adequately protect the Government's interests. Tailored warranties shall be used when customary trade practice warranties do not adequately protect the Government's interests or tailored warranties are necessary to assure that commercial items intended for use as components or subsystems of weapon systems are procured with warranties that do not compromise or invalidate the weapon system warranty. Tailored warranties should be considered when commercial items are not customarily warranted to the public. However, the criteria at FAR 46.703 shall be considered to determine if it is appropriate to require offerors to provide warranties for commercial items that are not customarily warranted to the public.

(i) Customary trade practice warranties. (A) Contracting officers shall consider a warranty to be in the Government's interests when it is customary trade practice to provide a warranty to the general public. Market research and analysis will disclose if a particular class of commercial items (e.g., shoes, radar sets, office equipment, etc.) is customarily offered for sale to the general public with a warranty.

(B) A commercial item warranty that limits the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) does not adequately protect the

Government's interests. Similarly, a warranty's duration must be considered when determining whether or not the warranty adequately protects the Government's interests. A warranty period that does not provide a reasonable time for a commercial item's operational use to verify that the item conforms to contractual requirements does not adequately protect the Government's interests. For example, if the Government intends to store the item for a period prior to the item's actual use, the duration of the warranty should cover both the storage time and a reasonable period of actual use.

(C) A warranty is a price related factor. Therefore, the evaluation factors included in competitive solicitations shall be structured to permit consideration of the relative value to the Government of the warranty offered by each offeror.

(ii) Tailored warranties. (A) Contracting officers may tailor a contract specific warranty clause or appropriately tailor the FAR warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature, 52.246–18, Warranty of Supplies of a Complex Nature, or 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, and their alternates to provide adequate protection of the Government's interests in a particular procurement. A tailored warranty clause shall not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and shall provide that the warranty applies notwithstanding inspection and acceptance or any other terms and conditions of the contract. The FAR warranty clauses or their alternates may be used without modification only if they do not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and provide that the warranty applies notwithstanding inspection and acceptance or other terms and conditions of the contract.

(B) Contracting officers shall assure that warranty provisions are consistent with other contractual requirements (e.g., failure free warranties may not be appropriate when acceptance criteria are stated in terms of Mean Time Between Failure or other probability based requirements that assume an "acceptable" level of discrepancies). The duration of a warranty for an item intended for use as a subsystem or component of a weapon system should be established giving consideration to the duration of the weapon system warranty.

(C) Contracting Officers preparing solicitations requiring offers based upon a Government specified warranty are encouraged to permit offerors to make alternative offers based upon alternative warranty provisions, including an offeror's standard commercial warranty. Solicitations permitting submission of alternative offers shall include evaluation factors that permit a realistic assessment of the relative value to the Government of offers based upon the Government specified warranty and alternative warranty provisions. The solicitations shall clearly advise the offerors that an alternative offer shall be considered for award only if its alternative warranty provision adequately protects the Government's interests.

(k) *Contract administration.* Contracting officers shall not perform, or have performed, Production Surveillance and Reporting procedures at FAR 42.11 when contracting for commercial items.

(l) *Contract changes*—(1) *General.* A change to a contract for a commercial item can have a more disruptive and costly effect on both the contractor and the Government than a corresponding change to an item which has been specifically designed and developed for the Department of Defense. Therefore, the ordering of changes, particularly specification changes, is strongly discouraged. Requirements personnel and contracting officers shall carefully evaluate the need for a change prior to ordering any change. An example of an extraordinary circumstance under which a change may be necessary is a change to the form, fit or function of a commercial item necessitated by a change to other equipment or systems of which the commercial item is, or is intended to be, a component.

(2) *Unilateral changes.* The contracting officer may make unilateral changes only to the method of shipment, packing or place of delivery specified in the contract. The changes must be in writing and may be made at any time during performance of the contract.

(3) *Bilateral changes.* Specification changes shall be made only by a bilateral modification to the contract. The bilateral modification shall be prospectively, definitively priced unless the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirements. In the latter event, the bilateral modification shall:

(i) Include a maximum price for the change and the contractor's agreement that the definitive price for the change shall not exceed the maximum price; and,

(ii) Contain definitization schedules established in accordance with 217.7503(b)(3).

(4) *Certified cost or pricing data.* Certified cost or pricing data may be required when the definitive price of a contract change results in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, as provided at 211.7004–1(i) and FAR 15.804. Certified cost or pricing data are not required when establishing the maximum price for a contract change in accordance with paragraph (l)(3) of this subsection or when the price adjustment for a change is exempt from the requirements for certified cost or pricing data as provided at FAR 15.804–3.

(5) The clause at 252.211–7002, Changes—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(m) *Progress payments.* Contracting officers shall not provide for customary or unusual progress payments when contracting for commercial items. For purposes of this subpart, the term *standard commercial items* as used at FAR 32.502–1(c) includes commercial items requiring minor modifications to meet the requirements of the procuring agency.

(n) *Telegraphic and facsimile submission of offers.* (1) Contracting officers shall authorize the submission of telegraphic or facsimile offers to the maximum extent practicable. Telegraphic offers include offers, modifications of offers, or withdrawals of offers that are delivered to the Government by telegram or mailgram, or transmitted to the Government by telex. The Government's telex number shall be provided to offerors in paragraph (g) of the solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, if telex equipment is available at the location designated in the contract for submission of offers.

(2) Contracting officers shall require offerors submitting telegraphic offers to submit a signed, original offer within five working days from the date specified for receipt of offers in the solicitation. Contracting officers may provide offerors who fail to make a timely response to the contracting officer's request for an original, signed offer an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency

must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(3) Contracting officers may provide offerors who fail to sign a facsimile offer, or who fail to make a timely response to the contracting officer's request for an original, signed solicitation cover sheet an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(o) *One offer.* (1) When only one offer is received from a responsive, responsible offeror in response to a competitive solicitation, the contracting officer shall re-examine the market analyses and specifications for the commercial item to assure that the initial assumptions of market conditions were valid and the specifications contained in the solicitation did not unduly restrict competition.

(2) The contracting officer shall cancel the solicitation if it is determined that the specifications unduly restricted competition.

(3) The contracting officer shall make an award in accordance with the procedures of this Subpart if the specifications did not unduly restrict competition and the initial assumptions of market conditions were valid. The offer received shall be considered an offer submitted under conditions of full and open competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost and pricing data from its subcontractors and suppliers.

(4) The contracting officer shall, if the specifications did not unduly restrict competition but the initial assumptions of market conditions were not valid:

(i) For sealed bids, proceed with award in accordance with the procedures at FAR 14.407.

(ii) For other than sealed bids, the contracting officer shall perform a price analysis to determine if the price offered is reasonable. If price analysis demonstrates that the price is reasonable, the contracting officer may proceed with award of the contract. The price offered shall be considered a price based upon adequate price competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost or pricing data from its subcontractors and suppliers. If price analysis alone cannot demonstrate price reasonableness, the contracting officer shall either cancel the solicitation or enter into negotiations with the offeror under the procedures at FAR part 15 and DFARS part 215.

(p) *Clauses to be included in contracts with subcontractors and suppliers.* (1) A prime contractor shall not be required to include in its contracts with subcontractors and suppliers, as those terms are defined at 211.7001, or require its subcontractors and suppliers to include in their contracts with lower tier subcontractors and suppliers, any contract clauses except:

(i) Clauses required to implement provisions of law applicable to such contracts; and,

(ii) Clauses determined by the Secretary of Defense to be appropriate for such contracts.

(2) Subparagraphs (p)(2)(i) through (p)(2)(iii) identify the FAR and DFARS clauses that implement provisions of law or Executive Order that may apply to subcontractors and suppliers under certain conditions or monetary thresholds:

(i) All contracts with subcontractors and suppliers:

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
FAR 52.222–22 Previous Contracts and Compliance Reports.
FAR 52.222–26 Equal Opportunity.
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
FAR 52.222–36 Affirmative Action for Handicapped Workers.
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.
252.223–7005 Notice of Radioactive Materials.
252.225–7001 Buy American Act and Balance of Payment Program.
252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
252.225–7015 United States Products Certificate (Military Assistance Program).
252.225–7016 United States Products (Military Assistance Program).

(ii) Only contracts with subcontractors:

FAR 52.220–4 Labor Surplus Area Subcontracting Program.
FAR 52.222–25 Affirmative Action Compliance.
FAR 52.223–1 Clear Air and Water Certification.
FAR 52.223–2 Clean Air and Water.
FAR 52.225–10 Duty-Free Entry
FAR 52.225–11 Certain Communist Areas.
FAR 52.222–21 Certification of Nonsegregated Facilities.
252.211–7011 Audit of Contract Modifications-Commercial Items.
252.225–7009 Preference for Certain Domestic Commodities.
252.247–7203 Transportation of Supplies by Sea.

(iii) Only first tier subcontracts:

FAR 52.209–6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
FAR 52.215–1 Examination of Records by Comptroller General.
FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.
252.203–7001 Special Prohibition on Employment.
252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(3) The clause at 252.211–7021, Clauses to be included in Contracts with Subcontractors and Suppliers—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of that clause also includes the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. Accurate information concerning actual or potential labor disputes cannot be obtained unless the clause at 52.222–1, although not required by law or Executive Order, is also included in the prime contractor's contracts with its subcontractors or suppliers.

(q) *Award of contract.* (1) Contracts for commercial items shall be awarded to:

(i) For sealed bids, the responsive, responsible bidder whose bid is most advantageous to the Government considering only price and the price related factors included in the solicitation; and,

(ii) For other than sealed bids, the responsive, responsible offeror whose proposal has been determined, in accordance with the evaluation criteria contained in the solicitation, to be most advantageous to the Government.

(2) Forms. (i) Contracts resulting from invitations for bids shall be awarded on the forms prescribed at FAR 14.407(d)(1).

(ii) Contract awards using procedures other than sealed bidding procedures, including awards contemplated when only one response is received to a competitive request for proposals, shall be made using the award portion of the solicitation document, either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), unless the contracting officer has had discussions with the offerors within the competitive range and bilateral execution of an SF 26, Award/Contract (FAR 53.301–26), would more appropriately reflect acceptance of the modified offer resulting from the discussions or negotiations.

(3) Section 802 of the FY91 National Defense Authorization Act (Pub. L. 101–510) requires the Government to state its intention to award with or without discussions. The provision at 252.211–7014, Contract Award—Commercial Items, which states an intention to award without discussions unless discussions prove to be necessary, shall be included in all solicitations for commercial items. The provision shall be appropriately modified if, prior to release of a solicitation, the contracting officer anticipates evaluation and award based on discussions.

211.7004–2 Format for solicitations and contracts.

(a) Invitations for bids and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 14.201 or the simplified contract format described at FAR 14.201–9.

(b) Requests for proposals and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 15.406–1 or the simplified contract format described at FAR 15.416.

211.7004–3 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/Contract Form.* Invitations for bids and requests for proposals shall be prepared on either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), which serves as the first page of the solicitation.

(b) *Section B, Supplies and Prices.* Provide a brief description of the commercial items or incidental services supporting those items to be acquired under each line item, and the quantities and units of measure (i.e., gross, dozen, etc.) applicable to each line item.

(c) *Section C, Description/Specification.* Include only specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(d) *Section D, Packaging and Marking.* Contracting officers shall require packaging and marking to be accomplished in accordance with the offeror's standard practices unless the use of special packaging and marking has been justified (see 211–7004–1(g)). Any special packaging and marking requirements shall be clearly identified.

(e) *Section E, Inspection and Acceptance.* Solicitations and contracts shall identify the place(s) where inspection and acceptance will be performed and the acceptance criteria.

(f) *Section F. Delivery Schedule.* Solicitations and contracts shall identify the date(s) and place(s) of delivery, and shall provide shipping instructions if necessary.

(g) *Section G. Contract Administration Information.* This section may be used to supplement, if necessary, the contract administration information provided on the cover sheet.

(h) *Section H. Special Contract Requirements.* Contracting officers shall include in this section economic price adjustment provisions, warranty provisions, commercial computer software licensing agreements and any other special contract requirement that the contracting officer has determined, in writing, is essential for the protection of the Government's interests in a particular contract.

211.7004–4 Part II—Contract Clauses.

Section I, Contract Clauses. The contracting officer shall include in all solicitations and contracts under this Subpart: all the clauses included in 211.7005(a); any applicable clauses from 211.7005(b); and, any other contract clauses that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract.

211.7004–5 Part III—List of Exhibits and Attachments.

Section J, List of Exhibits and Attachments. The Contracting officer shall list the title, date, and number of pages of each attached document.

211.7004–6 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations and Certifications.* (1) Only the representations and certifications, or submissions of other information by offerors which are authorized for use under this subpart (See 211.7005(c)) shall be included in the solicitation.

(2) The certification at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, and the representation at 252.211–7013, New Material—Commercial Items, shall be used in all invitations for bids and requests for proposals. Alternate 1 of the certification at 252.211–7012 shall be used as prescribed at 211.7003–2(d).

(3) Solicitations and contracts under this subpart shall include the provision at 252.211–7020, Business Type Certification—Commercial Items, in lieu of the representations and certifications prescribed at FAR part 19 and DFARS parts 219 and 220.

(b) *Section L, Instructions, Conditions, or Notices.* (1) Insert in this section the applicable solicitation provisions from 211.7005(d), any other solicitation provisions that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract, and any other information which may be required to facilitate an offeror's understanding of the solicitation.

(2) The solicitation provisions at FAR 52.215–9, Submissions of Offers, FAR 52.215–12, Restriction on Disclosure and Use of Data, FAR 52.215–13, Preparation of Offers, FAR 52.215–14, Explanation to Prospective Offerors, FAR 52.216–1, Type of Contract, 252.211–7009, General Solicitation Information and Definitions—Commercial Items, and 252.211–7014, Contract Award—Commercial Items, shall be included in all invitations for bid and requests for proposals.

(3) The solicitation provision at 252.211–7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals issued in the United States or Canada that require the submission of offers to a contracting office in the United States or Canada.

(4) The solicitation provision at 252.211–7019, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items (Overseas), shall be included in all invitations for bid and requests for proposals requiring the submission of offers to a contracting office outside the United States and Canada.

(5) The solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, shall be

incorporated in all invitations for bid and requests for proposals when telegraphic submission of offers is authorized.

(6) The provision at 252.211–7008, Facsimile Submission of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals when submission of facsimile offers is authorized.

(c) *Section M, Evaluation Factors for Award.* (1) When sealed bids will be solicited, identify the price related factors and subfactors, if any, other than the bid price that will be considered in evaluating bids and awarding the contract.

(2) When proposals will be solicited, the solicitation shall clearly advise offerors that award will be made to the offeror whose offer is most advantageous to the Government. The solicitation shall identify all factors and any subfactors that will be considered in awarding the contract and state the relative importance the Government places on those evaluation factors and subfactors. As prescribed at FAR 15.605(b), price and quality shall be addressed in every source selection.

211.7005 Contract clauses.

(a) The contracting officer shall insert the following required clauses in section I of all solicitations and contracts awarded under this subpart:

(1) FAR 52.203–1 Officials Not to Benefit.
(2) FAR 52.203–3 Gratuities.
(3) FAR 52.203–6 Restriction on Subcontractor Sales to the Government.
(4) FAR 52.203–7 Anti-Kickback Procedures.
(5) FAR 52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.
(6) FAR 52.209–6 Protecting The Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(7) FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
(8) FAR 52.219–13 Utilization of Women-Owned Small Businesses.
(9) FAR 52.222–26 Equal Opportunity.
(10) FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
(11) FAR 52.222–36 Affirmative Action for Handicapped Workers.
(12) FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
(13) FAR 52.223–6 Drug-Free Workplace.
(14) FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.
(15) FAR 52.229–3 Federal, State, and Local Taxes.
(16) FAR 52.232–23 Assignment of Claims.
(17) FAR 52.233–1 Disputes.
(18) 252.203–7001 Special Prohibition on Employment.
(19) 252.203–7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.
(20) 252.211–7000 Termination—Commercial Items.
(21) 252.211–7001 Invoice and Payment—Commercial Items.
(22) 252.211–7002 Changes—Commercial Items.
(23) 252.211–7003 Patents and Copyright Indemnification—Commercial Items.
(24) 252.211–7004 Inspection and Acceptance—Commercial Items.
(25) 252.211–7005 Limitation of Liability—Commercial Items.
(26) 252.211–7006 Title and Risk of Loss—Commercial and Items.
(27) 252.211–7010 Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items.
(28) 252.211–7011 Audit of Contract Modifications—Commercial Items.
(29) 252.211–7015 Technical Data and Computer Software—Commercial Items.
(30) 252.211–7021 Clauses to be Included in Contracts with Subcontractors and Suppliers—Commercial Items.
(31) 252.214–7001 Domestic Source Restriction.
(32) 252.225–7009 Preference for Certain Domestic Commodities.
(33) 252.243–7001 Pricing of Adjustments.
(34) 252.247–7203 Transportation of Supplies by Sea.

(b) The contracting officer shall insert the following clauses in Section I of solicitations and contracts awarded under this Subpart as applicable. The prescriptions for the FAR and DFARS clauses other than DFARS part 211 clauses are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 clauses are contained in 211.7004–1.

(1) FAR 52.203–5 Covenant Against Contingent Fees.
(2) FAR 52.203–9 Requirement for Certificate of Procurement Integrity—Modification.
(3) FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
(4) FAR 52.215–1 Examination of Records by Comptroller General.
(5) FAR 52.215–33 Order of Precedence.
(6) FAR 52.216–18 Ordering.
(7) FAR 52.216–19 Delivery Order Limitation.
(8) FAR 52.216–20 Definite Quantity.
(9) FAR 52.216–21 Requirements.
(10) FAR 52.216–22 Indefinite Quantity.
(11) FAR 52.219–6 Notice of Total Small Business Set-Aside.
(12) FAR 52.219–7 Notice of Partial Small Business Set-Aside.
(13) FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.
(14) FAR 52.219–16 Liquidated Damages-Small Business Subcontracting Plan.
(15) FAR 52.220–3 Utilization of Labor Surplus Area Concerns.
(16) FAR 52.220–4 Labor Surplus Area Subcontracting Program.
(17) FAR 52.222–1 Notice to the Governme t of Labor Disputes.
(18) FAR 52.222–3 Convict Labor.
(19) FAR 52.222–20 Walsh Healy Public Contracts Act.
(20) FAR 52.222–28 Equal Opportunity Preaward Clearance of Subcontract.
(21) FAR 52.223–2 Clean Air and Water.
(22) FAR 52.225–10 Duty-Free Entry.
(23) FAR 52.225–11 Certain Communist Areas.
(24) FAR 52.232–17 Interest.
(25) FAR 52.232–28 Electronic Funds Transfer Payment Methods.
(26) FAR 52.242–10 F.o.b. Origin-Government Bills of Lading or Prepaid Postage.
(27) FAR 52.246–17 Warranty of Supplies of a Non-Complex Nature.
(28) FAR 52.246–18 Warranty of Supplies of a Complex Nature.
(29) FAR 52.246–19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
(30) FAR 52.247–1 Commercial Bill of Lading Notations.
(31) FAR 52.247–29 F.o.b. Origin.
(32) FAR 52.247–34 F.o.b. Destination.
(33) 252.205–7000 Release of Information to Cooperative Agreement Holders.
(34) 252.211–7016 Technical Data and Computer Software—Withholding of Payment— Commercial Items.
(35) 252.211–7017 Certification of Technical Data and Computer Software Conformity—Commercial Items.
(36) 252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).
(37) 252.219–7001 Notice of Combined Small Business-Labor Surplus Area Set-Aside.
(38) 252.219–7002 Notice of Combined Small Business-Labor Surplus Area Set-Aside—Alternate.
(39) 252.219–7003 Determining the Set-Aside Award Price.
(40) 252.219–7006 Notice of Total Small Disadvantaged Business Set-Aside.
(41) 252.219–7007 Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns.
(42) 252.219–7009 Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions.
(43) 252.219–7010 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.
(44) 252.219–7011 Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business (SDB) Consideration).
(45) 252.220–7000 Notice of Labor Surplus Area Set-Aside.
(46) 252.220–7001 Notice of Labor Surplus Area Set-Aside—Alternate.
(47) 252.223–7004 Hazardous Material Identification and Material Safety Data.
(48) 252.223–7005 Notice of Radioactive Materials.

(49) 252.225–7001 Buy American Act and Balance of Payment Program.
(50) 252.225–7002 Qualifying Country Sources as Subcontractors.
(51) 252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
(52) 252.225–7010 Domestic Wool Preference.
(53) 252.225–7011 Preference for Domestic Specialty Metals (Major Programs).
(54) 252.225.7012 Preference for Domestic Specialty Metals.
(55) 252.225–7013 Preference for Domestic Hand or Measuring Tools.
(56) 252.225–7015 United States Products Certificate (Military Assistance Program).
(57) 252.225–7016 United States Products (Military Assistance Program).
(58) 252.225–7017 Limitation of Sales Commissions and Fees for Foreign Governments.
(59) 252.225–7019 Exclusionary Policies and Practices of Foreign Governments.
(60) 252.225–7021 Acquisition and Use of Excess and Near-Excess Currency.
(61) 252.225–7023 Restriction on Acquisition of Foreign Machine Tools.
(62) 252.225–7024 Restriction on Acquisition of Foreign Valves.
(63) 252.233–7000 Certification of Request for Adjustment Exceeding $100,000.
(64) 252.242–7000 Submission of Commercial Freight Bill to the General Services Administration for Audit.
(65) 252.247–7204 Notification of Transportation of Supplies by Sea.

(c) The contracting officer shall insert the following representations and certifications in Section K of solicitations as applicable. The prescriptions for the following FAR and DFARS representations and certifications other than DFARS part 211 representations and certifications are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 representations and certifications are contained in 211.7004–6(a) and 211.7003–2(d).

(1) FAR 52.203–4 Contingent Fee Representation and Agreement.
(2) FAR 52.203–8 Requirement for Certificate of Procurement Integrity.
(3) FAR 52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(4) FAR 52.204–3 Taxpayer Identification.
(5) FAR 52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters.
(6) FAR 52.222–19 Walsh-Healy Public Contracts Act Representation.
(7) FAR 52.222–21 Certification of Nonsegregated Facilities.
(8) FAR 52.222–22 Previous Contracts and Compliance Reports.
(9) FAR 52.222–25 Affirmative Action Compliance.
(10) FAR 52.223–1 Clear Air and Water Certification.
(11) FAR 52.223–5 Certification Regarding A Drug-Free Workplace.
(12) FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
(13) 252.209–7000 Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism
(14) 252.211–7012 Certifications—Commercial Items—Competitive Acquisitions.
(15) 252.211–7013 New Material—Commercial Items.
(16) 252.211–7020 Business Type Certification—Commercial Items.
(17) 252.225–7000 Buy American-Balance of Payment Program Certificate.
(18) 252.225–7005 Buy American Act-Trade Agreement Act-Balance of Payments Program Certificate.
(19) 252.247–7202 Representation of Extent of Transportation by Sea.

(d) The contracting officer shall insert the following instructions, conditions or notices in Section L of solicitations as applicable. The prescriptions for the following FAR and DFARS provisions other than FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS Part 211 provisions are identified in FAR part 52 and DFARS part 252. The prescriptions for FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS part 211 provisions are contained in 211.7004–6(b).

(1) FAR 52.204–4 Contractor Establishment Code.
(2) FAR 52.214–21 Descriptive Literature.
(3) FAR 52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.
(4) FAR 52.214–25 Step Two of Two-Step Sealed Bidding.
(5) FAR 52.214–33 Late Submissions, Modifications and Withdrawals of Technical Proposals Under Two Step-Sealed Bidding (Overseas).
(6) FAR 52.215–8 Acknowledgment of Amendments to Solicitations.
(7) FAR 52.215–9 Submissions of Offers.
(8) FAR 52.215–12 Restriction on Disclosure and Use of Data.
(9) FAR 52.215–13 Preparation of Offers.
(10) FAR 52.215–14 Explanation to Prospective Offerors.
(11) FAR 52.216–1 Type of Contract.
(12) FAR 52.222–24 Preaward On-Site Equal Opportunity Compliance Review.
(13) 252.211–7007 Telegraphic Submission of Offers—Commercial Items.
(14) 252.211–7008 Facsimile Submission of Offers—Commercial Items.
(15) 252.211–7009 General Solicitation Information and Definitions—Commercial Items.
(16) 252.211–7014 Contract Award—Commercial Items.
(17) 252.211–7018 Late Submissions, Modifications and Withdrawals of Offers— Commercial Items.
(18) 252.211–7019 Late Submissions, Modifications and Withdrawals of Offers— Commercial Items (Overseas).

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Sec.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

Subpart 212.3—Priorities and Allocations

212.302 General.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202. DoD Directive 5000.35, FAR subpart 1.3.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) Use the clause at FAR 52.212–5, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of less than $500,000 is optional.

Subpart 212.3—Priorities and Allocations

212.302 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.
213.203–1 General.
213.203–2 Clauses.
213.204 Purchase under Blanket Purchase Agreements.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

Subpart 213.4—Imprest Fund

213.402 General.
213.403 Agency responsibilities.
213.404 Conditions for use.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.
213.504 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203-1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.203-2 Clauses.

(a) The clauses prescribed at 213.507 for purchase orders also apply to BPAs.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR Part 6 for any action above the dollar threshold at FAR 13.000.

Subpart 213.3—Fast Payment Procedure

§ 213.302 Conditions for use.

(a) Individual orders may exceed $25,000 for—

(i) Brand name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.402 General.

See DoDD 7360.10, Disbursing Policies, and chapter 32 of the DoD Accounting Manual, DoD 7220.9-M.

213.403 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are responsible for approving the establishment of imprest funds.

213.404 Conditions for use.

(a) Overseas transactions in support of contingencies declared by the Secretary of Defense may use imprest funds up to $2,500.

(c)(i)Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections

(ii) When imprest funds are used for small purchases, the funds may also be used to pay charges for local delivery, parcel post, c.o.d. charges, and line haul or inter-city transportation charges when the supplier is to arrange for delivery.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications (see FAR 43.103) may also be used for—

(A) No cost amended shipping instructions (ASI) if—

(*1*) The ASI modifies a unilateral purchase order, and

(*2*) The contractor agrees verbally or in writing.

(B) Any change made before work begins if—

(*1*) The change is within the scope of the original order;

(*2*) The contractor agrees;

(*3*) The modification references the contractor's verbal or written agreement; and

(*4*) Block 13D of the Standard Form 30 is annotated to reflect the authority for issuance of the modification.

(ii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clauses prescribed in 213.507(a)(ii) in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.504 Termination or cancellation of purchase orders.

(b) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services-Schedule Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the small purchase procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order or a blanket purchase agreement, when used with the clauses prescribed at 213.507(a);

(B) A delivery order under a Government contract or from Government agencies outside the DoD;

(C) A receiving and inspection report;

(D) A property voucher;

(E) A document for acceptance by the supplier; and

(F) A public voucher, when used as—

(*1*) A delivery order;

(*2*) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established; or

(*3*) A purchase order for not more than the small purchase limitation in FAR 13.000.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The $2,500 limitation applies to all purchases except that purchases up to the small purchase limitation in FAR 13.000 may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of contingencies declared by the Secretary of Defense; and

(C) Transactions in support of intelligence and other specialized activities addressed by part 2.7 of Executive Order 12333.

213.507 Clauses.

(a) Use the clauses in paragraphs (a)(i) through (iii) of this section, as applicable, in all purchase orders and blanket purchase agreements. The clauses listed in the following paragraphs (i) and (ii) may be incorporated by reference, except for FAR 52.252-2, Clauses Incorporated by Reference. Any other clauses included in the purchase order shall be incorporated by reference or in full text as required by the matrix in FAR 52.3.

(i) Unilateral purchase orders—

(A) FAR 52.252-2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203-1, Officials Not to Benefit;

(C) FAR 52.203-3, Gratuities;

(D) FAR 52.203-5, Covenant Against Contingent Fees;

(E) FAR 52.203-7, Anti-Kickback Procedures;

(F) FAR 52.212-9, Variation in Quantity;

(G) FAR 52.222-3, Convict Labor (unless the order will be subject to the

Walsh-Healey Public Contracts Act (see FAR Subpart 22.6));

(H) FAR 52.222–26, Equal Opportunity (unless exempt under FAR 22.807);

(I) FAR 52.225–3, Buy American Act-Supplies;

(J) FAR 52.232–1, Payments;

(K) FAR 52.232–25, Prompt Payment;

(L) FAR 52.232–28, Electronic Funds Transfer Payment Methods;

(M) FAR 52.233–1, Disputes;

(N) FAR 52.246–1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(O) FAR 52.246–16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) FAR 52.204–2, Security Requirements (if the acquisition is classified);

(C) FAR 52.243–1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243–7001, Pricing of Contract Modifications;

(E) FAR 52.249–1, 52.249–4, or 52.249–5, Termination for Convenience of the Government; and

(F) FAR 52.249–8, 52.249–9, or 52.249–10, Default.

(iii) Any other clauses required by the prescription for their use.

PART 214—SEALED BIDDING

Sec.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.
214.202–5 Descriptive literature.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.
214–404–1 Cancellation of invitations after opening.
214.406 Mistakes in bids.
214.406–3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503–1 Step one.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202–5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210–7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404–1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404–1 (c) and (e).

214.406 Mistakes in bids.

214.406–3 Other mistakes disclosed before award.

(c) Process cases involving evidence that is less than clear and convincing under paragraph (e) of this subsection.

(e)(i) Departments may delegate authority for making a determination under FAR 14.406–3 (a), (b), and (d), without power of redelegation, as follows:

(A) Department of the Army:

(*1*) Deputy Assistant Secretary (Procurement), Office of the Assistant Secretary of the Army (Research, Development, and Acquisition);

(*2*) General Counsel, U.S. Army Materiel Command;

(*3*) General Counsel, Office of the Chief of Engineers; and

(*4*) Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(B) Department of the Navy:

(*1*) Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; and

(*2*) Deputy Commander, Contracting Management Directorate, Naval Supply Systems Command Headquarters.

(C) Department of the Air Force: The Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(ii) Authority for making a determination under FAR 14.406–3 (a), (b), and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(A) Defense Advanced Research Projects Agency: General Counsel, DARPA.

(B) Defense Communications Agency: General Counsel, DCA.

(C) Defense Intelligence Agency: Principal Assistant for Acquisition.

(D) Defense Logistics Agency:

(*1*) General Counsel, DLA; and

(*2*) Associate General Counsel, DLA.

(E) Defense Mapping Agency: General Counsel, DMA.

(F) Defense Nuclear Agency: General Counsel, DNA.

(G) National Security Agency: Director of Procurement, NSA.

(H) On-Site Inspection Agency: General Counsel, OSIA.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503–1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(4) Include all factors and any significant subfactors.

PART 215—CONTRACTING BY NEGOTIATION

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Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

215.414 Forms.

This does not preclude use of letter RFPs and RFQs, provided their use complies with other requirements of the FAR and this regulation.

Subpart 215.6—Source Selection

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705–2(d).

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(b) Except for determinations based on violations or possible violations of section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of section 27 of the OFPP Act shall be made at the level specified in FAR 3.104–11(g).

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—

(A) The total number of competitive negotiated acquisitions awarded;

(B) The number of those acquisitions for which an additional request for best and final offers was approved and issued; and

(C) The reasons for approving each additional request for best and final offers.

(iii) To ensure that additional requests for best and final offers are used only when necessary and unavoidable, HCAs shall—

(A) Periodically analyze data collected under paragraph (c)(ii) of this section;

(B) Take appropriate corrective action, e.g., training, revising approval levels; and

(C) Provide periodic summary reports to the SPE as specified in department/agency regulations.

215.613 Alternate source selection procedures.

215.613–70 Four-step source selection procedures.

(a) *General.* The four-step source selection procedure is designed for those situations where the Government wishes to focus on technical excellence. Proposals are evaluated, a competitive range established, and an apparent successful offeror selected without discussions of proposal deficiencies (a deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements). Negotiations are conducted only in the final step and only with the apparent successful offeror.

(b) *Applicability.* Four-step source selection procedures may be used for—

(1) Competitively negotiated research and development acquisitions with an estimated value of $2 million or more; or

(2) Other acquisitions as permitted by department/agency regulations, except those in paragraph (c) of this subsection.

(c) *Restrictions.* Four-step source selection procedures shall not be used for acquisitions which—

(1) Will require extensive discussion and negotiations;

(2) Use the authority of FAR 6.302–2;

(3) Are solely for personal or nonpersonal services;

(4) Are for architect-engineer services; or

(5) Have an estimated value of less than $2 million.

(d) *Presolicitation.* Establish early and open dialogue with prospective offerors to ensure their understanding of the Government's needs, since the evaluation will be conducted with limited discussions and without disclosing deficiencies in offeror proposals. Ways of establishing this dialogue are—

(1) Presolicitation notices;

(2) Presolicitation conferences;

(3) Preproposal conferences;

(4) Solicitations for information or planning purposes; and

(5) Tailoring of specifications.

(e) *Solicitations.* Include the following special provisions in four-step source selection solicitations—

(1) Explanation of the four-step concept and procedures;

(2) Statement regarding the relative importance of technical/system performance criteria;

(3) Notification that the contracting officer may reject proposals with unrealistic technical, schedule, cost, or price commitments since unrealistic commitments reflect an inherent lack of technical competence or indicate a failure to comprehend the complexity and risks of the requirements;

(4) Schedule of planned source selection events, including specific dates for the sequential submission of separate technical and cost proposal.

(5) Requirement for the technical proposal to include—

(i) Identification, when appropriate, of trade-offs (with illustrative cost estimate impacts) among performance, production costs, operating and support costs, schedule and logistics support factors; and

(ii) Information showing that the goals for design to cost and operating and

support costs (when used) will be achieved when the item enters production.

(6) Requirement for the cost proposal to include detailed cost information supporting the technical proposal and the cost factors in the evaluation criteria;

(7) Statement that both technical and cost discussions will be limited as described in paragraphs (f) and (g) of this subsection; and

(8) Notification that the contracting officer will only negotiate with the selected offeror, and that offerors' initial technical and cost proposals should be their best offer.

(f) *Step one—evaluation of technical proposals.* (1) The sequence of step one—

(i) Evaluate all technical proposals;

(ii) Conduct limited discussions with all offerors; and

(iii) Ask for any necessary clarifications and additional supporting data when necessary (normally, ask that this be submitted with the cost proposal).

(2) In conducting step one—

(i) Limit discussions to only what is necessary to ensure that both parties understand each other;

(ii) Do not tell offerors about deficiencies in their proposals; and

(iii) Provide written clarification to all offerors when it appears the Government's requirements have been misinterpreted.

(g) *Step two—evaluation of cost proposals.* (1) The sequence of step two—

(i) Request cost proposals;

(ii) Evaluate all cost proposals;

(iii) Establish the competitive range;

(iv) Eliminate those proposals outside the range and advise those offerors;

(v) Conduct limited discussions with remaining offerors; and

(vi) Eliminate proposals which cannot be made acceptable and advise the offerors.

(2) In conducting step two—

(i) Limit discussions to—

(A) Clarifying inconsistencies or correcting mathematical errors;

(B) Correlating cost elements with technical effort in order to assess cost realism; and

(C) Ensuring a complete understanding of the Government's requirements, the offeror's offer, and other contract terms;

(ii) Do not tell an offeror that any of its cost elements are either too high or too low; and

(iii) Follow the guidelines in paragraph (f) of this subsection if further discussions of technical proposals or clarifications are required.

(h) *Step three—common cut-off and selection of an offeror for final contract negotiations.* (1) The sequence of step three—

(i) Notify offerors of the common cut-off date for receipt of best and final offers (technical and cost);

(ii) Evaluate the offers;

(iii) Select the best offeror (see paragraph (h)(2)(iv) of this subsection for multiple sources);

(iv) Tell the selected source that the decision is conditional based on negotiation of a definitive contract within the time period prescribed by the source selection authority; and

(v) Advise the other offerors of the source selected.

(2) In conducting step three—

(i) Remind offerors, when notifying them of the common cut-off date, that any changes incorporated in the final proposal must be fully documented;

(ii) Do not accept lump sum reductions in final cost proposals without supporting data;

(iii) Do not request additional best and final offers without the approval required by 215.611(c); and

(iv) Do not select two or more offerors, rather than a single source, for final contract negotiations, unless the HCA makes a written determination that final selection of a single source should not be made until the prospective contracts have been tentatively negotiated.

(i) *Step four—final negotiations and contract award.* (1) The sequence of step four (single selectee)—

(i) Negotiate the final contract price, terms, and conditions; and

(ii) Award the contract.

(2) The sequence of step four (multiple selectees)—

(i) Negotiate tentative final contract terms and conditions;

(ii) Select the best source; and

(iii) Award.

(3) In conducting step four—

(i) Complete negotiations and award the contract within the time prescribed by the source selection authority;

(ii) Terminate negotiations and make a new source selection decision if the condition in paragraph (i)(3)(i) cannot be met;

(iii) Do not permit changes in the Government's requirements or the offeror's proposal which would affect the source selection decision; and

(iv) Follow the procedures in FAR 15.606 if changes in the Government's requirements are necessary.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar amount is $1 million.

Subpart 215.8—Price Negotiation

215.801 Definitions.

Cost realism analysis means a review of the overall costs in an offeror's proposal to determine if they—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror's technical proposal.

215.804 Cost or pricing data.

215.804-1 General.

(a) When certified cost or pricing data are not required, the contracting officer may ask for partial or limited data when the data are necessary for the Government's analysis. The contracting officer shall not ask the contractor to certify these data.

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The contracting officer may ask an offeror to submit partial or limited data on proposals under $100,000 when the data are necessary for the Government's cost analysis. The contracting officer need not ask the contractor to certify these data.

(a)(1) The contracting officer rarely should need to require the submission or certification of cost or pricing data on acquisitions where adequate price competition is expected (regardless of the type of contract anticipated).

(b) Adequate price competition. (1) Adequate price competition may exist for any contract, including cost-reimbursement contracts, as long as price is a substantial factor in the evaluation. If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see FAR 15.804-2), certified cost or price data.

(3)(A) Examples of a price "based on" adequate price competition are:

(1) Exercise of an option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable under FAR 17.207(d);

(2) Acquisition of an item that has multiple suppliers, where the contracting officer only solicits or receives one offer, but the price is clearly reasonable in comparison with recent purchases where adequate price competition existed.

(B) Dual or multiple source programs. *(1)* In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-

case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain some data to assist in price analysis.

(2) Adequate price competition normally exists when prices are solicited across a full range of step quantities, usually including a 0–100 percent split, from at least two offerors who are individually capable of producing the full quantity, and

(i) The award is made to the offeror with the lowest evaluated price;

(ii) When the award is split, the combined price is the lowest evaluated price in the range of offers submitted; or

(iii) When the combined price is not the lowest evaluated price in the range of offers submitted, the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(i) Waiver for exceptional cases. (i) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(ii) The DoD has waived certain cost or pricing data certification requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer—

(A) Shall require cost or pricing data, including cost or pricing data from subcontractors;

(B) Shall not require certification of data submitted by the organization on its own behalf or on behalf of subcontractors which are also nonprofit organizations;

(C) Shall require certification of cost or pricing data from subcontractors which are not nonprofit organizations or educational institutions.

(iii) Use the following format when preparing an authorization for waiver in accordance with FAR 15.803–3(i):

(Military Department or Defense Agency)

Authority to Waive Submission of Certified Cost or Pricing Data

1. The (contracting activity) proposes to award a contract to (name of contractor) for acquisition of (brief description of supplies or services).

2. Under FAR 15.804–2, the prospective contractor is required to submit certified cost or pricing data. However, for the following reasons, I am waiving the requirement for certification of the data (The waiver may be partial, e.g., limited to particular cost or pricing data. If so, describe the cost or pricing data for which the certification is to be waived): Explain the circumstances and conditions which make the prospective contract action an exceptional case. State the reasons why the waiver is justified.)

3. I make this waiver under the authority of 10 U.S.C. 2306a(b)(2), as implemented by FAR 15.804–3(i).

Date_____

Signed_____

215.804–6 Procedural requirements.

(b)(2)(A) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715–8, Navy—NAV PUB P–5241, and Air Force—AFLCP/AFSCP 800–15), require the contractor to submit DD Forms 1921 or 1921–1 with its SF 1411.

(B) Contracting offices may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for the SF 1411. Schedules should only ask for data that are necessary and reasonable based on industry, company, or commodity practices.

215.804–7 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the nondefective data had been known.

215.804–8 Contract clauses.

(1) If the solicitation or contract includes one of the clauses at FAR 52.215–23, FAR 52.215–24, or FAR 52.215–25, also use the clause at 252.215–7000, Pricing Adjustments.

(2) In accordance with 10 U.S.C. 2406, use the clause at 252.215–7001, Availability of Contractor Records, in solicitations and contracts which—

(i) Require the submission and certification of cost or pricing data; and

(ii) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

(a) Also use the clause at FAR 52.215–22, Price Reduction for Defective Cost or Pricing Data, when obtaining partial cost or pricing data.

215.805 Proposal analysis.

215.805–5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding $500,000;

(2) Cost-type proposals exceeding $500,000 from offerors with significant estimating system deficiencies (see 215.811–70(a)(3) and (c)(2)(i)); or

(3) Cost-type proposals exceeding $1 million from offerors without significant estimating system deficiencies.

(B) Contracting officers may, with adequate written justification, waive the requirement for these reports.

(2)(A) The contract administration office price/cost analyst supports the administrative contracting officer in preparing a complete and accurate field pricing report for the contracting officer. The analyst—

(1) In concert with the auditor and in consideration of the auditor's workload, establishes a deadline for the auditor's input, subject to adjustments when considered necessary;

(2) Identifies areas for special consideration;

(3) Arranges for exchanges of technical and audit information; and

(4) Must be fully responsive to a request for technical information from the auditor.

(B) The pricing report—

(1) Details the price/cost analyst's comprehensive review and evaluation of the proposal;

(2) Includes information specifically requested by the contracting officer; and

(3) Summarizes what was analyzed, how it was analyzed, and the conclusions reached.

(c)(i) In requesting field pricing support—

(A) Mark all requests "FIELD PRICING REQUEST" in bold letters on the mailing envelope;

(B) On urgent requests, provide facsimile numbers to facilitate return of the completed report; and

(C) Send an advance copy to the audit activity.

(ii) When the contracting officer knows in advance that field pricing support will be required, the contracting officer may request field pricing support before the offeror submits a proposal.

(A) Give the administrative contracting officer (ACO) and auditor a copy of the solicitation;

(B) Tell them when to expect the proposal; and

(C) Tell the offeror to provide the ACO and auditor copies of the proposal.

(iii) Where audit reports are received on contracting actions that are subsequently cancelled or unsuccessful, notify the cognizant auditor in writing.

(iv) For spare parts or support equipment, identify all line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period. The field pricing report will include, as a minimum—

(A) A detailed analysis of each line item identified by the contracting officer in the request;

(B) A detailed analysis of those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(D) An analysis of a random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the contractor and reliability of its estimating and accounting systems.

(v) For spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoD Instruction 4245.12, Spares Acquisition Integrated with Production (SAIP))—

(A) Include a copy of the data entitled "Contractor's Procurement Schedule for SAIP' (Data Item DI–V–7200), or equivalent, in the request so that the benefits of combining new and in process quantities can be assured (these data are delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include these data in its proposal.

(e)(6) The contract administration office price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes quantifying technical findings; however, if the auditor requests a technical analysis, the auditor normally will incorporate the financial effect of the analysis in the audit report.

(7) The contracting officer shall, with the advice of the ACO and auditor, ensure that the contractor initiates necessary corrective action before contract award.

(8) The administrative contracting officer and auditor shall confer with the contractor during the course of the field pricing review to fully understand the basis for each item in the proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The audit activity sends the original to the administrative contracting officer and a copy to the contracting officer.

215.805–70 Cost realism analysis.

(a) In competitive acquisitions, even when adequate price competition exists, to ensure that proposed costs are consistent with the technical proposal, the contracting officer—

(1) Should perform a cost realism analysis when—

(i) A cost-reimbursement contract is anticipated;

(ii) The solicitation contains new requirements that may not be fully understood by competing contractors;

(iii) There are quality concerns; or

(iv) Past experience indicates that contractors proposed costs have resulted in quality or service shortfalls.

(2) May perform a cost realism analysis on other acquisitions.

(b) The contracting officer should determine what data are necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless these data are already available from Government sources, the contracting officer will need to ask the offerors for them.

(1) Request only necessary data; and

(2) Do not request submission or certification of cost or pricing data.

215.806 Subcontract pricing considerations.

215.806–1 General.

Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(1) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(2) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(i) Circumstances require prompt negotiation; and

(ii) A statement substantially as follows is included in the repricing modification of the prime contract:

As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(a)(1) If the contractor's analysis is not adequate, return it for correction of deficiencies.

(d) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.903(d).

215.806–3 Field pricing reports.

(a)(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition.

215.807 Prenegotiation objectives.

(a)(i) Also consider data resulting from application of work measurement systems in developing prenegotiation objectives.

(ii) Consider field pricing support personnel participation in planned prenegotiation and negotiation activities.

215.808 Price negotiation memorandum.

(a)(8) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The memorandum—

(A) Must document significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.810 Should-cost analysis.

(b)(i) DoD contracting activities shall perform a should-cost analysis before award of a definitive major systems contract exceeding $100 million when—

(A) Some initial production has already taken place;

(B) The contract will be awarded on a sole-source basis;

(C) There are future Defense requirements for substantial quantities of like items;

(D) The work is sufficiently defined to permit an effective analysis of what production should cost; and

(E) Major changes in the system are unlikely.

(ii) After the initial should-cost analysis, perform follow-on should-cost analyses as appropriate on contracts meeting the requirements in paragraph (b)(i) of this section.

(iii) Departments/agencies may prescribe procedures for waiving should-cost analysis, but shall not prescribe an approval level lower than a general/flag officer or civilian equivalent.

215.811 Estimating systems.

215.811–70 Disclosure, maintenance, and review requirements.

(a) *Definitions.*

(1) *Adequate estimating system* means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215–7001, Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for total cost or a major cost element(s) which do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.* (1) DoD policy is that all contractors have estimating systems that—

(i) Are adequate;

(ii) Consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling $50 million or more for which certified cost or pricing data were required; or

(ii) If in its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling $10 million or more (but less than $50 million) for which certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215–7001, Cost Estimating System Requirements, apply the disclosure, maintenance and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirement to other than large business contractors.

(2) The cognizant administrative contracting officer, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the administrative contracting officer (ACO);

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system*—(1) *General.* An adequate system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review Procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(*1*) The ACO or a representative should—

(*i*) Coordinate the contract administration activity's review;

(*ii*) Consolidate findings and recommendations; and

(*iii*) When appropriate, prepare a comprehensive written report for submission to the auditor.

(*2*) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review every three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings*—(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) The deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies which prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: Bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503–6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.* (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items which are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost or pricing data submitted as part of the supplemental proposal;

(iii) Provide for the contracting officer to unilaterally adjust the contract price

if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(h) *Contract clause.* Use the clause at 252.215–7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

215.870 Industrial modernization incentive program.

215.870–1 Policy.

DoD policy permits use of industrial modernization incentives to motivate the contractor to invest in modernization projects beneficial to the Government—

(a) Earlier than it otherwise would have; or

(b) It would not have otherwise undertaken.

215.870–2 General.

When conducting an industrial modernization incentives program (IMIP)—

(a) Follow the guidance in DoD Directive 5000.44, Industrial Modernization Incentives Program (IMIP), and DoD Guide 5000.44–G, Industrial Modernization Incentives Program (IMIP); and

(b) Tailor the IMIP to the requirements of the individual situation.

215.870–3 Incentives.

Incentives may be in the form of—

(a) *Modernization incentives.* The contractor earns negotiated amounts on instant and future contracts by participating in an IMIP.

(b) *Contractor investment protection.* (1) The Government is committed to reimburse the contractor for specifically identified capital assets acquired to support a contract or program which is terminated, or for which funds are not otherwise provided.

(2) Use of this incentive requires high level approval and Congressional notification in accordance with the DoD Guide.

(c) Other appropriate incentives such as award fees or, when it is in the Government's best interest, direct Government funding.

215.870–4 IMIP business agreement.

(a) In order to receive monetary incentives, the contractor must enter into a business agreement with the Government.

(b) The contracting officer—

(1) Shall evaluate the contractor's proposed agreement to determine that benefits are expected and that incentives are necessary to motivate contractor investment.

(2) Shall provide only those incentives needed to motivate the investment.

(3) Should normally negotiate ceilings to establish a maximum incentive amount.

(4) Should encourage flowdown of IMIP requirements to subcontractors, where appropriate.

215.870–5 Contract requirements.

Specific contract requirements, as described in DoD 5000.44–G, may be included in contracts, if appropriate.

215.870–6 Contract clause.

(a) Use the clause at 252.215–7003, Industrial Modernization Incentive Program Productivity Savings Rewards, in all solicitations and contracts which—

(1) Require cost or pricing data; and

(2) Exceed $1 million.

(b) The clause may be used in solicitations and contracts under $1 million.

215.871 Production special tooling and production special test equipment (PST/PSTE).

215.871–1 Definitions.

As used in this section,

Production special tooling and *production special test equipment* are those subsets of *special tooling* and *special test equipment* (see FAR 45.101) that support production rates and quantities.

Maximum amount means the total amount to be paid to the contractor on the instant and any future contracts,as a direct cost for the PST/PSTE to be acquired or fabricated to perform the instant contract. The maximum amount can be a specific dollar amount or dollar ceiling.

215.871–2 General.

(a) Contractors performing a production contract may need to acquire or fabricate PST/PSTE. 10 U.S.C. 2329 places certain restrictions on full payment of PST/PSTE costs under the instant contract.

(b) All contracts with PST/PSTE costs exceeding $1 million are subject to 10 U.S.C. 2329, except contracts—

(1) Where the PST/PSTE will be used solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding;

(3) Where the price is or is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(4) Where the price is set by law or regulation.

(c) When the cost of the PST/PSTE is under $1 million, the Government generally will reimburse the full amount under the instant contract.

215.871–3 Contract requirements.

In contracts subject to 10 U.S.C. 2329, include a special contractual provision which includes as a minimum—

(a) A listing, or reference to a listing, of the PST/PSTE the contractor will acquire or fabricate to perform the contract;

(b) The maximum amount the Government will pay for the PST/PSTE;

(c) The amount to be paid on the instant contract (see 250.871–4);

(d) The amortization schedule for payment of the balance, subject to availability of funds;

(e) A requirement that costs incurred by the contractor for the acquisition and fabrication of PST/PSTE shall be treated as direct charges under the instant and under future contracts. The requirement should clearly state that cost deferred for payment under future contracts shall not be shifted, assigned to other programs, or charged to indirect cost pools;

(f) A statement that, if the contract or program is terminated (for reasons other than the contractor's failure to perform) before the maximum amount has been paid, the Government, subject to the availability of funds, will pay the balance of the maximum amount or the actual direct cost incurred, whichever is less; and

(g) Designation of the rights to title.

215.871–4 Payment of PST/PSTE on contracts subject to 10 U.S.C. 2329.

Payment under the instant contract depends on whether the contracting officer expects that future contracts will be awarded to the same contractor for the same or similar items.

(a) If future contracts are not expected, allow full payment of the maximum amount under the instant contract.

(b) If future contracts are expected—

(1) Allow for payment of at least 50 percent of the maximum amount on the instant contract. The head of the agency may authorize, before contract award, a lower percentage if the lower percentage is in the Government's best interest and will not cause an undue financial burden on the contractor.

(2) Establish an amortization schedule for payments on future contracts.

215.871–5 Adjustments for profit and facilities capital cost of money.

(a) Do not consider the unamortized portion of PST/PSTE costs in developing the profit objective and do not include

these costs in the facilities capital employed base. Only those costs to be paid under the contract are profit-bearing and shall be included in the cost base for performance risk and contract cost risk (including working capital adjustment).

(b) Calculate the cost of money amount for the unamortized portion of PST/PSTE as follows:

Unamortized portion of PST/PSTE
TIMES
Current cost of money rate
TIMES
Period of time (years or portions thereof) until award of next contract on which PST/PSTE will be reimbursed

(1) Do not include this amount on the DD Form 1861, Contract Facilities Capital Cost of Money.

(2) Add this amount to Line 32 of the DD Form 1547, Record of Weighted Guidelines Application.

215.872 Work measurement systems.

215.872-1 Definition.

Work measurement systems (WMS), as used in this section, means systems used—

(a) To analyze the touch labor content of a manufacturing operation,

(b) To establish labor standards for that operation;

(c) To measure and analyze variances from those standards;

(d) To continuously improve both the manufacturing operation and the labor standards used in that operation.

215.872-2 Policy.

DoD policy is to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance.

215.872-3 General.

(a) The contracting officer, in coordination with the program manager, shall include provisions in the contract to implement the program's work measurement system requirements.

(b) An example of an acceptable set of criteria for WMS is found in MIL-STD-1567A. Tailor either MIL-STD-1567A or the contractor's existing WMS, if acceptable to the Government, for the specific program or contract.

215.872-4 Applicability.

The contracting officer—

(a) Should include provisions for WMS in solicitations and resulting production contracts for major weapons systems or subsystems in excess of—

(1) $100 million total cost; or

(2) $20 million annually.

(b) Should tailor the provisions to be consistent with program requirements and compatible with existing contractor technical and management processes and procedures;

(c) May include WMS requirements in full scale development contracts exceeding $100 million, when appropriate (e.g., to assist in transitioning from full scale development to production).

(d) Should not include WMS when—

(1) Acquiring commercial products (FAR 11.001);

(2) There will be low volume, nonrepetitive production runs;

(3) Submission and certification of cost or pricing data are not required; or

(4) There will be no cost benefit from the imposition of these systems.

215.873 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

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

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

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

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

(5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

Subpart 215.9—Profit

215.902 Policy.

Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.974). There are three approaches—

(1) The weighted guidelines method;

(2) The modified weighted guidelines method; and

(3) An alternate structured approach.

215.903 Contracting officer responsibilities.

(a) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(b) The contracting officer—

(1) Shall use the weighted guidelines method (see 215.971), unless—

(A) The modified weighted guidelines method applies; or

(B) An alternate approach is justified.

(2) Shall use the modified weighted guidelines method (see 215.972) on contract actions with nonprofit organizations;

(3) May use an alternate structured approach (see 215.973) when—

(i) The contract action is—

(A) Under $500,000;

(B) For architect-engineer or construction work;

(C) Primarily for delivery of material from subcontractors; or

(D) A termination settlement; or

(ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not

materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

215.905 Profit-analysis factors.

215.905-1 Common factors.

The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

215.970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The Military Departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.975).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.902. (See 215.971, 215.972, and 215.973 for guidance on using the structured approaches.) Administrative instructions for completing the form are in 253.215-70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

215.971 Weighted guidelines method.

215.971-1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

215.971-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 18)	Profit Objective
21	Technical	(1)	(2)	N/A	N/A
22	Management	(1)	(2)	N/A	N/A
23	Cost Control	(1)	(2)	N/A	N/A
24	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100%.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example—

Assigned—	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value	100		4.5

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development/bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values:* Normal and designated ranges.

Standard Alternate	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6
Alternate	6	4 to 8

(1) Standard. The standard designated range should apply to most contracts.

(2) Alternate. Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.971-4(c)(3)).

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state of the art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) Below normal conditions.

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.* (1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value-added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) Below normal conditions. (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control. (1) The contracting officer should evaluate—*

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors which affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) Above normal conditions. The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions. The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.971-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors	Assigned value	Base (Item 18)	Profit objective
25	Contract Type Risk	(1)	(2)	(3)

		Cost financed	Length factor	Interest rate	
26	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development/bid proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this Block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (230.7101(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values:* Normal and designated ranges.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm fixed-price, no financing	(1)	5	4 to 6.
Firm fixed-price, with financing	(2)	3	2 to 4.
Fixed-price-incentive, no financing	(1)	3	2 to 4.
Fixed-price with redeterminable provision	(3)		
Fixed-price-incentive, with financing	(2)	1	0 to 2.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time and material contracts (including overhaul contracts priced on time and material basis)	(5)	.5	0 to 1.
Labor-hour contracts	(5)	.5	0 to 1.
Firm fixed-price-level-of-effort-term	(5)	.5	0 to 1.

(1) *No financing* means that the contract either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) *With financing* means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions; and

(vii) Risks associated with contracts for foreign military sales (FMS) which are not funded by U.S. appropriations.

(2) *Mandatory*—The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (see also 217.7406–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0%, regardless of contract type.

(3) *Above normal conditions*—The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor; or

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions which substantially reduce the contractor's risk; or

(iv) Incentive provisions which place a low degree of risk on the contractor.

(e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100% minus the customary progress payment rate (FAR 32.501). For example, if a contractor receives progress payments at 75%, the portion financed by the contractor is 25%. On contracts that provide flexible progress payments (252.232–7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65

TABLE—Continued

Period to perform substantive portion (in months)	Contract length factor
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.971–4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27	Land	N/A	(2)	N/A
28	Buildings	(1)	(2)	(3)
29	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 215.871–5 and 230.7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range
(1)	Land	0	N/A.
(1)	Buildings	15	10% to 20%.
(1)	Equipment	35	20% to 50%.
(2)	Land	0	N/A.
(2)	Buildings	5	0% to 10%.
(2)	Equipment	20	15% to 25%.
(3)	Land	0	N/A.
(3)	Buildings	0	0%.
(3)	Equipment	0	0%.

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (215.971–2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business which is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clause, capital investment indemnification, and productivity saving rewards (215.870–3); and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial product lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.972 Modified weighted guidelines method for nonprofit organizations.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) Which operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) Which is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations which are Federally funded research and development centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.971, with the following modifications—

(i) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).* (A) If the contracting officer assigns a value from the standard designated range (215.971–2(c)), reduce the fee objective by an amount equal to 1% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of −1% to 0% in lieu of the values in 215.971–3. There is no normal value.

(c) For nonprofit organizations which are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2) of this section.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2)(i) of this section.

215.973 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.903.

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1% of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches.

215.974 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.404–2 and 216.404–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.973(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1% of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.975 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices which participate in the

management information system for profit and fee statistics send completed DD Forms 1547 on actions of $500,000 or more, where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated office
Army:	
Army Material Command (all field offices)	Army Material Command, ATTN: AMCPP-P, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.
U.S. Army Corps of Engineers (all field offices)	Office of the Chief of Engineers, ATTN: HQDA (DAEN-PRP), Washington, DC 20314-1000.
All others	Assistant Secretary for Research, Development, and Acquisition, ATTN: SARD-KS, Washington, DC 20310-0600.
Navy:	
Naval Air Systems Command [1]	Commander, Naval Supply Systems Command, ATTN: SUP 026, Washington, DC 20376-5000.
Naval Sea Systems Command [1]	
Space and Naval Warfare Systems Command [1]	
Naval Facilities Engineering Command [1]	
Naval Supply Systems Command [1]	
Office of Naval Research [1]	
Headquarters, United States Marine Corps [1]	
Strategic Systems Programs Office [1]	
Military Sealift Command [1]	
Automatic Data Processing Selection Office [1]	
Navy Regional Data Automation Center [1]	
Naval Research Laboratory [1]	
Navy Commercial Communications Center [1]	
Naval Aviation Depot Operations Center [1]	
Air Force:	
Air Force Systems Command (all field offices)	Air Force Logistics Command, ATTN: HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.
Air Force Logistics Command (all field offices)	

[1] Includes all subordinate field offices.

(c) When negotiation of a contract action over $500,000 has been delegated to another contracting agency (e.g., to an administrative contracting officer), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to: Washington Headquarters Service, Directorate for Information Operations and Reports (WHS/DIOR), 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

(f) In preparing/sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: P&L(Q) 1751.

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b) *Preaward notices.*

(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

PART 216—TYPES OF CONTRACTS

Sec.

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Subpart 216.7—Agreements

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

216.104-70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often

results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Achievement of those targets is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203-4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216-2, Economic Price Adjustment-Standard Supplies only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216-3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.*

(2) Limit use of the clause at FAR 52.216-4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds $50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding.

(4) Apply the full amount of the decrease in the labor rates and fringe benefits or unit prices for materials.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile

tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(*1*) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(*2*) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(*3*) Labor costs for which a definitive union agreement exists; and

(*4*) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply economic price adjustment coverage. This may be accomplished by—

(A) Using an economic price adjustment (EPA) clause that applies only to the effort covered by the modification;

(B) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(C) Using an entirely new EPA clause for the entire contract, including the new work.

(xv) Consistent with the factors in paragraphs (d)(i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for similar economic price adjustment arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804–3, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

216.203–4–70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price—

(i) Exists for the particular product being acquired; and

(ii) Has been verified in accordance with the criteria at FAR 15.804–3(c).

(2) Do not make an adjustment under this clause until the adjustment has been verified in accordance with the criteria set forth in FAR 15.804–3.

(3) The ten percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the "base steel index" definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (f) and Note 6 of the clause), verify the established price before contract award in accordance with FAR 15.804–3.

(5) When the clause is to provide for adjustment on a basis other than "established price" (see Note 6 of the clause), that price must be verified.

(6) Make no adjustment in contract price under this clause until the requested adjustment has been verified in accordance with the criteria in FAR 15.804–3 (but see Note 6 of the clause) and as required by paragraph (f) of the clause.

(7) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301–3 Limitations.

(c) The contracting officer executes the determination and findings.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

216.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.403-70 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed price contracts as provided in 216.470.

216.404 Cost-reimbursement incentive contracts.

216.404-1 Cost-plus-incentive-fee contracts.

(b) *Application.*

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.404-2 Cost-plus-award-fee contracts.

(a) *Description.* (i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application.* (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(1) Evaluate the contractor's performance; and

(2) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

216.470 Other applications of award fees.

The "award amount" portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The "base fee" (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the "award amount."

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

TABLE 16-1.—PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very good	Excellent
A—Time of Delivery	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule...	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.

TABLE 16–1.—PERFORMANCE EVALUATION CRITERIA—Continued

		Submarginal	Marginal	Good	Very good	Excellent
B—Quality of Work	(B–1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B–2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B–3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B–4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B–5) Independence and Initiative.	Constant surveillance req'd to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C—Effectiveness in Controlling and/or Reducing Costs.	(C–1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C–2) Control Direct Charges (Except Labor).	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C–3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

TABLE 16–2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

Category	Criteria	Rating		Item factor		Evaluation rating		Category factor		Efficiency rating
A	TIME OF DELIVERY									
	A–1 Adherence to Plan Schedule	____	×	.40	=	____				
	A–2 Action on Anticipated Delays	____	×	.30	=	____				
	A–3 Plan Maintenance	____	×	.30	=	____				
	Total Item Weighed Rating					____	×	.30	=	____
B	QUALITY OF WORK									
	B–1 Work Appearance	____	×	.15	=	____				
	B–2 Thoroughness and Accuracy of Work	____	×	.30	=	____				
	B–3 Engineering Competence	____	×	.20	=	____				
	B–4 Liaison Effectiveness	____	×	.15	=	____				
	B–5 Independence and Initiative	____	×	.20	=	____				
	Total Item Weighed Rating					____	×	.40	=	____
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS.									
	C–1 Utilization of Personnel	____	×	.30	=	____				
	C–2 Control of all Direct Charges Other than Labor	____	×	.30	=	____				
	C–3 Performance to Cost Estimate	____	×	.40	=	____				

TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT—Continued

Category	Criteria	Rating	Item factor	Evaluation rating		Category factor		Efficiency rating
Total Item Weighed Rating					×	.30	=	

TOTAL WEIGHED RATING:
Rated by:
Signature(s):

Ratings—Excellent; Very good; Good; Marginal; Submarginal;
Period of 19
Contract Number
Contractor
Date of Report
PNS Technical Monitor/s
Note: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) by central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

216.505 Contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271–4), substitute paragraph (f) at 252.247–7015, Requirements, for paragraph (f) of the clause at FAR 52.216–21, Requirements.

216.506 Ordering.

Orders placed under indefinite delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603–3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

216.603–4 Contract clauses.

(b)(2) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all undefinitized contract actions (UCAs) (see subpart 217.74), solicitations associated with UCAs, and basic ordering agreements contemplating the use of undefinitized orders.

(3) Use a clause substantially the same as the clause at FAR 52.216–25, Contract Definitization, in all solicitations and contracts when an undefinitized contract action (see subpart 217.74) is contemplated. If necessary, change the term "letter contract" to a term that describes the particular undefinitized action, e.g., order. Use Alternate I only for letter contracts.

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 3 years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to 2 years. No single extension shall exceed 1 year.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(2)(i) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

(3) Incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.102–2 General.

(b) The applicable program year is that shown in the DoD Future Years Defense Program.

217.103 Procedures.

217.103–1 General.

(a) *Criteria.* 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic production rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9));

(iii) The economic order quantity of the advance acquisition which precedes the multiyear acquisition is funded at least to the limits of the Government's liability (section 9021, Pub. L. 101–165).

(b) *Limitations.*

(i) *Public Law 90–378 (10 U.S.C. 2306(g)).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation during the fiscal year in which the contract is executed:

(*1*) Operation, maintenance, and support of facilities and installations;

(*2*) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(*3*) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(*4*) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond five years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(ii) Section 512 of Public Law 91–142.

(A) DoD may enter into multiyear acquisitions for supplies and services required for maintenance and operation of family housing even though funds would otherwise be available only within the fiscal year for which appropriated.

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond four years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(*1*) A substantial initial investment in plant or equipment;

(*2*) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(*3*) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of any—

(A) Multiyear contract that contains a cancellation ceiling in excess of $100 million (10 U.S.C. 2306(h)(3));

(B) Multiyear contract that provides for economic order quantity purchases in excess of $20 million in any year (section 9021, Pub. L. 101–165);

(C) Multiyear contract that includes an unfunded contingent liability in excess of $20 million (section 9021, Pub. L. 101–165); or

(D) Contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year (section 9021, Pub. L. 101–165).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Under Secretary of Defense (Acquisition), Director of Defense Procurement (USD(A)DP) and the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of $500 million for any system or component thereof unless—

(*1*) Specifically provided for in a DOD appropriation act (section 9021, Pub. L. 101–165); and

(*2*) The Secretary of Defense certifies to Congress that the current Future Years Defense Program fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to the Under Secretary of Defense (Acquisition), Director of Defense Procurement.

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (section 9021, Pub. L. 101–165).

(vii) Do not terminate a multiyear contract under a program approved by

Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (section 9021, Pub. L. 101–165).

(viii) The Secretary of Defense may ask Congress for relief from any conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to the Under Secretary of Defense (Acquisition), Director of Defense Procurement.

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation.* State cancellation ceilings in the schedule as a not-to-exceed amount.

Subpart 217.2—Options

217.202 Use of options.

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

217.208–70 Additional clauses.

(a) Use the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217–7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

Subpart 217.4—Leader Company Contracting

217.401 General.

When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is selected as the follower company, the contracting officer shall document the contract file to reflect—

(1) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(2) The rationale for selection of a non-SDB as the follower company.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

Unless otherwise stated in department or agency regulations, the contracting officer may make the determination.

217.503 Determination requirements.

(b) Also include in the determination a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Do not send invitations for bids or requests for proposals to other Government agencies.

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

FAR Subpart 17.6 does not apply to DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes policy and procedures for exchange of nonexcess personal property concurrent with an acquisition. Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)) permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of nonexcess personal property.

217.7001 Definitions.

As used in this subpart,

(a) *Exchange (trade-in) property* means property which—

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

(b) *Property* means items which fall within one of the generic categories listed in DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7002 Policy.

DoD policy is to exchange, rather than replace, eligible nonexcess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by—

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7003 Purchase request.

Ensure that the requiring activity provides all of the following in support of the purchase request—

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoDI 4140.51;

(b) A written determination of economic advantage indicating—

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

217.7004 Solicitation and award.

(a) Solicitations shall include a request for offerors to state prices—

(1) For the new items being acquired without any exchange; and

(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

217.7005 Solicitation provision.

Use the provision at 252.217–7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the continental United States. Allow at least 21 calendar days outside the United States.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

217.7101 Definitions.

(a) *Master agreement for repair and alteration of vessels*—

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) *Job order*—

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States, its possessions, or Puerto Rico, which—

(1) Request ship repair work; and

(2) Which possess the organization and facilities to perform the work satisfactorily. (Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States, its possessions, or Puerto Rico.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government whenever requested to do so by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

217.7103 Procedures.

217.7103–1 Content and format.

(a) A Master agreement shall contain all clauses required by 217.7104(a), statute and executive order.

(b) The following format may be adapted to fit specific circumstances:

Master Agreement for Repair and Alteration of Vessels

(1) This agreement is entered into this _____ day of _____ 19____, by the United States of America (the "Government":) represented by _____, the Contracting Officer, and, _____ a corporation organized and existing under the laws of the State of _____ (the "Contractor").

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA
by _____
(Contracting Officer)

_____
(Contractor)
by _____
(Authorized Individual)

_____
(Title)

217.7103–2 Period of agreement.

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103–3 Solicitations for job orders.

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

(2) Have not previously executed a master agreement, but possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Prepare the solicitation in the uniform contract format and in accordance with FAR subparts 14.2 or 15.4, as applicable.

(c) Include in the solicitation—

(1) The nature of the work to be performed;

(2) The date the vessel will be available to the contractor;

(3) The date the work is to be completed; and

(4) Whether bulk ammunition is aboard the vessel.

(d) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(e) Solicitations processed under negotiated acquisition procedures shall require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(f) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

217.7103–4 Award of a job order.

Award job orders in accordance with FAR subparts 14.4 or 15.10.

217.7103–5 Emergency work.

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when—

(i) Delay in the performance of necessary repair work would endanger a vessel, its cargo or stores; or

(ii) Military necessity requires immediate work on a vessel.

(b) Process this type of undefinitized contract action in accordance with subpart 217.74.

(c) Negotiate a price as soon as practicable after the issuance of an undefinitized order and definitize the job order upon completing negotiations.

217.7103–6 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should—

(a) Solicit offers for determining the nature and extent of the repairs;

(b) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance of the repairs; and

(c) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

217.7103–7 Modification of master agreements.

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement shall be changed only by modifying the master agreement itself. It shall not be changed through a job order.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

217.7104 Contract clauses.

(a) Use the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

(1) 252.217–7003, Changes.

(2) 252.217–7004, Job Orders and Compensation.

(3) 252.217–7005, Inspection and Manner of Doing Work.

(4) 252.217–7006, Title.

(5) 252.217–7007, Payments.

(6) 252.217–7008, Bonds.

(7) 252.217–7009, Default.

(8) 252.217–7010, Performance.

(9) 252.217–7011, Access to Vessel.

(10) 252.217–7012, Liability and Insurance.

(11) 252.217–7013, Guarantees.

(12) 252.217–7014, Discharge of Liens.

(13) 252.217–7015, Safety and Health.

(14) 252.217–7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Use the clause at 252.217–7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

Subpart 217.72—Bakery and Dairy Products

217.7200 Scope.

This subpart provides special policies and requirements for acquisition of perishable bakery and dairy products.

217.7201 Contract requirements for dairy products.

(a) Include the following chemical and microbiological requirements in solicitations and resulting contracts for milk, milk products, and cultured products (as defined in the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR–40–70/NAVSUPINST 4355.6/AFR 161–46/MCO 10110.44)):

(1) *Chemical requirements.* Products shall meet the chemical requirements for each specification cited in the contract on the date of award.

(2) *Microbiological requirements.* Products shall meet microbiological requirements stated in Public Health Service Publication 229, Grade A Pasteurized Milk Ordnance, in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 take precedence.

(b) When the contractor is required to furnish its own cabinets for dispensing milk from bulk containers—

(1) Include the following information in the solicitation—

(i) The number (or estimated number) of dispenser cabinets required;

(ii) Whether metal stands for the cabinets are required;

(iii) The number of cabinets required with a capacity of two containers each; and

(iv) The number required with a capacity of three containers each.

(2) Include the contractor's list of cabinet equipment in the schedule of the contract.

(c) The contracting officer shall notify the Government quality assurance representative of code changes approved under the clause at 252.217–7022, Code Dating.

217.7202 Contract type.

Normally use requirements contracts for bakery and dairy products. Other indefinite delivery contracts and other contract types may be used as appropriate.

217.7203 Contract clauses.

(a) Use the following additional clauses in solicitations and contracts for perishable bakery and dairy products—

(1) 252.217–7017, Time of Delivery. Use Alternate I when the contract is other than a requirements contract. Insert the number of hours in paragraph (c) of Alternate I.

(2) 252.217–7018, Change in Plant Location.

(3) 252.217–7019, Sanitary Conditions. Use Alternate I when the contract is other than a requirements contract.

(4) 252.217–7022, Code Dating. Use this clause only when the schedule or a specification requires labels showing the date of pasteurization, manufacture, production, or processing.

(5) 252.217–7023, Marking. Do not use this clause when MIL–STD–129, Marking for Shipment and Storage, is required.

(6) 252.217–7024, Responsibility for Containers and Equipment. Use when contractor is required to provide reusable containers and equipment.

(b) Use the following additional clauses in solicitations and contracts for perishable dairy products—

(1) 252.217–7020, Examination and Testing. Use Alternate I when the contract is an indefinite quantity contract.

(2) 252.217–7021, Deficiency Adjustment.

(3) 252.217–7025, Containers and Equipment.

Subpart 217.73—Identification of Sources of Supply

217.7300 Scope.

This subpart implements 10 U.S.C. 2384. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

217.7301 Policy.

Contractors shall identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number (if there is one);

(3) The item identification number used by—

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to supplies that are commercial items sold in substantial quantities to the general public if the contract—

(1) Provides for the acquisition of such supplies at established catalog or market prices; or

(2) Is awarded through the use of full and open competition.

217.7303 Solicitation provision.

(a) Use the provision at 252.217–7026, Identification of Sources of Supply, or one substantially the same, in all solicitations for supplies when the acquisition is being conducted under other than full and open competition, except when—

(1) Using FAR 6.302–5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, use the provision at 252.217–7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of supplies.

Subpart 217.74—Undefinitized Contract Actions

217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

217.7401 Definitions.

As used in this subpart—

(a) *Contract action* means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in subpart 217.77.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Qualifying proposal* means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

217.7402 Exceptions.

The following undefinitized contract actions (UCA's) are not subject to this subpart, but the contracting officer should apply the policy to them (and to changes under the Changes clause) to the maximum extent practicable—

(a) UCAs for foreign military sales;

(b) Purchases of less than $25,000;

(c) Special access programs;

(d) Congressionally mandated long-lead procurement contracts.

217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

217.7404–1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404–2 Price ceiling.

UCAs shall include a not-to-exceed price

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules which provide for definitization by the earliest of the following dates—

(1) The date which is 180 days after issuance of the action (this date may be extended but may not exceed the date which is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds spent under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contacting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

217.7404-4 Limitation on expenditures.

The Government shall not expend more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been expended by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments.

217.7404-5 Exception for initial spares.

The limitations in 217.7404-2, -3, and -4 do not apply to UCAs for the purchase of initial spares.

217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

217.7405 Contract clause.

Use the clause at 252.217-7027, Price Ceiling, in all undefinitized contract actions and solicitations associated with UCAs. Insert the not-to-exceed amount.

Subpart 217.75—Acquisition of Replenishment Parts

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts (as defined in Appendix E).

217.7501 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in 217.7503.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts as long as the action is justified.

(c) Shall follow the limitations on price increases in 217.7504.

217.7502 Spares acquisition integrated with production (SAIP).

(a) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts concurrently with parts being produced for the end item.

(b) DoD acquisition managers select parts for SAIP under the criteria in DoDI 4245.12, Spares Acquisition Integrated With Production (SAIP).

(c) Include appropriately tailored provisions in the contract when SAIP is used.

217.7503 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures in order of preference—

(a) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are—

(1) Two-step sealed bidding; and

(2) Brand name or equal purchase descriptions.

(b) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm which developed or designed the item or process, or its licensees, provided productive capacity and quality are adequate and the price is fair and reasonable.

(c) When additional sources are needed and the procedures in paragraph (a) of this section are not practicable, consider the following alternatives—

(1) Encourage the developer to license others to manufacture the parts;

(2) Acquire the necessary rights in data;

(3) Use a leader company acquisition technique (FAR subpart 17.4) when complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(4) Incorporate a priced option in the contract which allows the Government to require the contractor to establish a second source.

(d) As a last alternative, the contracting activity may develop a design specification for competitive acquisition through reverse engineering. Contracting activities shall not do reverse engineering unless—

(1) Significant cost savings can be demonstrated; and

(2) The action is authorized by the head of the contracting activity.

217.7504 Limitations on price increases.

This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period. (1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts within the small purchase limitation in FAR part 13.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the

contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any government orders for the replenishment part issued within the most recent 12 months.

Subpart 217.76—Contracts with Provisioning Requirements

217.7600 Scope of subpart.

This subpart contains contract requirements and procedures for items to be provisioned. For technical requirements of provisioning, see DoDD 4140.40, Provisioning of End Items of Material. For breakout requirements, see appendix E.

217.7601 Definitions.

As used in this subpart,

(a) *Provisioning* means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(b) *Provisioned item* means any item selected under provisioning procedures.

(c) *Provisioned items order* (PIO) means an undefinitized order issued under a contract which includes the Government's requirements for provisioned items. (Provisioned items with firm prices are acquired by supplemental agreement or by separate contract.)

(d) *Provisioning activity* means the organization responsible for selecting and determining requirements for provisioned items.

(e) *Provisioning requirements statement* means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes:

(1) Instructions, such as the provisioning method to be used;

(2) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);

(3) The type and location of provisioning conferences;

(4) Sample article requirements;

(5) The delivery schedule;

(6) Packaging and marking requirements for provisioned items; and

(7) Requirements for provisioning screening.

(f) *Provisioning technical documentation* means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as *supplementary provisioning technical documentation.*

217.7602 Contracting requirements.

217.7602-1 Contractual provisions.

Contracts containing provisioning requirements shall—

(a) List the provisioning functions to be performed and who will perform them;

(b) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement shall also be incorporated by contract modification);

(c) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(d) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(e) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a minimum, the instructions shall require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and the effective date of release;

(f) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than one activity will place provisioned items orders against the contract, state the requirements for provisioned items of each activity as separate contract line items;

(g) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal), and a timeframe for the contractor to furnish price proposals for provisioned items orders (normally 60 days after order issuance);

(h) Specify exhibit identifiers applicable to the contract line/subline items; and

(i) Include procedures for processing changes (including cancellations) in quantities of items ordered.

217.7602-2 Issuance of provisioned items orders.

(a) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(1) Issue provisioned items orders;

(2) Decrease or cancel quantities of items ordered; and

(3) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer shall notify the contractor to cancel the items).

(b) Include in Block 14 of the Standard Form 30—

(1) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(2) The appropriate exhibit identifier(s) for all attached exhibits.

(c) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(d) Distribution is the same as for the basic contract (see FAR 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

(e) See subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

217.7603 Contract administration requirements.

217.7603-1 Provisioning conferences.

When requested by the contracting officer or provisioning activity, the contract administration office shall assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

217.7603-2 Contract administration office monitoring.

The contract administration office (CAO) shall monitor contracts containing provisioning requirements. As a minimum the CAO shall—

(a) Ensure that the contractor understands the provisioning requirements;

(b) Review contractor progress in the preparation of provisioning technical documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

(d) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.11);

(e) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(f) Ensure that the contractor complies with contractual criteria for release of long lead time items.

217.7603-3 Negotiating and executing supplemental agreements.

(a) The administrative contracting officer (ACO) shall definitize provisioned items orders within the prescribed schedule.

(b) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO shall coordinate the negotiated schedule with the contracting officer or provisioning activity before execution of the supplemental agreement.

(c) The ACO shall maintain records of provisioned items orders showing—

(1) The adequacy of obligated funds;

(2) Due dates for price proposals; and

(3) Actions taken to obtain additional funds or to deobligate excess funds.

Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of over and above work.

217.7701 Procedures.

(a) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, the contracting officer shall establish a separate contract line item for the over and above work.

(b) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as appropriate, the Government authorizes the contractor to proceed.

(c) The clause at 252.217-7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(d) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form 30).

(e) Over and above work requests are within the scope of the contract. Therefore, procedures in subpart 217.74, Undefinitized Contractual Actions, do not apply.

(f) To the maximum extent practical, over and above work shall be negotiated prior to performance of the work.

217.7702 Contract clause.

Use the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart 217.71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

219.000 Scope of part.

This part also implements section 1207 of Public Law 99-661, section 808 of Public Law 100-180, and section 831 of Public Law 101-189. These laws set a goal for DoD for each of fiscal years 1987-1993 to—

(1) Award five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs) (See part 226 for policy/procedures on HBCU/MIs); and

(2) Maximize the number of such entities in DoD contracting and subcontracting.

219.001 Definitions.

The definition of *small disadvantaged business concern* to be used for DoD

contracts is in the provision at 252.219–7000 and is more restrictive than the definition in FAR 19.001.

Subpart 219.2—Policies

219.201 General policy.

(a) The DoD will use the section 8(a) program, small disadvantaged business set asides and evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(c)(2) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization shall be appointed by, be responsible to, and report directly to the director deputy director of the defense agency.

(7) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(9) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over $10,000, except small business-small purchase set-asides;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record;

(C) Referring recommendations which have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, in the case of a rejected small disadvantaged business set-aside recommendation or if an SBA representative is not assigned or available, the specialist refers the matter to the specialist's appointing authority.

(d) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Small Business and Small Disadvantaged Business Utilization Programs. Specialists—

(i) Report directly and are responsible only to their appointing authority;

(ii) Make sure that the contracting activity takes the necessary actions to implement small business, historically black college and university/minority institution, and labor surplus area programs;

(iii) Advise and assist contracting, program manager, and requirements personnel on all matters which affect small businesses, historically black colleges and universities or minority institutions, and labor surplus area concerns;

(iv) Aid, counsel, and assist small business, small disadvantaged business, historically black colleges and universities, and minority institutions by providing—

(A) Advice concerning acquisition procedures;

(B) Information regarding proposed acquisitions; and

(C) Instructions on preparation of proposals in the interpretation of standard clauses, representations, and certifications;

(v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and develop information on the technical competence of small business, small disadvantaged business concerns, historically black colleges and universities, and minority institutions;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and acceptability of subcontracting plans and assist administrative contracting officers (see 219.706(a)(ii)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

219.202 Specific policies.

219.202–1 Encouraging small business participation in acquisitions.

The DoD will maximize the use of small business concerns as planned producers in the Industrial Readiness Planning Program.

219.202–5 Data collection and reporting requirements.

Determine the premium percentage to be entered in Item D4E of the Individual Contract Action Report (DD Form 350), (see 253.204–70), as follows —

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair market price and the award price by the fair market price.

(2) For 219.7000 evaluation preference awards, divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For 219.502–3 preferential consideration awards, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its offer and at contract award to be eligible for —

(i) Award under a small disadvantaged business set-aside;

(ii) Preferential consideration as an SDB under a partial set-aside; or

(iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror certifies that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror—

(A) Represents that it currently is in the section 8(a) program; or

(B) Certifies that—

(*1*) Within the six months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged; and

(*2*) No circumstances have changed to vary that determination.

219.302 Protesting a small business representation.

219.302-70 Protesting a small disadvantaged business representation.

This section applies to protests of a small business concern's status as socially and economically disadvantaged. Protests of a concern's size are processed under FAR 19.302. Any offeror, the contracting officer, or the Small Business Administration (SBA) may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation of disadvantaged status by filing a protest with the contracting officer. The protest—

(1) Must be filed within the times specified in FAR 19.302(d)(1); and

(2) Must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time. (1) If a contracting officer's protest is based on information brought to his/her attention by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protestor. This includes protests filed before bid opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness;

(3) A copy of the protested concern's self-certification of disadvantaged status; and

(4) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest or

(2) The offeror has certified that—

(i) Within the six months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged; and

(ii) No circumstances have changed to vary that determination.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless—

(1) It is appealed; and

(2) The contracting officer receives the appeal decision before award.

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.

(h) An SBA determination may be appealed by—

(1) The interested party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.

219.304 Solicitation provisions.

(b) Use the provision at 252.219-7000, Small Disadvantaged Business Concern Representation (DoD Contracts) instead of the provision at FAR 52.219-2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(g) This repetitive set-aside procedure applies to DoD.

(S-70) When a product or service has been acquired successfully by a contracting office as a small disadvantaged business set-aside, all future requirements of that office for that product or service shall be acquired as small disadvantaged business set-asides, except those—

(1) Processed under small purchase procedures; or

(2) For which the contracting officer determines there is no reasonable expectation that the criteria for a small disadvantaged business set-aside can be met (see 219.502-2-70(a)).

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services of $85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total $85,000 or more.

219.502-2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under $2 million;

(ii) Dredging under $1 million; and

(iii) Architect-engineer services under $85,000.

219.502-2-70 Total set-asides for small disadvantaged business concerns.

(a) Except as provided in paragraph (b), the contracting officer shall set aside an acquisition for small disadvantaged businesses when there is a reasonable expectation that—

(1) Offers will be received from at least two responsible small disadvantaged business (SDB) concerns who—

(i) Can comply with the FAR 52.219-14 limitations on subcontracting; or

(ii) In the case of SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside.

(2) Award will be made at not more than ten percent above fair market price; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

(b) Do not set aside acquisitions for SDBs when—

(1) The product or service has been successfully acquired as a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs, and is under $2 million, or is for dredging under $1 million;

(3) The acquisition is for architect-engineer services or construction design for military construction projects, without regard to dollar value;

(4) The acquisition is reserved for the 8(a) program;

(5) The acquisition is processed under small purchase procedures; or

(6) The acquisition is for commissary or exchange resale items.

(c) See 205.207(d) for information on Commerce Business Daily synopsis.

219.502–3 Partial set-asides.

When a portion of an acquisition is to be set aside for small business concerns, except acquisitions for commissary or exchange resale, the contracting officer shall give small disadvantaged business concerns preferential consideration by using the procedures in 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

219.502–4 Methods of conducting set-asides.

(b) Offers on a small disadvantaged business (SDB) set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

219.504 Set-aside program order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c))—

(i) Total set-aside for small disadvantaged business concerns;

(ii) Total set-aside for small business concerns;

(iii) Partial set-aside for small business concerns with preferential consideration for small disadvantaged business concerns.

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

219.506 Withdrawing or modifying set-asides.

(a) Do not withdraw small disadvantaged business set-asides for reasons of price reasonableness unless the low responsive responsible offer exceeds fair market price by more than ten percent.

219.508 Solicitation provisions and contract clauses.

(d) Use the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns, instead of the clause in FAR 52.219–7, Notice of Partial Small Business Set-Aside. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

(e) Use the clause at 52.219–14, Limitations on Subcontracting, also in small disadvantaged business set-asides.

219.508–70 Solicitation provisions and contract clauses.

Use the clause at 252.219–7002, Notice of Small Disadvantaged Business Set-Aside, in solicitations and contracts for small disadvantaged business set-asides. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602–1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

219.602–3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Central Office's written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

Subpart 219.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

219.702 Statutory requirements.

(a) Section 834 of Public Law 101–189 requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns.

(i) The test program—

(A) Will be conducted—

(*1*) Over a three year period, beginning October 1, 1990;

(*2*) In accordance with the DoD test plan, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans;" and

(*3*) By the military departments and agencies through specifically designated contracting activities; and

(B) Permits contractors selected by the designated contracting activities to—

(*1*) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(*2*) Use the comprehensive plans in all DoD contracts which require a subcontracting plan.

(ii) The comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts which require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (section 402, Pub. L. 101–574).

219.703 Eligibility requirements for participating in the program.

(a)(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219–7000, Small Disadvantaged Business

Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation of a historically black college or university or minority institution as to its status.

219.704 Subcontracting plan requirements.

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial products subcontracting plans.

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705–2 Determining the need for a subcontracting plan.

(d) The extent to which offerors identify and commit to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as joint venture, teaming arrangement, or subcontractor, shall be an evaluation factor in source selection for major systems acquisitions and other complex or sensitive acquisitions which use formal or alternative source selection procedures.

219.705–4 Reviewing the subcontracting plan.

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to small disadvantaged business concerns, historically black colleges and universities, or minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

219.708 Solicitation provisions and contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219–7004, Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(2) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219–16, Liquidated Damages—Small Business Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(A) When contracting by negotiation, use the clause at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(B) Use the clause at 252.219–7005 with its Alternate I when, in the judgement of the contracting officer, inclusion of an incentive is necessary to increase subcontracting opportunities for other small businesses.

(C) Determine the percentage to be negotiated and used in the clause by considering the type and extent of effort required to exceed the goal, for example—

(*1*) Unique outreach programs;

(*2*) Use of small disadvantaged businesses, historically black colleges and universities, and minority institutions in nontraditional areas;

(*3*) Technical assistance to qualify or assist these entities; and

(*4*) Proximity of subcontractors to the prime.

(D) Do not use the clauses at 252.219–7005 and FAR 52.219–10 in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

(c)(2) For negotiated acquisitions of $10 million or more, the contracting officer may use an award fee provision instead of the incentive provision required by (c)(1)(A). When an award fee provision is used, do not use the clauses at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, and FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns. Do not use award fee provisions in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering the set-aside order of precedence in 219.504(b), review the acquisition for offering under the 8(a) Program.

219.804 Evaluation, offering, and acceptance.

219.804–1 Agency evaluation.

When SBA asks for a requirement for the 8(a) Program, offer the requirement if appropriate, and do not use the small disadvantaged business set-aside procedure. If an acquisition, other than a repetitive acquisition (as described in FAR 19.804–4), was synopsized using either of the notices in 205.207(d) (i) or (ii) before receipt of the SBA request, the request does not have to be honored.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(a) Dredging (SIC 1629, FPDS Y216–Z216) applies only to the Army Corps of Engineers.

(b) The targeted industry categories for DoD are:

Standard industrial classification (SIC)	SIC Code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Guided missiles and space vehicles	3761
(7) Space vehicle equipment, NEC	3769
(8) Tanks and tank components	3795
(9) Search and navigation equipment	3812
(10) Communication services, NEC	4899

219.1006 Procedures.

(b)(1) During the period when small business set-asides cannot be considered for acquisitions in the four designated industry groups—

(A) The 219.502–2(a) requirements for setting aside acquisitions are waived;

(B) The restrictions at 219.502–2–70(b) (1), (2), and (3) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

(C) The evaluation preference at 219.70 shall not be used.

(2) The Office of the Secretary of Defense (OSD) will decide whether to reinstate small business set-asides and will advise the departments and defense agencies. Military departments and defense agencies shall not reinstate small business set-asides unless directed by the OSD.

(d) Reporting requirements are at 204.670–9.

219.1007 Solicitation provisions.

Do not use the clause at 252.219–7003, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations or contracts for the four designated industry groups.

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

Offers from small disadvantaged business concerns shall be given an evaluation preference in accordance with this subpart.

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions where award is based on price and price related factors. The preference may be used at the discretion of the source selection authority in other competitive acquisitions.

(b) Do not use the evaluation preference in acquisitions which—

(1) Use small purchase procedures;

(2) Are set-aside for small disadvantaged businesses;

(3) Are set-aside for small businesses; or

(4) Are for commissary or exchange resale.

219.7002 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor of ten percent to the price of all offers, except—

(1) Offers from small disadvantaged business concerns, which have not waived the evaluation preference;

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference;

(3) Otherwise successful offers of—

(i) Eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in FAR 25.402; or

(ii) Qualifying country end products (see the definition in 225.101); and

(4) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(b) Apply the factor on a line item by line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the ten percent factor.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price which exceeds fair market price by more than ten percent.

(d) In partial small business set-asides, use the evaluation preference procedures set forth in the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the procedures in paragraphs (a) through (c) of this section.

219.7003 Solicitation provisions and contract clauses.

Use the clause at 252.219–7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and contracts involving the evaluation preference, except those which include the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.1—Basic Labor Policies

222,101 Labor relations.

222.101–1 General.

(a) Contracting offices shall—

(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

222.101–3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned RCS DD I&L (AR) 1153.

222.101–3–70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The head of the contracting activity shall submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion.* (i) Describe the impact on operations of a 15–30, 30–60, and a 60–90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal

Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101–3–70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

222.101–70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102–1 Policy.

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA) . Contracting officers shall—

(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103–4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of $500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402-70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671-DOL-AN.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage determinations directly to the Department of Labor.

222.404-11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administration and enforcement.

222.406-1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act;

(3) Copeland (Anti-Kickback) Act;

(4) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(5) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(1) Employment of foremen, laborers, mechanics, and others;

(2) Wages and fringe benefits payments, payrolls, and statements;

(3) Differentiation between subcontractors and suppliers;

(4) Additional classifications;

(5) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(6) Penalties and sanctions for violations of the labor standards provisions; and

(7) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the

prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity. (i) *Beginning of the investigation.* The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation*—(A) *Review of the contract.*

(1) Verify that all required labor standards and clauses and the wage determination are included in the contract.

(2) Review the following items in the contract file, if applicable—

(i) List of subcontractors;

(ii) Payroll statements for the contractor and subcontractors;

(iii) Approvals of additional classifications;

(iv) Data regarding apprentices and trainees as required by FAR 22.406–4;

(v) Daily inspector's report or other inspection reports;

(vi) Employee interview statements; and

(vii) SF 1413, Statement and Acknowledgement.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees. (1)* Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(3) Former employees may be interviewed elsewhere.

(4) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(5) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(6) Obtain information by mail when personal interviews are impractical.

(7) Use SF 1445, Labor Standards Interview, for employee interviews.

(8) Request employees to sign their statements and to initial any changes.

(9) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor. (1)* Interview the contractor whenever the investigation indicates the possibility of a violation.

(2) Inform the contractor that—

(i) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(ii) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(3) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records. (1)* Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406–2(a)(3)).

(2) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(i) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(ii) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(iii) Computation of daily and weekly hours;

(iv) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(v) Gross weekly wages;

(vi) Deductions;

(vii) Computation of net weekly wages paid to each employee;

(viii) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(ix) Apprenticeship and trainee registration and ratios; and

(x) Computation of fringe benefits payments.

(3) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(i) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(ii) Follow the form used by the contractor.

(iii) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406–8(a)(ii);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(c) *Notification to the contractor.*

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA). The notification shall inform the contractor that—

(*1*) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(*2*) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(*1*) Investigator's report;

(*2*) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(*3*) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(*4*) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, canceled checks, or supplemental payrolls); and

(*5*) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406–9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.*

(A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406–13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(9) Amount of liquidated damages assessed under the CWHSSA—

(i) Total amount

(ii) Number of contracts involved;

(10) Number of employees and amount paid/withheld under—

(i) Davis-Bacon Act

(ii) CWHSSA

(iii) Copeland Act; and

(11) Preconstruction activities—

(i) Number of compliance checks performed

(ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following—

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

222.608 Procedures.

222.608-4 Award pending final determination.

(b)(1) The head of the contracting activity is the approval authority for the contracting officer's certification.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804-2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office (see FAR 22.609).

222.805 Procedures.

(a)(2) See FAR 22.609 for a list of OFCCP regional offices.

222.806 Inquires.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003-1 General.

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402-70.

222.1003-7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and nondirectory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008-7 Required time of submission of notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR

22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements section 8078 of the 1986 Defense Appropriations Act, Public Law 99–190, section 8067 of Public Law 101–511, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted, in the interest of national security, at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222–7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.
223.301 Definition.
223.302 General.
223.303 Contract clause.
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223.370–1 Scope.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

(c) The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense for Acquisition (USD(A)).

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

DoD procedures for use in acquisitions involving ammunition and explosives are in 223.370.

223.301 Definition.

Hazardous material, as used in this subpart, is defined in the latest version of Federal Standard No. 313, "Federal Standard Material Safety Data, Transportation Data, and Disposal Data for Hazardous Materials Furnished to Government Activities."

223.302 General.

Executive Order 12196, dated February 26, 1980, applies the requirements of the Occupational Safety and Health Administration regulations, known as the Hazard Communication Standard, to Federal employees. In order to comply with these requirements, it is necessary to obtain information about the hazardous properties of items bought by the DoD and introduced into the workplace. This information is obtained from material safety data sheets, which manufacturers, importers, and distributors are required to furnish to end users.

(c) Upon receipt of the apparently successful offeror's material safety data sheets (MSDS) and hazard warning labels, the contracting officer shall provide a copy to the cognizant safety officer or other designated official, in order to—

(i) Ensure inclusion of the data in the agency's MSDS information system or label information system; and

(ii) Satisfy any other control, safety, or information objectives.

(3) Technical personnel must identify items that, in their professional opinion, will expose Government personnel to hazardous materials in any manner, e.g., work use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use.

223.303 Contract clause.

DoD activities use the clause at 252.223–7000, Hazardous Material Identification and Material Safety Data, instead of the clause at FAR 52.223–3, Hazardous Material Identification and Material Safety Data. Use the clauses at 252.223–7000 and 252.223–7001, Hazard Warning Labels, in solicitations and contracts for the items described by FAR 23.302(c).

223.370 Safety precautions for ammunition and explosives.

223.370–1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

(1) Development;
(2) Testing;
(3) Research;
(4) Manufacturing;
(5) Handling or loading;
(6) Assembling;
(7) Packaging;
(8) Storage;
(9) Transportation;
(10) Renovation;
(11) Demilitarization;
(12) Modification;
(13) Repair;
(14) Disposal;
(15) Inspection; or
(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

(1) Inert components containing no explosives, propellants, or pyrotechnics;
(2) Flammable liquids;
(3) Acids;
(4) Oxidizers;
(5) Powdered metals; or
(6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps that could—

(1) Interrupt DoD operations;

(2) Delay project or product completion dates;

(3) Adversely impact DoD mission readiness, production base, or production capabilities;

(4) Damage or destroy DoD property; or

(5) Cause injury to DoD personnel.

(b) This policy is implemented by DoD Manual 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26-M, as long as the contract cites these regulations.

223.370-4 Procedures.

(a) *Preaward phase*—(1) *Waiver of the mandatory requirements.* (i) Before either omitting the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of the manual, obtain approval of—

(A) The safety personnel responsible for ammunition and explosives safety; and

(B) The head of the contracting activity.

(ii) If the contracting officer decides to waive the mandatory requirements before award, the contracting officer shall set forth in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.

(iii) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(2) *Transportation considerations*—If shipment of ammunition and explosives is involved in the contract, address in the schedule of the contract the applicable Department of Transportation or Military Traffic Management Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(3) *Disposition of excess*—Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(4) *Preaward survey*—Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunitions or explosive work, include a review of the subcontractor's facility in the preaward survey.

(b) *Postaward phase*—(1) *Contract administration office responsibility*—(i) The contract administration office is responsible for verifying that the safety requirements of the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(ii) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer. The contracting officer shall make a decision after following the procedures in paragraph (a)(1) of this subsection.

(A) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(B) When the contracting officer has made a determination approving or disapproving the contractor's request, send the determination to the ACO for transmission to the contractor.

(2) *Subcontracts*—(i) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR 42.204. If the contracting officer believes the nature of the subcontract work poses a potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team shall inform the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

223.371 Radioactive material.

223.371-1 Policy.

DoD policy is to require contractors shipping radioactive material to give notice sufficiently in advance of shipment so that receiving activities can take proper health and safety precautions and obtain all legally required licenses.

223.371-2 Procedures.

(a) *Notice of delivery.* (1) The contracting officer shall require contractors supplying radioactive material to notify the contracting officer before delivery.

(2) Upon receipt of contract notification of the impending delivery of radioactive materials, the contracting officer shall notify the receiving activities so that appropriate safeguards can be taken.

(b) *Wavier of notice.* The contracting officer may waive the notification required of the contractor if—

(1) The contractor certifies that a notification on prior deliveries is still accurate; and

(2) The cognizant technical representatives agree.

223.371-3 Contract clause.

(a) Use the clause at 252.223-7004, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain—

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or

(2) Radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries.

(b) Such supplies include but are not limited to—

(1) Aircraft;

(2) Ammunition;

(3) Missiles;

(4) Vehicles;

(5) Electronic tubes;

(6) Instrument panel gauges;

(7) Compasses; and

(8) Identification markers.

(c) Insert in paragraph (a) of the clause at 252.223-7004, Notice of Radioactive Materials, the number of days in advance of delivery that the contractor must provide notification. Determine the number of days for the advance notice in coordination with the radiation protection officer, who will ensure that the proper license, authorization or permit is obtained before receipt of the radioactive material.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.

223.570-1 Definitions.

Employee in a sensitive position and *illegal drugs*, as used in this section, are defined in the clause at 252.223-7005, Drug-Free Work Force.

223.570-2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570-3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility for coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, health, and safety.

223.570-4 Contract clause.

(a) Use the clause at 252.223-7005, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts for—

(1) Commercial or commercial-type products (see FAR 11.001); or

(2) Performance or partial performance outside the U.S., its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 224.1—Protection of Individual Privacy

224.102 General.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.202 Policy.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to—

(1) Systems of records the contractor maintains on its employees; or

(2) The records generated by a State or private educational organization under a contract with the Government to provide training, when the records (admission forms, grade reports) are similar to and commingled with those maintained on other students.

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDD 5400.11, Department of Defense Privacy Program, and DoD 5400.11-R, Department of Defense Privacy Program.

Subpart 224.2—Freedom of Information Act

224.202 Policy.

(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoD 5400.7-R, DoD Freedom of Information Act Program.

PART 225—FOREIGN ACQUISITION

Sec.

225.000 Scope of part.
225.000-70 Definitions.
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Subpart 225.1—Buy American Act—Supplies

225.102 Policy.
225.103 Agreements with certain foreign governments.
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225.107 Acquisition from or through other Government agencies.
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Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.
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225.302 Policy.
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225.702 Restrictions.

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225.872–2 Applicability.
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Subpart 225.9—Additional Foreign Acquisition Clauses

225.901 Omission of the Examination of Records clause.

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Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases

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225.7002–1 Restrictions.
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225.7002–3 Preference for domestic wool.
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225.7004 Restriction on machine tools and powered and non-powered valves.
225.7004–1 Applicability.
225.7004–2 Authorization Act restrictions (FY1990–1991).
225.7004–3 Appropriations Act restrictions (FY1987–1989).
225.7004–4 U.S. or Canadian origin.
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225.7005 Restriction on manual typewriters.
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225.7010 Restriction on certain chemical weapons antidote.
225.7011 Restriction on Strategic Defense Initiative research, development, test, and evaluation.
225.7011–1 Definitions.
225.7011–2 Restriction.
225.7011–3 Exceptions.
225.7011–4 Procedures.
225.7011–5 Solicitation provision.
225.7012 Restriction on anchor and mooring chain.
225.7012–1 Restriction for fiscal year 1991.
225.7012–2 Restriction for fiscal years 1989 and 1990.
225.7012–3 Restriction for fiscal year 1988.
225.7012–4 Contract clauses.
225.7013 Restriction on polyacrylonitrile (PAN) based carbon fiber.
225.7013–1 Restriction.
225.7013–2 Contract clause.
225.7014 Restriction on carbonyl iron powders.
225.7014–1 Restriction.
225.7014–2 Waiver.
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225.7015 Restriction on night vision image intensifier tubes and devices.
225.7015–1 Restriction.
225.7015–2 Exception.
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Subpart 225.71—Other Restrictions on Foreign Purchases

225.7100 Scope of subpart.
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Subpart 225.72—Reporting of Overseas Subcontracts

225.7200 Scope of subpart.
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Subpart 227.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.
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225.7307–1 General.
225.7307–2 Procedures.
225.7308 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials;

(2) Foreign military sale acquisitions;

(3) Coordinating acquisitions involving work to be performed in foreign countries;

(4) Cooperative programs.

225.000–70 Definitions.

As used in this part—

(a) *Defense equipment* means any equipment, item of supply, component, or end product purchased by the DoD.

(b) *Domestic concern* means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(c) *Domestic end product* has the meaning given in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the meaning in FAR 25.101.

(d) *Foreign concern* means any concern other than a domestic concern.

(e) *Nondesignated country end product* means any end product which is not a U.S. made end product or a designated country end product.

(f) *Nonqualifying country* means a country other than the United States or a qualifying country.

(g) *Nonqualifying country end product* means an end product which is neither a domestic nor qualifying country end product.

(h) *Nonqualifying country offer* means an offer of a nonqualifying country end product, including the price of transportation to destination.

(i) *Qualifying country* is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(j) *Qualifying country component* and *qualifying country end product* are defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(k) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(l) *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.

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Trade Agreements Act.

225.000–71 General guidelines.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows—

(a) *Statutory or policy restrictions.* (1) Determine whether the product is restricted by—

(i) DoD Authorization or Appropriations Acts (see subpart 225.70); or

(ii) DoD policy (see subpart 225.71 and FAR 6.302–3).

(2) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the Trade Agreements Act.

(b) *Memoranda of understanding or other international agreements.* (1) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.

(2) If the product is the product of a qualifying country, evaluate the offer under 225.105 and 225.872–4.

(c) *Trade Agreements Act.* (1) Determine whether the product is covered by the Trade Agreements Act (see subpart 225.4).

(2) If the product is an eligible product under subpart 225.4, evaluate the offer under FAR 25.402 and 225.105.

(3) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.402(c) and 225.402(c)).

(d) *Contractors controlled by terrorist nations.* (1) Determine whether the contractor is controlled by a terrorist nation.

(2) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).

(e) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in 225.105.

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(a)(2) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under 225.105.

(3)(A) Specific public interest exceptions for DoD are in 225.105.

(B) Normally, use the evaluation procedures in 225.105, but consider recommending a public interest exception where the purposes of the Buy American Act are not served. For example, a public interest exception may be appropriate if—

(*1*) Accepting the low domestic offer will involve substantial foreign expenditures; or

(*2*) Accepting the low foreign offer will involve substantial domestic expenditures.

(C) A determination to grant a public interest exception under paragraph (a)(3)(B) of this section shall be made by the—

(*1*) Head of the contracting activity for acquisitions under $100,000; or

(*2*) Agency head for acquisitions of $100,000 or more.

(b)(i)A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) The determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting office if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.108(d)(1) or FAR 25.108(d)(1);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Personnel Support Center when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

225.103 Agreements with certain foreign governments.

See 225.872.

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105.

(1) Evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25–1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25–1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(2) When application of the factor would not result in the award of a domestic end product, e.g., when no domestic offers are received (see Example 3 of Table 25–1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25–1, Evaluation), evaluate offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25–1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted and duty is to be paid by the Government, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25–1, Evaluation.)

(3) Treat offers of eligible products under acquisitions subject to the Trade Agreements Act as if they were qualifying country offers. (See Example 4 of Table 25–1, Evaluation.)

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of "domestic end product" is more restrictive than the definition for—

(A) "U.S. made end product" under the Trade Agreements Act;

(B) "Domestically produced or manufactured products" under small business set-asides or small business-small purchase set-asides; and

(C) Products of small businesses under FAR part 19.

(iii) If an offer is for a "U.S. made end product," "domestically produced end product," or the product of a small business, but is not a "domestic end product" as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer. (See Example 4 of Table 25–1, Evaluation.)

Table 25–1, Evaluation

Example 1

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)—$6,000
Domestic Offer—$8,900
Qualifying Country Offer—$9,100
Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$600,000
Domestic Offer—$910,000
Qualifying Country Offer—$920,000
Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is awarded at $599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)—$6,000
Domestic Offer—$8,500
Qualifying Country Offer—$7,800
Award on Nonqualifying Country Offer. In this case, the application of the evaluation factor to the nonqualifying country offer results in a price ($9,000) that is higher than the other two offers, but would not result in award of a domestic offer, since the qualifying country offer is lower. Therefore, all offers are evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Domestic Offer—$950,000
Qualifying Country Offer—$880,000
Award on Nonqualifying Country Offer. Again, the addition of the evaluation factor would not result in the award of a domestic offer and all offers are evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $1,000 duty)—$10,000
Qualifying Country Offer—$9,500
Award on Qualifying Country Offer. Since no domestic offers are received, the foreign offers are evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Qualifying Country Offer—$880,000
Award on Nonqualifying Country Offer. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

Example 4

Alternate I:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Domestic Offer—$820,000
Eligible Product—$830,000
Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

Alternate II:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Eligible Product—$820,000
Domestic Offer—$830,000
Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i)DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, 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. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act-Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes the clause at 252.225–7007, Trade Agreements Act.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225–3, Buy American Act-Supplies,

and FAR 52.225–7, Balance of Payments Program, in solicitations and contracts for supplies or services which require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used where the restrictions in paragraph (d)(2) of this section apply when the contracting officer anticipates a waiver of the restriction.

225.109–70 Additional provisions and clauses.

(a) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(b) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in all solicitations that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(c) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

Subpart 225.2—Buy American Act—Construction Materials 225.202 Policy

(b) A nonavailability determination is not required for construction materials listed in FAR 25.108(d)(1) or in 225.108(d)(1). For other materials, a nonavailability determination must be approved at the levels specified in 225.102(b)(ii). Use the estimated value of the construction materials to determine the approval level.

225.205 Solicitation provision and contract clause.

225.205–70 Additional clause.

Use the clause at 252.225–7004, Nondomestic Construction Materials, in solicitations and contracts if construction materials may be used without regard to the Buy American Act. List the excepted items in the clause.

Subpart 225.3—Balance of Payments Program

225.302 Policy.

(a) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products; and

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama.

(b)(i) Before solicitation, the determinations required by FAR 25.302(b)(2) and (3), or a determination that the cost of acquiring domestic end products or services is unreasonable (FAR 25.303(b)), may be made by the following individuals or their immediate deputies—

ARMY

Deputy Chief of Staff for Procurement, U.S. Army Material Command
Commander in Chief, U.S. Army, Europe and DCSLOG, U.S. Army, Europe
Commander, Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command
Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Forces
Commander, Military Airlift Command
Commander, Air Force Logistics Command
Commander, Air Force Systems Command
Commander, Strategic Air Command
Commander, Tactical Air Command
Commander, Air Force Communications Command
Commander, Space Command

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

DEFENSE COMMUNICATIONS AGENCY

Director

DEFENSE LOGISTICS AGENCY

Executive Director, Contracting

DEFENSE MAPPING AGENCY

Deputy Director for Acquisition, Installations and Logistics

ON-SITE INSPECTION AGENCY

Principal Deputy Director

(ii) The authority to make the determinations required by FAR 25.302(b)(2) and (3) may be redelegated below the levels in paragraph (b)(i) of this section for acquisitions estimated at $500,000 or less in foreign cost.

(3)(A) 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.

(B) DoD has determined that requirements for the items on the lists at FAR 25.108(d)(1) and at 225.108(d)(1) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned—

(A) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(B) Industrial gases;

(C) Brand drugs specified by the Defense Medical Materiel Board;

(D) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick; and

(E) Overhaul and repair of vessels, aircraft, and vehicles which—

(*1*) Are home-ported/stationed/deployed overseas; and

(*2*) Cannot practically return to the United States or to U.S. operated repair facilities.

(F) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than $100,000.

(c)(i)Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other

taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

225.303 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation.*

(i) Use the evaluation procedures in 225.105 instead of the evaluation procedures in FAR 25.303(b). Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in 225.105 result in the award of a nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interest. If no domestic end product offers are received, the determination in FAR 25.302(b)(3) is not required.

225.305 Solicitation provision and contract clause.

225.305-70 Additional clause.

In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225-7005, Identification of Expenditures in the United States, in all negotiated contracts over $25,000 where—

(a) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(1) The contractor is a foreign concern; or

(2) The contractor is a domestic concern and the Government will take title outside the United States.

(b) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(1) The contractor is a domestic concern; or

(2) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

Eligible product means, instead of the definition at FAR 25.401, a designated or Caribbean Basin country end product in the categories listed in 225.403-70.

225.402 Policy.

(a) For solicitations containing multiple line items, estimate the value of the acquisition as follows:

(i) Total (add together) all line items of eligible products that represent the same item and differ only as to delivery period or location.

(ii) Consider individually (do not add together) essentially different line items of eligible products that are combined in a single solicitation.

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

(c)(i)Except as provided in paragraph (c)(ii) of this section, do not purchase nondesignated country end products subject to the Act unless they are Caribbean Basin country end products or qualifying country end products (see 225.872-1).

(ii) National interest waivers under section 302(b)(2) of the Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(ii)(A), (B), and (C) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The chief of the contracting office may approve a national interest waiver on the basis of nonavailability when—

(1) The solicitation is synopsized in accordance with FAR 5.203;

(2) The acquisition is made under full and open competition; and

(3) Offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(i) Not received; or

(ii) Insufficient to fill the Government's requirements. In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(B) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(C) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.403 Exceptions.

(c) The evaluation preference for small disadvantaged businesses in Subpart 219.70 does not displace an offer of an eligible product.

(d)(1)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD(A)DP).

(B) The following national security/national defense exceptions do not require approval by USD(A)DP—

(1) Where purchase from foreign sources is restricted by the DoD annual Appropriations or Authorization Acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR Part 8.

(2) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD(A)DP a copy of the justification for restricting competition in accordance with FAR 25.402(e) and FAR 6.303-1(d).

(3) Where competition from foreign sources is restricted under 225.71.

225.403-70 Products subject to the Trade Agreements Act.

Foreign end products subject to the Trade Agreements Act are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those end products which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list of products has been annotated to indicate those products which, due to this limitation, are eligible for designated countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment

FSG	Category/Description
34	Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
52	Measuring tools
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, lubricants, oils and waxes—See FAR 25.401 for exclusion for Caribbean Basin countries
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

25.405 Procedures.

(d) The requirements of FAR 25.405(d) do not apply to offshore acquisitions or to Defense Fuel Supply Center post, camp, or station overseas requirements.

225.407 Solicitation provision and contract clause.

(a)(1) Use the provision at 252.225–7006, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, instead of the provision at FAR 52.225–8, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7007, Trade Agreements Act.

(2)(A) Use the clause at 252.225–7007, Trade Agreements Act, instead of the clause at FAR 52.225–9, Buy American Act-Trade Agreements Act-Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(i)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B) Use the clause in all solicitations and contracts subject to the Trade Agreements Act, including solicitations for multiple line items, if any item is subject to the Act.

(C) Application of the procedures in 225.402 (a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the Trade Agreements Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

Subpart 225.6—Customs and Duties

225.602 Policy.

(1) Section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.604(b)).

(3) DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

225.603 Procedures.

(1) Issue duty-free entry certificates—

(i) In accordance with the policy in 225.602;

(ii) On contracts containing the clauses in—

(A) FAR 52.225–10, Duty-Free Entry; or

(B) 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies; or

(iii) On other contracts that fall within one of the following categories—

(A) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States; provided, the contract states that the final price is exclusive of duty;

(B) Purchases of foreign supplies by a domestic 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), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (1)(iii)(C) of this section; or

(C) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; provided—

(*1*) The fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(*2*) The prime contractor and, if applicable, the subcontractors concerned certify that—

(*i*) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government; and

(*ii*) The duty will be paid if such supplies or any portion are used 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

(3) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225–10, Duty-Free Entry, and 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies, to the extent practicable.

(2) Do not issue duty-free entry certificates or exempt duty for end products, components, or supplies already entered into the customs territory of the United States for which duty has already been paid.

(3) If a duty-free entry certificate is issued a contractor under a fixed-price contract based on the contractor's providing a domestic or qualifying country end product, component, or supply, negotiate an equitable reduction in the contract price if the contractor subsequently furnishes a nonqualifying country end product, component, or supply.

(4) Exclude duty from the contract price for end products, components, or supplies that are being accorded duty-free entry.

(5) Except as required under the evaluation procedures in 225.105 for the Buy American Act, do not evaluate duty for items accorded duty-free entry.

(6) Even if duty is evaluated under Subpart 225.1, the supplies may still be authorized duty-free entry if to do so is consistent with the policies in 225.602. However, if the Government will pay a duty, then the cost of the duty must be included in the contract price and evaluated as part of the offer.

(b) *Formal entry and release.*

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225–10, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMAO New York, Attn: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.
Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMAO New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Chief, Customs Division, International Logistics Office, DCMAO New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMAO New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Forms 7501, 7501A, or 7506, with the District Director of Customs.

(c) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.604 Exempted supplies.

(b)(i) The term "supplies"—

(A) Includes articles known as "stores," such as food, medicines, and toiletries, as well as 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.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of 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."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency 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)_____

225.605 Contract clause.

(b) The dollar amount in paragraphs (b)(1) and (i)(2) of the FAR 52.225–10 clause may be reduced appropriately in solicitations and contracts of $100,000 or less.

225.605–70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in all solicitations and contracts when—

(1) Duty-free entry will be granted under the resultant contract; and

(2) The solicitation and contract include the clauses at—

(i) FAR 52.225–10, Duty-Free Entry; or

(ii) 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies.

(b) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies, in all solicitations and contracts for supplies and in all solicitations and contracts for services involving the furnishing of supplies. Do not use the clause in a contract for supplies for exclusive use outside the United States.

(c) Use the clause at 252.225–7010, Duty-Free Entry—Additional Provisions, in all solicitations and contracts which include the clause at FAR 52.225–10, Duty-Free Entry.

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.702 Restrictions.

(1) See 209.104–1(g) for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism.

(2) Do not purchase petroleum products originating in Angola from companies engaged in production of petroleum products in Angola (Pub. L. 99–661, section 316). "Petroleum products" means—

(i) Natural or synthetic crude;

(ii) Blends of natural or synthetic crude; and

(iii) Products refined or derived from natural or synthetic crude or from such blends.

225.703 Exceptions.

(b)(i) For other than small purchases, the Secretary of the Department concerned may approve an exception. Before approving an exception for other than small purchases, the Secretary shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs), except—

(A) For emergency purchases; or

(B) Where supplies are not available from any other source and substitute supplies are not acceptable.

(ii) The Secretary of Defense, or designee, may waive the restriction in 225.702(2) if the Secretary or designee determines it to be in the best interest of the Government. Designees for this waiver authority are—

(A) Army—Assistant Secretary of the Army (Research, Development, and Acquisition).

(B) Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition).

(C) Air Force—Deputy Assistant Secretary of the Air Force (Contracting).

(D) Defense agencies—Director of Defense Procurement.

225.704 Contract clause.

225.704–70 Additional clause.

Use the clause at 252.225–7011, Certification and Agreement by Contractors Currently Producing Petroleum Products in Angola, in solicitations and contracts involving the supply of petroleum products.

Subpart 225.8—International Agreements and Coordination

225.801 International agreements.

(1) Treaties and agreements between the U.S. and foreign governments affect both—

(i) The way offers from foreign contractors are evaluated in DoD acquisitions; and

(ii) Performance of DoD contracts in foreign countries.

(2) This subpart covers acquisition policy and procedures based on treaties and international agreements.

(3) Information on specific agreements is available as follows—

(i) Memoranda of understanding (MOU) and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Office of the Deputy Assistant Secretary of Defense (Procurement) (Foreign Contracting) (703) 697–9351, DSN 227–9351).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East are filed with the U.S. European Command (EUCOM).

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command (CINCPAC).

225.802 Procedures.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a purchasing activity anticipates placement of a contract for performance outside the United States or Canada and the contracting activity is not under the command jurisdiction of a unified or specified command for the country involved, the purchasing activity shall maintain liaison with the cognizant contract administration office (CAO) (as specified in DLAH 4105.5) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) Where the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or where the acquisition will require logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting activity must coordinate with the cognizant contract administration office before contract award.

(2) The contracting officer shall request the following information from the contract administration office—

(i) The applicability of any international agreements to the acquisition;

(ii) Security requirements applicable to the area;

(iii) The standards of conduct required to be observed by the prospective contractor and its employees, and any action that may be taken in the event required standards are not maintained;

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies;

(v) Availability of logistics support for contractor employees; and

(vi) Information on taxes and duties from which the Government may be exempt.

(3) The contracting officer shall furnish the following information to the contract administration office—

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation;

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements;

(iii) Contract performance period and estimated contract value;

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(v) Contract security requirements; and

(vi) Other pertinent information to effect complete coordination and cooperation.

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all

commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting activity of the U.S. Government. The Canadian Government has waived notice of any change or modification which may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is considered to be part of the defense industrial base (see 225.870–2(b)).

(c) Contracts with contractors located in Canada should be awarded to and administered by the Canadian Commercial Corporation, except for—

(1) Negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program;

(2) Purchases of unusual or compelling urgency;

(3) Small purchases; or

(4) Purchases made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, uses provisions in the contracts that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) When contracts are placed with the Canadian Commercial Corporation, the government of Canada will provide the following services, without charge to DoD departments and agencies—

(1) *Contract administration services*, including—

(i) Cost and pricing analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing termination claims and disposing of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier; and

(2) *Audits*. When required, audits are performed by the Audit Service Group, Supply and Services Canada. Requests for audit on non-Canadian Commercial Corporation contracts should be routed through the cognizant contract administration office of Defense Contract Management Command.

(3) *Inspection*. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for the acquisitions in 225.870–1(b) (1) through (4), include Canadian firms on bidders mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Readiness Planning Program on bidders mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate bidders mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) Furnish a solicitation, if requested, to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle small purchases (see FAR part 13) directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter, supporting the Canadian offer, containing the following information—

(1) Name of the Canadian offeror;

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) 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 may permit Canadian firms to submit offers directly. The Canadian Commercial Corporation's endorsement of award, however, must be received by the contracting officer before contract award.

(c) All sealed bids will be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, all offers and quotations submitted by the Canadian Commercial Corporation are normally in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract shall—

(1) Provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Award individual contracts covering purchases from suppliers located in Canada, except for those in 225.870–1(b) (1) through (4), to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; provided, that the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency shall quote the contract price in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870–5 Contract administration.

(a) Assign contract administration in accordance with part 242. When contract administration is performed in Canada by the cognizant contract administration office of the Defense Contract Management Command, the paying office 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 Management Area Office, Cleveland 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

(b) For cost-reimbursement type contracts—

(1) Audits on contracts with the Canadian Commercial Corporation (CCC) are automatically arranged by the Department of Supplies and Services (DSS), Canada. Audit reports are furnished to DSS. Upon advice from

DSS, the CCC will certify the invoice and forward it with SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) On contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada.

(i) Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit.

(ii) The ASB/DSS forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.

(iii) ASB/DSS furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that may be terminated by the U.S. contracting officer.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts is made under this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) When contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, require contract quality assurance (CQA) and/or acceptance before shipment, CQA and/or acceptance, as applicable, will be performed by the Department of National Defence (Canada), under paragraph 6 of the Letter of Agreement.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–1 Scope.

(a) This section provides guidance on awarding contracts based on NATO cooperative projects.

(b) The authority is 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871–2 Definitions.

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) Cooperative project authority. (1) Departments or agencies, that have authority to do so, may enter into a cooperative project agreement with NATO or with one or more member countries of that organization under DoD Directive 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads have authority to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if—

(1) Required by the terms of a written cooperative project agreement;

(2) It will significantly further NATO standardization, rationalization, and interoperability; and

(3) It is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) The Deputy Secretary of Defense may waive for contracts or subcontracts placed outside the United States any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements for, or preferences to be given—

(i) To goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) For services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) If a waiver is contemplated under the terms of a cooperative project agreement, forward a request for the waiver to the Deputy Secretary of Defense, through the Director of Defense Procurement. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) The approval of the Deputy Secretary of Defense must be obtained before committing to make waivers in an agreement or an amendment to an agreement or contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. The general provisions for work sharing

at the prime and subcontractor level, however, must be clearly delineated in the agreement. This will provide the authority necessary to implement such arrangements during the acquisition phase.

(c) The agreement is the authority necessary for including a contractual provision requiring the prime contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871-7 Congressional notification.

(a) Congress must be notified whenever DoD determines to award a prime contract or subcontract to a particular contractor if the determination was not part of the certification made under Section 27(f) of the Arms Export Control Act before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to ASD(P&L) in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason why the authority to designate a particular contractor or subcontractor should be used.

(b) Congressional notification is also required each time a statutory waiver is exercised under 225.871-4, if such information was not provided in the certification to Congress before finalizing the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries (referred to in this part as "qualifying countries")—

Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

Australia
Sweden
Switzerland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in instances where considered necessary for national defense reasons.

225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except where restricted by—

(1) Provision of U.S. National Disclosure Policy (NDP), DOD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers—

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from OASD(P&L), Office of Industrial Base Assessment;

(3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872-3 Solicitation procedures.

(a) Include qualifying country sources on bidders mailing lists and comparable source lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and making awards under FAR Part 19 for small business concerns without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business firms.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use (see FAR 14.202 and FAR 14.203).

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department/agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been service tested and evaluated by the department/agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department/agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department/agency decides that confirmatory tests of qualifying country end products are necessary.

(4) Where it appears that these provisions might adversely delay service programs, obtain the concurrence of the DoD Acquisition Executive, Under Secretary of Defense (Acquisition), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

§ 225.872-4 Evaluation of offers.

(a) Qualifying country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(b) Evaluate offers from the qualifying country sources in 225.872-1(a) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, in accordance with 225.105 and 225.303.

(c) Evaluate offers of end products from the qualifying country sources in 225.872-1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request exemption of the Buy American Act as inconsistent with the public interest.

(1) To obtain an exemption, process a Determination and Findings for signature at the appropriate level as set forth at 225.102(a)(3)(C).

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

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 determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (*qualifying country-identify 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 and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (*qualifying country*) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act and without taking applicable U.S. customs and duties into consideration so that (*qualifying country*) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (*qualifying 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, 252.225-7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225-7006. Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

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)

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, ((703) 697-9351, DSN 227-9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity under DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services for DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity under DLAH 4105.4, section II, part 2.

(c) The contract administration activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portions of the delegation are covered by memoranda of understanding annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

225.872-6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement ((703) 697-9351, DSN 227-9351).

(c) Handle requests for audits in qualifying countries under 215.805-5(c)(1).

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Send the request for audit from the UK directly to their Ministry of Defence. See section VII, DLAH 4105.4 for guidance.

(2) Send an advance copy of the request to the focal point identified by the Foreign Contracting Directorate, Office of the Director of Defense Procurement.

225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22-R (implemented for the Army by AR 380-49; for the Navy by OPNAV Instruction 5540.8L; for the Air Force by AFR 205-4; for the Defense Communications Agency by DCA Instruction 240-110-8; and for the Defense Mapping Agency by DMA Instruction 5220.22).

225.872-8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations. (See the clause at 252.225-7002, Qualifying Country Sources as Subcontractors.)

Subpart 225.9—Additional Foreign Acquisition Clauses

225.901 Omission of the Examination of Records clause.

(c) *Conditions for omission.* (1)(ii) The department or agency shall submit the required report in triplicate to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301.

Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.

(a) The authority to act for the agency head is limited to a level no lower than

an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense for Acquisition.

(b) The designee is the contracting officer.

Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products, imposed by DoD Appropriations and Authorization Acts and other statutes. Refer to the Acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American Act or Balance of Payments Program.

225.7001 Definitions.

As used in this subpart—

(a) "Hand or measuring tools" means those tools listed in Federal supply classifications 51 and 52, respectively.

(b) "Possessions," as used in the phrase "United States or its possessions," includes Puerto Rico.

(c) "Specialty metals" is defined in the clause at 252.225–7014, Preference for Domestic Specialty Metals.

225.7002 Restrictions on food, clothing, fabrics, and specialty metals.

§ 225.7002–1 Restrictions.

(a) Do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

(1) Food, but this does not restrict acquisition of foods manufactured or processed in the United States or its possessions;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), but this does not restrict acquisition of cotton or wool reprocessed or reused in the United States or its possessions;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric or coated synthetic fabric;

(8) Canvas products; or

(9) Any item of individual equipment manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

(b) Do not acquire specialty metals, including stainless steel flatware, that were not melted in steel manufacturing facilities located within the United States or its possessions.

225.7002–2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002–1—

(a) Any of the items in 225.7002–1, if the Secretary concerned, or designee, determines that they cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at U.S. market prices.

(b) Outside the United States—

(1) In support of combat operations;

(2) Perishable foods by activities located outside the United States for their personnel; or

(3) Emergency acquisitions by such activities for their personnel.

(c) Acquisitions by vessels in foreign waters.

(d) Acquisitions of those supplies listed in FAR 25.108(d)(1).

(e) Small purchases (for the purpose of this exception, a small purchase means the contract action, as distinguished from a single line item of $25,000 or less).

(f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than ten percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed $25,000.

(g) Supplies purchased specifically for commissary resale.

(h) Purchases of specialty metals by subcontractors at any tier for programs, except—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; and

(6) Ammunition.

(i) Purchases of specialty metals and chemical warfare protective clothing when—

(1) Agreements with foreign governments require the United States to purchase supplies from foreign sources to offset sales made by—

(i) The U.S. Government; or

(ii) U.S. firms under approved programs; or

(2) The acquisition furthers an agreement with a qualifying country (see 225.872).

225.7002–3 Preference for domestic wool.

Use of the procedures in this subsection may result in acquisition of articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions. If so, a secretarial determination under 225.7002–2(a) is not required because the Secretaries have determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices.

(a) Solicit offers for supplies that are part wool as follows, giving preference in the order listed—

(1) Manufactured in the United States or its possessions from domestic wool;

(2) Manufactured in the United States or its possessions from a blend of domestic wool and foreign wool; and

(3) Manufactured in the United States or its possessions from foreign wool.

(b) Award for domestically produced articles using 100 percent domestic wools if—

(1) On the date offers are opened, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices (which reflect the Secretary of Agriculture's current incentive price) of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications; and

(2) Reasonable offers of 100 percent domestic wools are received.

(c) Evaluate offers using a factor computed in accordance with paragraph (d) of this subsection. Base the factor on the portion of foreign wool furnished or used to perform the contract, add the resulting amount to the offered price, and award accordingly. If the evaluation results in tie offers, make award to the offeror proposing to furnish or use the most domestic wool.

(d) The evaluation factor is ten percent of the average price of the representative grade(s) of domestic wool. To determine the representative grade(s) of wool, see the Table 25–2, Representative Grade. (The table prices reflect the current incentive price per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News.")

TABLE 25–2.—Representative Grade

	Price clean basis per pound dollars
Category 1—Grades 60's and finer: The average of the following grades:	
64's	(1)
62's	(1)
60's	(1)

TABLE 25–2.—Representative Grade—Continued

	Price clean basis per pound dollars
Category 2—Grades 58's and below: The average of the following grades:	
58's	(1)
56's	(1)
54's	(1)

[1] Determine the price clean basis for each grade by dividing the current incentive price by the first of the two grease percentages for the applicable grades (for which prices are reported) listed in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals. Compute the evaluation factor for solicitations on the basis of the four issues of "Market News" immediately preceding the issuance of bids or proposals, but adjust the factor at the time of bid opening (or the closing date for receipt of proposals) if the incentive prices change during the interim.

225.7002–4 Contract clauses.

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in all solicitations and contracts of $25,000 or more.

(b) Use the provision at 252.225–7013, Domestic Wool Preference, in solicitations for supplies if wool is a component part or end product. Compute the evaluation factor in accordance with 225.7002–3(d), and insert the amount of the factor in paragraph (a)(2)(i) of the clause.

(c) Use the clause at 252.225–7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over $25,000 that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over $25,000 requiring delivery, for one of the following major programs, of an article containing specialty metals—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; or

(6) Ammunition.

225.7003 Restriction on hand or measuring tools.

225.7003–1 Restriction.

Public Law 97–377 and subsequent laws appropriating funds for DoD restrict the acquisition of hand or measuring tools.

225.7003–2 Contract clause.

Use the clause at 252.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over $25,000 calling for delivery of hand or measuring tools.

225.7004 Restriction on machine tools and powered and non-powered valves.

(a) Public Law 99–591 (DoD Appropriations Act for FY 1987) and subsequent statutes have imposed restrictions on the acquisition of certain classes of machine tools, and on powered and non-powered valves used in piping for naval surface ships and submarines.

(b) Appropriations Act restrictions apply to acquisitions made obligating certain year funds, while Authorization Act restrictions apply to fund obligations made during certain fiscal years regardless of the year for which the funds were appropriated.

(c) When both restrictions apply to an acquisition, the Appropriations Act restrictions take precedence and the procedures of 225.7004–3 apply.

225.7004–1 Applicability.

(a) Machine tools restricted under this section are those tools listed in Federal supply classes of metalworking machinery in the following categories—

Federal supply classification (FSC)	Name
3405 [1]	Saw and filing machines.
3408	Machine centers and way type machines.
3410	Electrical and ultrasonic erosion machines.
3411	Boring machines.
3412	Broaching machines.
3413	Drilling and tapping machines.
3414	Gear cutting and finishing machines.
3415	Grinding machines.
3416	Lathes.
3417	Milling machines.
3418	Planers and shapers.
3419	Miscellaneous machine tools.
3426	Metal finishing equipment.
3433	Gas welding, heat cutting, and metalizing equipment.
3438 [1]	Miscellaneous welding equipment.
3441	Bending and forming machines.
3442	Hydraulic and pneumatic presses, power driven.
3443	Mechanical presses, power driven.
3445 [1]	Punching and shearing machines.
3446	Forging machinery, and hammers.
3448	Riveting machines.
3449	Miscellaneous secondary metal forming and cutting machines.
3460	Machine tool accessories.
3461	Accessories for secondary metalworking machinery.

[1] Not subject to the restrictions of 225.7004–3 for FY 1987 or FY 1988 funds.

(b) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

225.7004–2 Authorization Act restrictions (FY 1990–1991).

(a) Do not purchase the machine tools or powered and non-powered valves in 225.7004–1 unless they are of United States or Canadian origin, or unless an exception in paragraph (b) of this subsection applies.

(b) *Exceptions.* (1) The restriction in paragraph (a) of this subsection is waived for acquisitions of less than $25,000 when small purchase procedures are used.

(2) The head of the agency may waive the restriction in paragraph (a) for other acquisitions on a case-by-case basis if any of the following apply—

(i) The restriction would cause unreasonable costs or delays.

(ii) United States producers of the item would not be jeopardized by competition from a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iv) The restriction would impede cooperative programs entered into between DoD and a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(v) The restriction would result in the existence of only one United States or Canadian source for the item.

225.7004–3 Appropriations Act restrictions (FY 1987–1989).

(a) Machine tools listed in 225.7004–1 purchased directly as an end item or indirectly on behalf of the Government using funds appropriated in FY 1989 must be of U.S. or Canadian origin. This restriction also applies to purchases made using FY 1987 and 1988 appropriated funds except for those machine tools asterisked in 225.7004–1.

(b) The restrictions under this subsection may be waived only if supplies of these machine tools of U.S. or Canadian origin are not adequate to meet DoD requirements on a timely basis.

(1) The head of the agency may waive the restriction for acquisitions of $25,000 or more.

(2) The chief of the contracting office may waive for acquisitions less than $25,000.

225.7004-4 U.S. or Canadian origin.

(a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.

(b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7004-5 Contract clauses.

(a) Unless a waiver has been granted, use the clause at 252.225-7016, Restriction on Acquisition of Foreign Machine Tools, in all solicitations and contracts for machine tools restricted under 225.7004-2 when the contract is awarded from October 1, 1989, through September 30, 1991. Use the basic clause with its Alternate I when the acquisition is covered either by 225.7004-3 or by both 225.7004-2 and 225.7004-3.

(b) Unless a waiver has been granted, use the clause at 252.225-7017, Restriction on Acquisition of Foreign Valves, in all solicitations and contracts for valves when the contract is awarded from October 1, 1989, through September 30, 1991.

(c) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

225.7005 Restriction on manual typewriters.

10 U.S.C. 2507(c) states that DoD may not acquire manual typewriters containing one or more components manufactured in a Warsaw Pact member country, unless the products of that country are accorded most favored nation status. Information on Warsaw Pact countries accorded most favored nation status is maintained in the Office of the Director of Defense Procurement (Foreign Contracting) (703)697-9351, DSN 227-9351.

225.7006 Restrictions on construction or repair of vessels in foreign shipyards.

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7007 Restriction on acquisition of foreign buses.

(a) Do not use DoD appropriations to acquire a multipassenger motor vehicle (bus) manufactured outside the United States (10 U.S.C. 2507(a)), unless acquiring a U.S. manufactured bus is uneconomical or adversely affects the national interest.

(b) Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

(c) The head of the contracting activity may authorize the use of foreign manufactured buses by determining that the use of U.S. manufactured buses is not economical or will adversely affect the national interest of the United States.

(d) Foreign buses may be acquired without a determination in the following circumstances—

(1) When needed for temporary use because buses in the United States are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States.

(2) When the requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, foreign-manufactured buses may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(3) When foreign-manufactured buses are available at no cost to the U.S. Government.

225.7008 Restriction on research and development.

(a) Public Law 92-570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 Restriction on aircraft ejection seats.

(a) Do not use funds appropriated for DoD for FY1984 through 1989 to acquire aircraft ejection seats manufactured in a foreign nation if that foreign nation does not permit U.S. manufacturers to compete for its ejection seat requirements.

(b) This limitation applies only to ejection seats acquired for installation on aircraft produced or assembled in the United States.

225.7010 Restriction on certain chemical weapons antidote.

Under 10 U.S.C. 2507(b), DoD appropriations may not be used to acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless—

(a) The injector or component is manufactured in the United States by a company that—

(1) Is a producer under the Industrial Preparedness Program at the time of contract award;

(2) Has received all required regulatory approvals; and

(3) Has the plant, equipment, and personnel to perform the contract in the United States at the time of contract award; or

(b) The Under Secretary of Defense (Acquisition) determines that acquisition from a source not described in paragraph (a) of this section is critical to the national security.

225.7011 Restriction on Strategic Defense Initiative research, development, test, and evaluation.

225.7011-1 Definitions.

Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E.

225.7011-2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts for the conduct of

Strategic Defense Initiative (SDI) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011–3(b)).

(c) Except as provided in 225.7011–3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the SDI.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

225.7011–3 Exceptions.

This prohibition shall not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

225.7011–4 Procedures.

(a) When awarding a prime contract to a foreign government or firm under 225.7011–3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) When either a broad agency announcement (BAA) or program research and development announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory.

(i) The determination must specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(b) Forward a copy of the certification (from 225.7011–3(b)) and, as appropriate, the determination or justification and approval (J&A) within 30 days of contract award to the SDI Organization, Attn: SDIO/IPM, The Pentagon, Washington, DC 20301–7100, if award is based on—

(1) A determination under paragraph (a) of this subsection;

(2) Other than full and open competition under FAR Subpart 6.3; or

(3) An unsolicited proposal under FAR Subpart 15.5.

225.7011–5 Solicitation provision.

Use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E, in all competitively negotiated SDI solicitations for research, development, test, and evaluation, unless foreign participation is otherwise excluded.

225.7012 Restriction on anchor and mooring chain.

225.7012–1 Restriction for fisca year 1991.

(a) Under Public Law 101–511, section 8041, DoD appropriations may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) This restriction may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(1) Document the waiver in a written D&F containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(2) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7012–2 Restriction for fiscal years 1989 and 1990..

Under Public Law 100–463, section 8089, and Public Law 101–165, section 9051, no fiscal year 1989 or 1990 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States.

225.7012–3 Restriction for fiscal year 1988.

(a) Under Public Law 100–202, section 8125, no fiscal year 1988 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States, its territories or possessions, or Canada.

(b) When adequate domestic supplies of chain are not available to meet contract requirements on a timely basis, the chain may be procured from other countries on a case-by-case basis as

determined by the head of the agency concerned.

225.7012-4 Contract clauses.

(a) Use the clause at 252.225-7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(1) Using fiscal year 1991 funds; and

(2) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

(b) Use the clause at 252.225-7020, Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Years 1989 and 1990), in all solicitations and contracts—

(1) Using fiscal year 1989 or 1990 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

(c) Use the clause at 252.225-7021, Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Year 1988), in all solicitations and contracts—

(1) Using fiscal year 1988 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

225.7013 Restriction on polyacrylonitrile (PAN) based carbon fiber.

225.7013-1 Restriction.

(a) Section 8088, Public Law 100-202, and subsequent appropriations acts, require the Secretary of Defense to take such action as necessary to ensure by FY1992 that a minimum of 50 percent of the annual DoD requirements for PAN carbon fibers is acquired from domestic sources.

(b) To meet this goal, all new major systems must use domestic or Canadian sources for all PAN carbon fiber requirements. "Domestic or Canadian sources" include U.S. and Canadian manufacturers and producers.

225.7013-2 Contract clause.

(a) Use the clause at 252.225-7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber, in all major systems acquisition programs (as defined in FAR Part 34) that are not yet in production (milestone III as defined in DoDI 5000.2, Defense Acquisition Program Procedures).

(b) Contracting officers may, with the approval of the head of the contracting activity, waive, in whole or in part, the requirement in the clause. For example, a waiver is justified if a qualified domestic or Canadian source cannot meet scheduling requirements.

225.7014 Restriction on carbonyl iron powders.

225.7014-1 Restriction.

In accordance with 10 U.S.C. 2507(a), all carbonyl iron powders contained in supplies acquired by DoD shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada.

225.7014-2 Waiver.

The restriction may be waived by the Secretary of Defense if its application is determined not to be in the national interest.

225.7014-3 Clause.

Use the clause at 252.225-7023, Restriction on the Acquisition of Carbonyl Iron Powders, in all solicitations and contracts which anticipate the acquisition of supplies which contain carbonyl iron powders.

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015-1 Restriction.

Under Public Law 101-165 and subsequent Appropriations Acts, DoD appropriations may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

225.7015-2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Department responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.

225.7015-3 Contract clause.

Use the clause at 252.225-7024, Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices, in all solicitations and contracts which—

(a) Use fiscal year 1990 or later funds; and

(b) Require second and third generation night vision image intensifier tubes and devices.

Subpart 225.71—Other Restrictions on Foreign Purchases

225.7100 Scope of subpart.

This subpart contains foreign product restrictions which are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

Relevant definitions are in the clause at 252.225-7022, Foreign Source Restrictions.

225.7102 Policy.

DoD requirements for the following, including acquisitions for items containing the following, shall be acquired from U.S. or U.S. and Canadian sources to the maximum extent practicable—

(a) Miniature and instrument ball bearings;

(b) Precision components for mechanical time devices included in fuzes, boosters, and aircraft clocks in the following Federal supply classes:

FSC	Description
1305	Ammunition through 30mm
1310	Ammunition, over 30mm up to 75mm
1315	Ammunition, 75mm through 125mm
1320	Ammunition over 125mm
1325	Bombs
1330	Grenades
1340	Rockets and rocket ammunition
1345	Land mines
1390	Fuzes and primers
6645	Time measuring instruments (aircraft clocks only);

(c) High purity silicon;

(d) High carbon ferrochrome (HCF);

(e) Antifriction bearings and bearing components;

(f) Forging items as follows:

Items	Categories
Shipboard forged anchor chains.	All.
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large caliber, thick-walled cannon (105 mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts receivers, sights/handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

225.7103 Exceptions.

The policy in 225.7102 does not apply to acquisitions—

(a) When using small purchase procedures, unless the restricted item is the end item being purchased;

(b) Of miniature and instrument ball bearings or precision components for mechanical time devices when

necessary to meet urgent military requirements;

(c) Of commercial products—

(1) Except forgings;

(2) Other than miniature and instrument ball bearings or precision components for mechanical time devices for use as components or subassemblies of defense equipment or systems (e.g., repair parts);

(3) Other than steel plate, sheet, ingots or the like that incorporate high carbon ferrochrome; or

(4) Except when the restricted item is the end item;

(d) Overseas for overseas use;

(e) Of forgings—

(1) Used for commercial vehicles or noncombat support military vehicles; or

(2) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete;

(f) Of high carbon ferrochrome incorporated in qualifying country end products from North Atlantic Treaty Organization countries; or

(g) For bearings and bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. (This exception does not apply to miniature and instrument ball bearings.)

225.7104 Waivers.

(a) Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102(a), (b), (c), (d), and (f), provided in the case of (a), (b) and (c) that—

(1) The contractor has on hand subassemblies or end items containing the restricted items;

(2) The waiver is only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components; and either

(3) The delivery schedule is such that use of other than domestic items is necessary; or

(4) Use of domestic items would interfere with economical or normal production scheduling.

(b) If the waiver is for miniature and instrument ball bearings or precision components for mechanical time devices, the contractor must agree to acquire a like quantity and type for non-Government use.

(c) If the waiver is for antifriction bearings (225.7102(e)), except miniature and instrument ball bearings, the head of the contracting activity, on a nondelegable basis, may waive the requirement for domestic manufacture—

(1) Upon execution of a determination and findings that—

(i) No domestic bearing manufacturer meets the requirement; or

(ii) It is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive.

(2) For multiyear contracts or contracts exceeding 12 months, if—

(i) The head of the contracting activity executes a D&F in accordance with paragraph (c)(1) of this section;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

225.7105 Contract clause.

(a) Use the clause at 252.225-7025, Foreign Source Restrictions, in all solicitations and contracts, except—

(1) Those in 225.7103; or

(2) Those where the contracting officer knows that the supplies being acquired do not contain the restricted items.

(b) If an exception under 225.7103 applies to any portion of the acquisition, specify the exception in the solicitation and contract.

Subpart 225.72—Reporting of Overseas Subcontracts

225.7200 Scope of subpart.

This subpart discusses DoD monitoring of the volume, type, and nature of certain subcontracts awarded to foreign sources.

225.7201 Applicability.

(a) Except as noted in 225.7202, this subpart applies to any contract that—

(1) Is expected to exceed $500,000;

(2) Exceeds $500,000 at time of award; or

(3) Exceeds $500,000 subsequent to award if a modification increases the amount of the contract to more than $500,000.

(b) Contractors awarded contracts meeting the criteria in paragraph (a) of this section, and their first-tier subcontractors awarded subcontracts exceeding $100,000, must report (using DD Form 2139, Subcontract Report of Foreign Purchases) the volume, type, and nature of—

(1) Subcontracts exceeding $25,000 if the country of origin of the producer of the supplies, or provider of the services, is outside the United States; and

(2) Modifications, exceeding $25,000, of such subcontracts.

(c) Contractors, and their first-tier subcontractors, required by paragraph (a)(3) of this section to report subcontracts awarded to foreign sources are required to report only those subcontracts awarded after the modification is effective.

225.7202 Exception.

This subpart does not apply to contracts for commercial items, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

225.7203 Contract clause.

Except for acquisitions in 225.7202, use the clause at 252.225-7026, Reporting of Overseas Subcontracts, in all solicitations and contracts described in 225.7201(a).

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act. Section 22 of the Arms Export Control Act (Pub. L. 90-629, as amended) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) Foreign military sales made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks;

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through foreign military sales (FMS) agreements. The agreement is documented on a DD Form 1513, DoD Offer and Acceptance. The DD Form 1513—

(1) Lists the items and services, estimated costs, and terms and conditions of the sale;

(2) Is presented to the foreign customer; and

(3) Provides for signature of the foreign customer to indicate acceptance.

(b) Acquisitions for FMS are conducted under the same acquisition and contract management procedures as other defense acquisitions.

(c) Solicitations shall separately identify known FMS requirements and the FMS customer.

(d) Contracts for known FMS requirements shall clearly be marked "FMS requirement" on the face of the contract along with the FMS customer and the case identifier code.

225.7302 Procedures.

On FMS programs that will require an acquisition, the contracting officer assists the departmental/agency activity responsible for preparing the DoD Offer and Acceptance by—

(a) Working with prospective contractors to—

(1) Identify and review sales commissions and fees;

(2) Identify, in advance of the DoD Offer and Acceptance, any unusual provisions or deviations.

(3) Advise the contractor if the departmental/agency activity expands, modifies, or does not accept any requirements proposed by the contractor;

(4) Identify any logistics support necessary to perform the contract; and

(5) For acquisitions over $10,000 that are to be awarded noncompetitively, asking the prospective contractor(s) for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer.

(b) Working with the departmental/agency activity responsible for preparing the DoD Offer and Acceptance to—

(1) Assist, as necessary, in preparation of the DD Form 1513;

(2) Identify and explain all unusual contractual requirements or requests for deviations; and

(3) Assist in preparing the price and availability data.

225.7303 Pricing acquisitions for foreign military sales.

Price foreign military sale contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to a foreign military sale contract, however, may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

225.7303–1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303–2 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 225.7303–1 do not exist—

(1) Recognize 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 other defense contracts.

(2) Recognize reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(i) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for sales to foreign governments.

(*1*) Such costs may be recovered for U.S. Government requirements under DFARS 231.205–38(c).

(*2*) Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses, such as—

(A) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(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 an offset arrangement between DoD and a foreign government. (Costs associated with the implementation of an offset agreement directly between a contractor and a foreign government are not allowable.)

(iv) Costs that are the subject of advance agreement under the appropriate provisions of FAR Part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement 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 not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs in FAR part 31 and on independent research and development (IR&D) costs in part 231 do not apply 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—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Arms Export Control Act.

225.7303–3 Government-to-government agreements.

If 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 this section, the language of the government-to-government agreement prevails.

225.7303-4 Sales commissions and contingent fees.

Sales commissions and contingent fees are allowable under defense contracts provided that 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 for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable sales commissions and contingent fees (as defined in FAR subpart 3.4) is limited to $50,000 and must be identified to the FMS customer before, or at the time of, submitting the DoD Offer and Acceptance (DD Form 1513) to the customer.

(a) When requesting price and availability data for an Offer and Acceptance, require contractors to identify the amount of any sales commissions or fees. The fees, even if under $50,000 per contract, must be justified and supported. Except for those contracts excluded in FAR subpart 3.4—

(1) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(2) Determine under FAR subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR subpart 3.4 of improper influence also extends to officials of the foreign government);

(3) Require the contractor to submit a breakdown of the fee for the sales representative's services. Even if a bona fide employee or agency relationship is determined to exist, the fee must be reasonable.

(i) Whether the fee is reasonable requires an assessment of the services provided, or to be provided, compared to the amount of the fee.

(ii) The proposed fee/commission may be compared with known costs for comparable services under non-FMS contracts, or for FMS sales of comparable scope and dollar amounts for the same or similar items.

(iii) In analyzing the fee, give consideration to whether the sale is the initial or a follow-on sale. Effort for follow-on sales of additional quantities, spares, and support equipment is normally not as great as the effort for the initial sale.

(4) The chief of the contracting office must approve the contracting officer's determination—

(i) As to whether there is a bona fide employee or agency relationship; and

(ii) Of the reasonableness of the commission or fee.

(b) If the foreign customer disapproves the fee, or a portion of the fee, the contracting officer must notify the prospective contractor and request that the contractor withdraw the fee for the sales representative from the proposal. If the contractor refuses to withdraw the fee, the contracting officer notifies the department/agency activity responsible for preparation of the DoD Offer and Acceptance, which notifies the foreign customer that DoD is unable to purchase the items or services from that contractor.

(c) It may not be possible to determine whether or not the price to be paid for material or services will include sales commissions and fees (for example, when FMS requirements are to be fulfilled by competitive acquisitions). In such cases, if contract negotiations indicate that costs for a sales representative will be claimed by the contractor, the department/agency responsible for presentation of the Offer and Acceptance notifies the foreign customer as soon as possible and asks for a reply within 30 days as to whether the customer will approve the costs.

(d) Under DoD 5105.38-M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of sales commission and fee unless the payments have been identified and payment approved in writing by the foreign customer before contract award. (See 225.7308(a).)

225.7304 Source selection.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302-4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the Letter of Agreement or other written direction sufficiently fulfills the requirements of FAR 6.3.

(b) Do not allow representatives of the FMS customer to—

(1) Direct the deletion of names of firms from bidders mailing lists or slates of proposed A-E firms. (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Participate in the price negotiations between the U.S. Government and the contractor.

(c) Do not accept directions from the FMS customer on 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).

(d) Do not honor any requests by the FMS customer to reject any bid or proposal.

225.7305 Limitation of liability.

The contracting officer must advise the contractor whenever the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Exercise of options for foreign military sales.

Consider changes to cost and profit attributable to pricing differences between U.S. and FMS requirements when exercising an option to satisfy an FMS requirement. Also consider such changes if the option is already identified for FMS, but it is exercised for country B requirements instead of the country A requirements for which it was priced.

225.7307 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

225.7307-1 General.

(a) The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. The general policy in fulfilling these commitments is to exempt the FMS country's products from the requirements of the Buy American Act on a case-by-case basis.

(b) Generally, it is not appropriate to establish an offset goal or objective. If in special circumstances it is in the national interest to establish an offset goal or objective, the goal or objective may be stated as—

(1) A certain percentage of the FMS agreement dollar value;

(2) A specific dollar amount; or

(3) A combination of the two.

(c) The Presidential policy statement of April 16, 1990 provides that DoD shall not encourage, enter directly into, or commit U.S. firms, to any FMS/offset arrangement. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. Exceptions to this policy must be approved by the President through the National Security Council. This does not prevent DoD from fulfilling obligations incurred through international agreements entered into before April 16, 1990.

(d) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to provide opportunities for foreign sources to obtain contracts under the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements are negotiated before the FMS agreement Offer and Acceptance so that—

(1) DoD and its contractors have an opportunity to assess in advance their ability to fulfill the FMS/offset arrangement; and

(2) The offer can include those DoD and contractor costs associated with such arrangements.

(e) If an exception is granted under paragraph (c) of this subsection, the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if the Government determines that the FMS/offset arrangement cannot be fulfilled in this fashion will DoD seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. contractor shall be contacted and coordination obtained before the Government commits the contractor's participation.

(f) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy. DSAA consults with, and derives its overall policy guidance from, the Office of the Assistant Secretary of Defense (International Security Affairs). The Director of Defense Procurement is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries to the Directorate for Foreign Contracting, OUSD(A)DP(FC).

225.7307-2 Procedures.

(a) Whenever an FMS agreement involves a single major weapon system, the department responsible for acquisition of the weapon system is responsible for managing any resulting FMS/offset arrangement.

(b) If an FMS agreement involves the sale of items from two or more departments, OASD(P&L) 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.

225.7308 Contract clauses.

(a) Use the clause at 252.225-7027, Limitation on Sales Commissions and Fees, in all solicitations and contracts for foreign military sales for the countries in 225.7303-4(d), unless payment of sales commissions and fees has been approved by the foreign customer. Insert the name of the foreign country customer in the three blanks of the clause.

(b) Use the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in all solicitations and contracts for the purchase of goods and services for international military education training and foreign military sales.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) aspects of section 1207 of Public Law 99-661, section 806 of Public Law 100-180, and section 831 of Public Law 101-189. These laws set a goal for DoD for each of fiscal years 1987-1993 to—

(a) Award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Maximize the number of such entities in DoD contracting and subcontracting.

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226-7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs.

226.7003 Set-asides for HBCUs and MIs.

226.7003-1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219-14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

226.7003-2 Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d) (iii), (iv), and (v).

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than ten percent.

226.7004 Evaluation preference for HBCUs and MIs.

In acquisitions which use the evaluation preference described in Subpart 219.70 for small disadvantaged business concerns, the preference also applies to offers from HBCUs or MIs.

226.7005 Eligibility as an HBCU or MI.

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, both at the time of submission of its offer and at contract award; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror's certification under the provision at 252.226–7001 that it is an HBCU or MI, unless—

(1) Another offeror challenges the certification; or

(2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCUs is published periodically by the Department of Education.)

226.7006 Protesting an HBCU or MI representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal;

(2) Consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher educational institutions.

(b) Use of incentives for subcontracting with HBCU/MIs is prescribed in 219.708(c)(1).

226.7008 Solicitation provision and contract clause.

(a) Use the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set-aside for HBCU/MIs.

(b) Use the provision at 252.226–7001, Historically Black College or University and Minority Institution Certification, in solicitations set-aside for HBCU/MIs and in solicitations which contain the clause at 252.219–7003, Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 227—PATENTS, DATA, AND COPYRIGHTS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 227.3—Patent Rights Under Government Contracts

227.303 Contract clauses.

(a) Pursuant to FAR 27.304–1(e), the contracting officer shall insert the clause at 252.227–7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

227.304 Procedures.

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(d)(ii)) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of

technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This subpart does not apply to rights in computer software acquired under GSA schedule contracts.

227.401 Definitions.

As used in this subpart—

(1) *Commercial computer software* means 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.

(2) *Computer* means 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.

(3) *Computer data base* means a collection of data in a form capable of being processed and operated on by a computer.

(4) *Computer program* means 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.

(5) *Computer software* means computer programs and computer data bases.

(6) *Computer software documentation* means 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) *Data* means recorded information, regardless of form or method of the recording.

(8) *Detailed design data* means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) *Detailed manufacturing or process data* means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) *Developed* means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of title 35 of the United States Code.

(11) *Developed exclusively with Government funds* means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) *Developed exclusively at private expense* means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristic, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) *Government purpose license rights (GPLR)* means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) *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 asserting limited rights, be: Released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) *Required for the performance of a Government contract or subcontract* means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

(17) *Restricted rights* means rights that 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.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in a contract or described in a license agreement made a part of a contract.

(18) *Technical data* means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) *Unlimited rights* means rights to use, duplicate, release, 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.

(20) *Unpublished* means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

227.402 Policy.

227.402-70 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes often at points remote from the source of supply. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users.

The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's interests.* Commercial and nonprofit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The balancing of interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

(d) *Identification of technical data rights.* The Department of Defense is required by 10 U.S.C. 2320 to recognize and protect contractor rights in technical data and to negotiate rights in technical data resulting from mixed private and Government funded development and, under 10 U.S.C. 2321, to perform a thorough review of all restrictions on its right to use or disclose technical data. For these reasons, it is necessary that all contractor and subcontractor assertions of rights be identified in the contract as early in the acquisition process as possible but no later than delivery of the technical data to the Government (see 227.403-70).

227.402-71 Establishing minimum Government needs.

(a) *General.* The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be considered: whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items; or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see subpart 217.72). DoDD 5010.12, DoD Data Management Program, sets forth policies and procedures to be followed in acquiring technical data.

(b) *Commercial items.* It is DoD policy to encourage the use of commercial items to the maximum practicable extent. To further this policy, it is DoD policy to limit acquisition of technical data and rights in technical data pertaining to commercial items developed at private expense; neither data nor data rights should be acquired for the competitive acquisition of such a commercial item. Therefore for such commercial items, the DoD will normally only obtain technical data and data rights as provided in 10 U.S.C. 2320(a)(2)(C) and (D) (see 227.402-72(a)(1)), such as those needed for operation, maintenance, installation, and training. Additional technical data may not be acquired unless approved by the chief of the contracting office, and greater data rights may not be acquired unless approved by the head of the contracting activity.

227.402-72 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limited rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as

enumerated in (a)(1) of this subsection. The Government will obtain limited rights as discussed in (b)(1) of this subsection. Government purpose license rights may be established in accordance with (a)(2), (b)(2), or (c) of this subsection.

(a) *Unlimited rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under a Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under any Government contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to limited rights or Government purpose license rights which have expired.

(2) *Exception to unlimited rights—Government purpose license rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government purposes only for a stated period of time. After the time period has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) The contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2) of this subsection, the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) of this subsection.

(2) *Exception to limited rights—obtaining greater rights in technical data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in technical data pertaining to items, components, and processes developed with mixed funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227–7013(j) with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

227.403 Data Rights—General.

227.403–70 Procedures for establishing rights in technical data.

(a) *Notification requirements*—(1) *Background.* Offerors and contractors are required by 252.227–7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights.

(2) *Preaward notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in paragraph (a)(5) of this subsection.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227–7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.403–71(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical

data with restrictions on the Government's right of use or disclosure that is required by paragraph (k) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

(ii) During the life of the contract, this list will be updated as needed to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all technical data to be delivered with restrictions on the Government's rights of use or disclosure. Also, during contract performance, changing conditions may require bilateral modification of the list.

(iii) The purpose of the list is to facilitate the review of contractor assertions required by 10 U.S.C. 2321 and to provide a basis for Government acquisition planning. It is not a final determination of rights and does not alter the rights of the parties under 10 U.S.C. 2320 or 2321.

(4) *Postaward notification.* Because it may be impracticable to identify all items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights prior to contract award, paragraph (j) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the representation described in (a)(5) of this subsection.

(5) *Representations.* (i) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the representation at 252.227–7013(j).

(A) This clause authorizes the contracting officer to request additional information needed to evaluate the assertions.

(B) This representation assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(ii) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227–7028, Requirement for Technical Data Representation, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(B) Identification of any limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(6) *Supporting information.* The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information, either preaward or postaward, should normally not be requested unless there are reasonable grounds to question the validity of the assertion. While the contractor or subcontractor is obligated to provide sufficient information to fully justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(b) Establishing rights in technical data. (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227– 7013(k), unless there are grounds to question the validity of the assertion. If appropriate, the procedures at 217.7201 will be followed and greater rights obtained pursuant to 227.402–72(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.403–73 and 252.227–7037, Validation of Restrictive Markings on Technical Data.

(2) If the offeror or contractor is requesting exclusive commercial rights in technical data that would otherwise be delivered to the Government with unlimited rights, the contracting officer should agree to permit the contractor to establish exclusive commercial rights pursuant to 227.402–72(a)(2), unless the Government's intended use of the data would make protection of the contractor's rights unduly burdensome.

(i) Exclusive commercial rights may be accomplished by either deferring delivery or ordering of the technical data in accordance with 227.405–71 or by agreeing to accept the data with Government purpose license rights for a specified period of time in accordance with 227.402–72(a)(2).

(ii) The item, component, or process and the technical data will be identified in the list in the contract.

(3) If the offeror or contractor is asserting that the item, component, or process is developed with mixed funding, then the respective rights will be negotiated using the guidelines at paragraph (c) below and the results identified in the listing described at 252.227–7013(k).

(i) These negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or under urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved by the chief of the contracting office. The contracting officer will notify the contractor, stating that the contractor must notify the contracting officer if it elects to use the item, component or process. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of rights.

(ii) Data rights resulting from mixed funding need not be negotiated for small purchases or contracts awarded using sealed bidding.

(c) *Negotiation of rights.*— (1) *Negotiation factors.* The contracting officer shall consider, as appropriate, the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(i) The acquisition strategy for the item or system (including logistics support);

(ii) Whether the item or system (or related logistics support) will be competed;

(iii) Timing of such competition;

(iv) The economic life of the technology and whether it can be commercialized;

(v) Funding contributions of the respective parties;

(vi) Development of alternative sources for industrial mobilization or other purposes;

(vii) Burden of protecting the contractor's rights in technical data; and

(viii) Other factors, such as unique contractor qualification or expertise contributing to the configuration management or development of the item, component or process.

(2) *Negotiation situations.* The following are examples of how the negotiation factors in (c)(1) of this subsection may be applied:

(i) When the Government does not anticipate an early need to use the data for competition and the contractor has requested exclusive rights in the data, the Government may negotiate to establish limited rights which, upon

expiration of a time limitation, would become unlimited rights.

(ii) Where the Government requires early use of the data for competition, the contractor has requested exclusive commercial rights in the data, and protecting the contractor's rights is not unduly burdensome, the contracting officer may negotiate GPLR which would expire after a specified period of time and become unlimited rights.

(iii) Where the Government requires early use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights or to establish another suitable arrangement that would satisfy the Government's needs.

(3) *Negotiation of time periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(i) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(A) The technical data will not be needed for competition; and

(B) Longer periods are approved by the chief of the contracting office.

(ii) Time limitations for limited rights and GPLR may be extended, if:

(A) Other interested parties have not requested access to the technical data;

(B) The technical data need not be publicly disclosed to meet a specified Government need; and

(C) The contractor provides adequate consideration for remarking any technical data with revised legends.

(4) *Nonstandard license rights.* Unlimited rights, Government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated in technical data resulting from mixed funding unless approved by the chief of the contracting office. Direct licensing arrangements are not considered non-standard license rights unless they involve delivery of technical data with non-standard rights.

(d) *Standard nondisclosure agreements.* (1) Technical data subject to other than unlimited rights shall not be released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data are subject to GPLR, the recipient must sign the standard nondisclosure agreement shown below. This agreement must be executed by an official authorized to bind the contractor.

(2) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(3) The contracting officer shall require each contractor receiving data subject to GPLR to execute the standard nondisclosure agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Nondisclosure Agreement

The undersigned, _____ (name)_____ as the authorized representative of _____(company name)_____ (hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefore:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The Licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the standard nondisclosure agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR data supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires). Signed this ____ day of _____, 19____.

_____
Licensee

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227-7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, provided that such clause shall not be used in solicitations and contracts—

(1) When no data other than existing works are to be acquired in accordance with 227.405-77;

(2) When no data other than special works are to be acquired in accordance with 227.405-76;

(3) When the work will be performed by foreign sources in accordance with 227.405-74; and

(4) For architect-engineer services or construction in accordance with 227.405-78.

227.403-71 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2)(C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's

ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.402–72(b)(2)).

(3) 10 U.S.C. 2305(d)(4) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.402–72(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer determines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs.

227.403–72 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227–7018, Restrictive Markings on Technical Data, and 252.227–7029, Identification of Technical Data, in all contracts which also contain the clause at 252.227–7013, Rights in Technical Data and Computer Software. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227–7018, Restrictive Markings on Technical Data, shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227–7030, Technical Data—Withholding of Payment, for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.403–73 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(e) *Nonconforming markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly. Copyright notices, which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings.

227.403–73 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data, but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation."

(b) *Prechallenge request for information.* (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

227.403–74 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to ten percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) As required by 10 U.S.C. 2320(b)(7), the clause at 252.227–7036, Certification of Technical Data Conformity, shall be included in solicitations and contracts which include the clause at 252.227–7031, Data Requirements.

227.403–75 Subcontractor rights.

(a) Prime contractors must satisfy their contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying these obligations, prime contractors must accomplish the balancing of interests described at 227.402–70 in dealing with their subcontractors by ensuring that—

(1) The clauses 252.227–7013, Rights in Technical Data and Computer Software, and 252.227–7018, Restrictive Markings in Technical Data, are included in all subcontracts that call for delivery of technical data to the Government;

(2) A subcontractor is not hampered from furnishing limited rights data directly to the Government rather than through the prime contractor or higher-tier subcontractor;

(3) The economic leverage of the prime or higher-tier subcontractor is not used to acquire rights in technical data from subcontractors; and

(4) Subcontractor rights are recognized and protected in the notification and listing process (see 227.403–70).

(b) The prime contractor may not use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

227.403–76 Copyrights.

(a) In general, the copyright law gives a copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in paragraph (a) of this subsection may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227–7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227–7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227–7013, Rights in Technical Data and Computer Software, and 252.227–7020, Rights in Data—Special Works, provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.403–77 Acquisition of rights in computer software.

(a) *Policy.* (1) The Government shall have unlimited rights in:

(i) 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;

(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—

(A) Information supplied by the Government;

(B) Information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(iv) 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

(v) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(2) 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.

(3) 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 provided in the definition of restricted rights in section 227.401.

(4) 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.

(5) 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 the definition of limited rights in section

227.401, and will not be used for preparing the same or similar computer software.

(6) 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 (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

(b) *Procedures*—(1) *Deviations.* All requests for deviations from section 227.403–77 shall be submitted to the Director of Defense Procurement in accordance with the procedures in part 201.

(2) *General.* (i) Except as provided under 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on DD Form 1423, Contract Data Requirements List. Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing 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, Contract Data Requirements List.

(ii) The clause at 252.227–7013, Rights in Technical Data and Computer Software, 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 at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(iii) Contracts under which computer software developed at private expense is acquired 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 acquired. 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 are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(iv) 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.

(v) 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.

(3) *Computer software subject to restricted rights.* (i) 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 paragraph (a)(6) of this subsection 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.

(ii) 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 (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013", 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 227.403–73(c).

(iii) 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.

(iv) Except as provided in paragraph (b)(2) of this section, 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.

(v) All markings, (notices, 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.

(vi) 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.

(4) *Unmarked or improperly marked computer software.* (i) 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.

(ii) 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 its 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.

(iii) 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.

227.405 Other data rights provisions.

227.405–70 Data requirements.

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423, Contract Data Requirements List, is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) 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

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223–3.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423, Contract Data Requirements List, and data deliverable under clauses prescribed in the FAR and DFARS.

227.405–71 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software are expensive to prepare, maintain and update. By delaying the delivery of technical data or computer software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227–7026, Deferred Delivery of Technical Data and Computer Software, shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all items (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data or computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery of the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the data and computer software are ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

227.405–72 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246–7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with Section 246.708.

227.405–73 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.405–74 Overseas contracts with foreign sources.

The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.405–76), contracts for existing works (see section 227.405–77), or contracts for Canadian purchases. However, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be used whenever the rights to be obtained are those which would be obtained if contracting with U.S. firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition; provided, it is consistent with sections 227.402 and 227.403–77.

227.405–75 Publication for sale.

Alternate I of the clause at 252.227–7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.405–76 Special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.405–77 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—

(i) Means of exhibition or transmission;

(ii) Time;

(iii) Type of audience; and

(iv) Geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-shelf acquisition of books and similar items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.405–78 Architect-engineer and construction contracts.

(a) *General.* This subsection sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) *Acquisition and use of plans, specifications, and drawings*—(1) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(i) *Plans and Specifications and As-Built Drawings.*

(A) Except as provided in paragraph of this section (a)(1)(ii), use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(B) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(ii) *Shop Drawings for Construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

(c) *Contracts for construction supplies and research and development work.* The provisions and clauses required by this section shall not be used when the acquisition is limited to either—

(1) Construction supplies or materials,

(2) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(3) Both.

(d) *Approval of restricted designs.* The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.405–79 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97–219, "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65–01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of nondisclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgement and disclaimer statement.

(d) The clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to foreign license and technical assistance agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national

defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source;" foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675–1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) of this section:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675–1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675-2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07–124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with Section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (b) (1), (2), or (3) of this subsection, the guidance in (c) of this subsection shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of Section 124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) of this section, a request shall be made to the primary source—

(1) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors,

(2) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(3) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.70 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–

188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (a) (4) and (5) of this section, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) of this section, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art.

In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(1) For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;

(2) For the Department of the Navy—The Patent Counsel for Navy, Office of Naval Research;

(3) For the Department of the Air Force—Chief, Patents Division, Office of The Judge Advocate General;

(4) For the Defense Logistics Agency—The Office of Counsel; for the National Security Agency, the General Counsel;

(5) For the Defense Communications Agency—the Counsel;

(6) For the Defense Nuclear Agency—The General Counsel; and

(7) For the Defense Mapping Agency—The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth in paragraph (c) of this section, the sender shall be advised in writing—

(1) That his claim for infringement has not been satisfactorily presented, and

(2) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments (see 227.7004(c)) which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(a) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(b) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multi-departmental agreements may be made if necessary.

227.7009-1 Required clauses.

(a) Officials Not To Benefit. Insert the clause at FAR 52.203-1.

(b) Covenant Against Contingent Fees. Insert the clause at FAR 52.203-5.

(c) Gratuities. Insert the clause at FAR 52.203-3.

(d) Assignment of Claims. Insert the clause at FAR 52.232-23.

(e) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233-1.

(f) Non-Estoppel. Insert the clause at 252.227-7000.

227.7009-2 Clauses to be used when applicable.

(a) *Release of past infringement.* The clause at 252.227-7001, Release of Past Infringement, is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) *Readjustment of payments.* The clause at 252.227-7002, Readjustment of Payments, shall be inserted in contracts providing for payment of a running royalty.

(c) *Termination.* The clause at 252.227-7003, Termination, is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel (see 227.7004(c)).

227.7009-3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227-7004.

(b) License Term. Insert one of the clauses at 252.227-7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) *License grant—running royalty.* No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227-7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) *License term—running royalty.* The clause at 252.227-7007 is a sample form for expressing the license term.

(c) *Computation of royalties.* The clause at 252.227-7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

(d) *Reporting and payment of royalties.* (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227-7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) *License to other government agencies.* When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227-7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227-7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227-7004 and 252.227-7010 shall be required and suggested clauses.

respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009–3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227–7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

PART 228—BONDS AND INSURANCE

Sec.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.
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228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
228.311–1 Solicitation provision.
228.311–2 Contract clause.
228.370 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102–1 General.

(a) The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but may be used when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228–7004, Bonds or Other Security. Set a period of time (normally ten days) for return of executed bonds.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307–2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(*1*) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and

(*2*) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(*1*) Either domestic or foreign;

(*2*) Cost-reimbursement type; or

(*3*) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28–1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28–2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

Table 28–1.—Insurance Rating Plan Rating Agreement

Special Casualty Insurance Rating Plan
Assignment-Assumption of Premium Obligations

It is agreed that 100 percent * of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from _____

Accepted _____
(Date)
(Name of Insurance Company)_____
By _____
(Title of Official Signing)
Accepted _____
(Date)
United States of America
By _____
(Authorized Representative)
Accepted _____
(Date)
(Prime Contractor) _____
By _____
(Authorized Representative)

Table 28–2.—Automobile Insurance Policy Endorsement

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United

* In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor;

(ii) Contract number;

(iii) Date of award;

(iv) Place of performance;

(v) Name of insurance company providing Defense Base Act coverage;

(vi) Nationality of employees to whom waiver is to apply; and

(vii) Reason for waiver.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

228.311-1 Solicitation provision.

Use the provision at FAR 52.228-6, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at FAR 52.228-7, Insurance—Liability to Third Persons.

228.311-2 Contract clause.

Use the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

228.370 Contract clauses.

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228-7001, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228-7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228-7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of "aircraft" modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228-7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228-7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War-Hazard Compensation Act (42 U.S.C. 1701 et seq.).

(e) The clause at 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

PART 229—TAXES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost reimbursement type or a fixed price type with a tax escalation clause; and

(ii) The direction is coordinated with the agency-designated legal counsel through the DoD Tax Policy and Advisory Group.

(d)(i) Review DoDD 5100.64, Department of Defense Foreign Tax Relief Program, before contracting with a foreign source. Refer questions on implementation of the program to the Commanding Officers in Table 29-1, Designated Commanding Officers, which have been designated under subsection E.7 of DoDD 5100.64 to serve as—

(A) Single point of contact for U.S. contracting offices for investigation and resolution of specific foreign tax relief matters; and

(B) Liaison with responsible diplomatic mission and local foreign tax authorities.

(ii) Refer foreign tax relief questions which have not been resolved by the designated Commanding Officer to the agency-designated legal counsel.

(iii) When an acquisition is for a contract to be performed in a country or

area listed in Table 29–1, Designated Commanding Officers—

(A) Obtain from the designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt, and

(B) Provide the information to prospective offerors.

(C) Do not provide prospective offerors any other information about foreign taxes or duties.

(D) Issue tax exemption certificates, as appropriate, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price.

(E) Seek advice and assistance from the designated Commanding Officer and, if necessary, the agency-designated legal counsel if the contractor notifies the contracting officer that it has been assessed a tax or duty by a foreign government which could increase the contract price.

TABLE 29–1.—DESIGNATED COMMANDING OFFICERS

Country or area	Designated commanding officer
Australia	Commander in Chief, Pacific Representative, Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Representative, Philippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe.

PART 230—COST ACCOUNTING STANDARDS

Sec.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

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Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.
230.7101 Calculations.
230.7101–1 Cost of money.
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230.7102 Determining imputed cost of money.
230.7103 Preaward capital employed application.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB–CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001–1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB–CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001–2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of

establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(b) *Facilities Capital Employed.* Assess and weight the profit objective or risk associated with facilities capital employed in accordance with the profit guidelines at 215.970–1(c).

230.7003 Postaward facilities capital applications.

230.7003–1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment.

(b) As actual cost of money factors under CAS 414 and FAR 31.205–10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003–2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.

(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004–1 Forms CASB–CMF

(a) Forms CASB–CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809) and evaluated as complementary documents and procedures.

(b) Separate forms are required for each prospective cost accounting period of contract performance.

(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).

(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.

230.7004–2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB–CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages; or

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) *Intangible capital asset* is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset* is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101–1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the **Federal Register** during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101–2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101–1) to the representative investment amount (see 230.7101–2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101–2(b)(1) or 230.7101–2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101–2(b)(2) or 230.7101–2(c)(2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of

the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR Subpart 15.9 is not required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

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Subpart 231.70 Penalties for Unallowable Costs

231.7000 Scope of subpart.
231.7001 General.
231.7002 Responsibilities.
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231.7003–1 Assessing the penalty.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 231.1—Applicability

231.100 Scope of subpart.

231.100–70 Contract clause.

Use the clause at 252.231–7000, Supplemental Cost Principles, in all solicitations and contracts, except those which use the small purchase procedures of FAR part 13.

Subpart 231.2—Contracts with Commercial Organizations

231.205 Selected costs.

231.205–10 Cost of money.

The contractor also must comply with subpart 230.70 and maintain records to demonstrate compliance.

231.205–18 Independent research and development and bid and proposal costs.

(c) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential military relationship.

(i) For contracts where costs are not determined on a historical basis, estimated IR&D/B&P costs allocated to the contract must not exceed their proportionate share of the total estimated costs of IR&D/B&P with a potential military relationship.

(ii) IR&D/B&P costs are considered to satisfy the potential military relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation.

(iii) The contracting officer will—

(A) Determine the potential military relationship of IR&D/B&P; and

(B) Provide the results of the determination to the contractor.

(iv) See section 225.7303 for additional allowability provisions affecting foreign military sale contracts.

Subpart 231.3—Contracts with Educational Institutions

231.303 Requirements.

Under 10 U.S.C. 2324(e), the following costs are unallowable—

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Defense.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations prescribed by the Secretary of Defense.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States military facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k).

Subpart 231.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303 are unallowable.

Subpart 231.7—Contracts with Nonprofit Organizations

231.703 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303 are unallowable.

Subpart 231.70—Penalties for Unallowable Costs

231.7000 Scope of subpart.

(a) This subpart implements 10 U.S.C. 2324 (a) through (d), regarding the assessment of penalties against contractors which include unallowable costs in a final indirect cost rate proposal or in the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This subpart applies to all DoD contracts awarded after February 26, 1987, in excess of $100,000, except fixed-price contracts without cost incentives.

231.7001 General.

(a) The law provides for the following penalties:

(1) If the cost is unallowable based on clear and convincing evidence, the penalty is equal to—

(i) The amount of the disallowed costs, plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the cost was determined to be unallowable before proposal submission, the penalty is the amount in paragraph (a)(1) of this section, plus two times the amount of the disallowed cost.

(3) If a penalty is assessed under paragraph (a)(1) or (2) of this section, the department or agency may assess an additional penalty of not more than $10,000 per proposal.

(b) These penalties are in addition to other civil and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

231.7002 Responsibilities.

(a) Departments and agencies are responsible for—

(1) Designating officials authorized to assess the penalty in 231.7001(a)(3).

(2) Establishing requirements for documentation and review of administrative contracting officer (ACO) determinations and recommendations to assess the penalties in paragraph 231.7001(a).

(b) The cognizant ACO is responsible for—

(1) Determining whether the penalties in paragraphs 231.7001(a)(1) and (2) should be assessed.

(2) Initiating recommendations to assess the penalty under paragraph 231.7001(a)(3).

(3) If there is evidence that the contractor knowingly submitted unallowable costs—

(i) Referring the matter to the appropriate defense criminal investigative organization for review; and

(ii) Taking the actions indicated in DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Relating to Procurement Activities.

(c) The contract auditor, in the review and/or the determination of final rate proposals for contracts subject to this Subpart, is responsible for—

(1) Recommending to the ACO which costs may be unallowable and subject to the penalties in paragraphs 231.7001(a)(1) and (2).

(2) Providing rationale and supporting documentation for any recommendation.

231.7003 Procedures.

231.7003-1 Assessing the penalty.

(a) The cognizant ACO shall—

(1) Assess the penalty in 231.7001(a)(1) when the submitted cost is unallowable based on clear and convincing evidence; or

(2) Assess the penalty in 231.7001(a)(2) when the submitted cost was determined to be unallowable prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(i) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, (see FAR 42.705-2) which—

(A) The contractor elected not to appeal; or

(B) Was not withdrawn by DCAA.

(ii) A contracting officer final decision which was not appealed.

(iii) Prior ASBCA or court decision involving the contractor, which upheld the cost disallowance.

(iv) Any determination of unallowability under FAR 31.201-6.

(3) Issue a final decision (see FAR 33.211) which includes a demand for payment of any penalty assessed under paragraphs 231.7001(a)(1) or (2). The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

(b) The designated department/agency official, after receiving the ACO's recommendation and where circumstances warrant the additional penalty, may assess the penalty in paragraph 231.7001(a)(3). Appropriate circumstances may include contractor's repeated submissions of unallowable costs.

231.7003-2 Computing the penalty.

(a) The amount of the disallowed costs subject to penalty is the amount submitted in the contractor's proposal which—

(1) Is allocated to contracts subject to this subpart (see 231.7000(b)); and

(2) Is determined to be unallowable based on clear and convincing evidence.

(b) Compute interest on the paid portion of the disallowed cost.

(1) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not incurred and paid evenly over the fiscal year.

(2) Use the interest rate specified by the Secretary of Treasury pursuant to Pub. L. 92-41.

(3) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(4) Determine the paid portion of the disallowed cost in consultation with the contract auditor.

231.7004 Contract clause.

Use the clause at 252.231-7001, Penalties for Unallowable Costs, in all solicitations and contracts over $100,000, which contain the clauses at FAR 52.216-7, 52.216-13, 52.216-16, or 52.216-17.

PART 232—CONTRACT FINANCING

Sec.

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232.903 Policy.
232.905 Invoice payments.
232.906 Contract financing payments.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair.

232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized—

(1) Letter contracts contemplating a fixed-price contract;

(2) Orders under basic ordering agreements;

(3) Spares provisioning documents annexed to contracts;

(4) Unpriced equitable adjustments on fixed-price contracts; and

(5) Orders under indefinite delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

(1) Department/agency contract financing offices are—

(i) Army—Chief of Contract Financing, Office of the Comptroller;

(ii) Navy—Executive Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management;

(iii) Air Force—Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center;

(iv) Defense agencies—Office of the agency comptroller.

(2) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the departmental/agency headquarters. Departments/agencies may establish contract financing offices at operational levels.

(3) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases which involve unusual contract financing requirements.

232.170 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition), USD(A)DP, is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures.

(b) The departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to USD(A)DP for consideration (see also 201.24 for deviation request and approval procedures).

232.171 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of the USD(A)DP, serving as chairman;

(2) A representative of the Comptroller of the Department of Defense; and

(3) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists the USD(A)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through the USD(A)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.172 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.172–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions of paragraphs (a) (2) through (5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.172-2 Appropriate information.

(a) The contracting officer shall obtain whatever type and depth of financial and other information is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for the protection of the Government's interests, the contracting officer must insist upon obtaining that information which is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed below is required to comply with 232.172-1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, obtain the required information for each individual/joint venturer/partner—

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and preferably, for the two preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance;

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services;

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation;

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast which—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.172-3).

(7) Financing arrangement information which discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.172-3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. Whenever there is a doubt about the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other

credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) The requirements of FAR Subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed $500.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409-1 (e) and (f).

232.410 Findings, determination, and authorization.

(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

(4) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government.

232.412 Contract clause.

232.412-70 Additional clauses.

(a) Use the clause at 252.232-7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232-7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is 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 require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

In DoD, customary progress payments may be either uniform or flexible (FAR 32.501-1(a)). See also 232.501-1 and 232.502-1-71.

232.501-1 Customary progress payment rates.

(a)(i) For contracts with small disadvantaged businesses, the uniform customary progress payment rate is 90 percent. For single contracts using multiple progress payment rates, see FAR 32.502-4(d). For contracts funded with FY87 and other fiscal year appropriations, the contracting officer may—

(A) Apply the customary uniform progress payment rate for FY87 appropriations to all contract line items (see Table at 232.205-1-71(a)(7)); or

(B) Apply the customary uniform rate for FY87 appropriations to only those contract line items funded with FY87 appropriations, applying the different customary uniform rate to all other line items, provided the requirements of FAR 32.502-4(d) are met.

(ii) The progress payment rates applicable to foreign military sale requirements are the same rates applicable to DoD requirements.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502-1-71).

232.501-2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the USD(A)DP. Contracting officers shall submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (232.171), and submission to the USD(A)DP.

232.501-3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer shall limit such payments to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.

232.502-1-70 Customary foreign military sale progress payments.

(a) Foreign military sale (FMS) progress payments apply to DoD acquisitions on behalf of foreign governments or international organizations (Section 22 of the Arms Export Control Act).

(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502-1-71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual

investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(2) Progress payment amounts that are determined by using customary uniform rates are insensitive to the other factors influencing contractor investment in work in process inventory. Consequently, contractor investments in work in process inventory vary among contractors and contracts

(3) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage which is applied to costs to determine the amount payable as a progress payment, in the same manner as customary uniform rates are applied.

(4) For flexible progress payments, cash needs are measured and projected based on the investment required for the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(5) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract (see Table 32–1, Customary Uniform Progress Payment Rates). This minimum investment level is based on the customary uniform progress payment rate and its related investment percentage. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(6) The customary flexible progress payment rate will be determined by using the DoD Cash Flow Computer Model. The rate computed shall not—

(i) Exceed 100 percent; or

(ii) Be less than the customary uniform progress payment rate that would have been applied to the contract in the absence of customary flexible progress payments.

(7) Table 32–1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates, minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract.

TABLE 32–1.—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II
May 1, 1985 through October 18, 1986	80	15	CASH–III
October 19, 1986 through September 30, 1988	75	25	CASH–IV
After September 30, 1988	80	20	CASH–V

(b) *Using customary flexible progress payments.* (1) Use a flexible progress payment rate at the time of award or definitization instead of the customary uniform rate if—

(i) The contractor requests flexible progress payments;

(ii) The contractor agrees to the requirements of this section;

(iii) The contract contains the clause at FAR 52.232–16, Progress Payments. However, small business contractors may get flexible progress payments if they agree to use the clause at FAR 52.232–16 without its Alternate I; and

(iv) The criteria in paragraphs (b)(2) and (3) of this subsection are met.

(2) Do not use flexible progress payments for—

(i) Sealed bid contracts;

(ii) Undefinitized contract actions; or

(iii) Contracts awarded and performed entirely outside of the United States, its possessions or territories.

(3) Contractors who submit certified cost or pricing data, as defined in FAR 15.804–2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments.

(4) Subcontractors who request flexible progress payments, meet the criteria in paragraph (b)(3) of this subsection, and agree to the requirements of this subsection are to receive flexible progress payments. The prime contractor determines the flexible progress payment rate without regard to the rate in the prime contract. In determining the appropriate customary flexible rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model. The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH-IV model.

(6) If the contractor requests flexible progress payments after contract award or definitization, the contracting officer may, if warranted, grant their use. However, the contractor must provide adequate new consideration (see FAR 32.501–4).

(c) *Contractor cash flow and cost information.* (1) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. Contractors should furnish cash flow data prior to the start of negotiations. This data includes—

(i) Actual and projected incurred cost, broken down by element of cost and by month, for the duration of the contract;

(ii) Float times for each element of cost;

(iii) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(iv) Associated contract price and profit percentage.

(2) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost and pricing data, and establish the customary flexible progress payment rate during the negotiation of the contract price.

(3) If any customary flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, or complete at the time the rate was established, the flexible progress payment clause at 252.232–7003 provides for—

(i) Reduction of the flexible progress payment rate; and

(ii) Contractor payment of interest.

(4) The contracting officer will assess the interest charge on the amount of the overpayment resulting from facts that were not current, accurate, or complete, whether or not the overpayment has been liquidated. Calculate the interest from the date of the overpayment to the date of liquidation of the overpayment. In determining the amount of interest, the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(5) Administrative contracting officers are encouraged to establish advance agreements at contractor locations for payment float and lag times which are common to several contracts. Float and lag times may vary significantly from one contract to another due to variances in efficiency at different payment offices or due to differing procedures for high dollar versus low dollar value contracts. It may, therefore, be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(d) *Rate review.* (1) The flexible progress payment clause at 252.232–7003 provides for redetermination of the customary flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specific minimum investment in work in process inventory (see Table at 232.502–1–71(a)(7)). When such a redetermination is made—

(i) Apply the new customary flexible progress payment rate to the next contractor progress payment request; and

(ii) Adjust the unliquidated progress payment balance.

(2) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage in work in process inventory is outside of the investment tolerance in paragraph (d)(1) of this subsection. For contracts funded with FY87 appropriations, the investment range is 23 to 27 percent with a target of 25 percent.

(3) The administrative contracting officer shall assess changes in the following factors during each periodic review required by FAR 32.503–5 and shall review the customary flexible progress payment rate whenever there has been—

(i) A significant change in the float or lag factors;

(ii) A significant change in the delivery schedule; or

(iii) Substantial work added to or deleted from the contract.

(e) *Letter contracts and undefinitized orders.* When flexible progress payments are contemplated for use on a definitized contract superseding a letter contract or an unpriced BOA order, the applicable uniform customary progress payment rate shall be used until definitization. The flexible progress payment rate shall be determined by the contracting officer before definitizing the contract or order.

(f) *Availability of CASH program and user's guide.* The flexible progress payment program CASH and the user's guide are available to offerors and contractors from the contracting officer.

232.502–4 Contract clauses.

(b) If the contractor is a small disadvantaged business, use the FAR 52.232–16, Progress Payment, clause with its Alternate I and change each mention of the progress payment rate and liquidation rate (except paragraph (k)) to the DoD uniform customary progress payment rate of 90 percent for small disadvantaged businesses.

232.502–4–70 Additional clauses.

(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains foreign military sale requirements.

(b) Use the clause at 252.232–7003, Flexible Progress Payments, in contracts using a customary flexible progress payment rate.

232.503 Postaward matters.

232.503–6 Suspension or reduction of payments.

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503–6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer shall prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503–6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the "Costs to Complete" are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

232.503–15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the standard at 242.7206(b)(7) constitutes the contracting officer approval requirement of FAR 32.503–15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting

office, the disbursing office, or the selling office/agency, shall—

(A) Make a demand for payment; and

(B) Provide a copy of the demand to the payment office cited in the contract.

(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make such payment to the designated office.

(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108(1)) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the USD(A)DP, may exempt the contracts in FAR 32.617(a) (2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(a)(7) Other exceptions—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.

232.671 Bankruptcy reporting.

(a) For those debts covered by this subpart, the department or agency which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—

(1) Have been transferred to a contract financing office;

(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(4) Are the result of bankruptcy or insolvency proceedings.

(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than $600.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Under 50 U.S.C. 1651(a) (4) and (5), a national emergency exists for contract purposes. Nevertheless, if departments/agencies decide it is in the Government's interest, they may exclude the no-setoff commitment.

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(2) The contracting officer shall use Alternate I with the clause at FAR 52.232–23, Assignment of Claims, unless otherwise authorized under 232.803(d).

Subpart 232.9—Prompt Payment

232.903 Policy.

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.905(2)).

232.905 Invoice payments.

(1) In most cases, Government acceptance or approval can occur within the 7 day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

(2) Designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

(f)(6) DoD Manual 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic signature of receiving reports.

232.906 Contract financing payments.

(a)(i) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due

dates of 7 days for progress payments and 14 days for interim payments on cost type contracts in subparagraphs (b)(2) of the Prompt Payment clauses at FAR 52.232–25, 52.232–26, and 52.232–27.

(ii) The contracting officer should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be met. Where justified, the contracting officer may insert a due date greater than but not less than the standard. In determining payment terms, consider—

(A) Geographical separation;

(B) Workload;

(C) Contractor ability to submit a proper request; and

(D) Other factors that could affect timing of payment.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Sec.

Subpart 233.2—Disputes and Appeals

233.204 Policy.
233.210 Contracting officer's authority.
233.214 Contract clause.

Subpart 233.70—Certification of Claims and Requests for Adjustment or Relief

233.7000 Policy.
233.7001 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 233.2—Disputes and Appeals

233.204 Policy.

When it would be helpful in reviewing the current claim, the contracting officer should get information on claims previously filed by the contractor with other contracting officers.

233.210 Contracting officer's authority.

DFARS 243.105(a) limits contracting officer authority.

233.214 Contract clause.

Use Alternate I of the clause at FAR 52.233–1, Disputes, when—

(1) The acquisition is for—

(i) Aircraft

(ii) Spacecraft and launch vehicles

(iii) Naval vessels

(iv) Missile systems

(v) Tracked combat vehicles

(vi) Related electronic systems;

(2) The contracting officer determines that continued performance is—

(i) Vital to the national security, or

(ii) Vital to the public health and welfare; or

(3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

Subpart 233.70—Certification of Claims and Requests for Adjustment or Relief

233.7000 Policy.

(a) 10 U.S.C. 2410 requires contractors to certify in good faith that all supporting data submitted in connection with a claim (see definition in FAR 33.201), a request for equitable adjustment to contract terms, a request for relief under Public Law 85–804 (see FAR part 50), or another similar request that exceeds $100,000 are accurate and complete to the best of the certifying official's knowledge and belief. The certification must be signed by a senior company official in charge at the contractor's plant or location involved.

(b) Submission of the certification in paragraph (a) of this section is in addition to any certification required by FAR part 15 or FAR part 33. However, when the first assertion of a claim or request for relief coincides with the inception of a contract dispute, the certification requirement in FAR 33.207 will satisfy the requirement in 233.7000(a) for certification of a claim if the certification is signed by a senior company official in charge at the contractor's plant or location involved.

(c) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification are met (see example in FAR 15.804–2(a)(1)(ii)).

233.7001 Contract clause.

Use the clause at 252.233–7000, Certification of Claims and Requests for Adjustment or Relief, in all contracts expected to exceed $100,000.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

Sec.

234.003 Responsibilities.
234.005 General Requirements.
234.005–70 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

234.003 Responsibilities.

DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, contain the DoD implementation of OMB Circular A–109.

234.005 General requirements.

234.005–70 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD cost/schedule control systems criteria, use the provision at 252.234–7000, Notice of Cost/Schedule Control Systems, in solicitations and the clause at 252.234–7001, Cost/Schedule Control Systems, in solicitations and contracts.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

235.001 Definitions.
235.002 General.
235.006 Contracting methods and contract type.
235.007 Solicitations
235.010 Scientific and technical reports.
235.015 Contracts for research with educational institutions and nonprofit organizations.
235.015–70 Special use allowances for research facilities acquired by educational institutions.
235.015–71 Short form research contract (SFRC).
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235.070 Indemnification against unusually hazardous risks.
235.070–1 Indemnification under research and development contracts.
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235.070–3 Contract clauses.
235.071 Additional contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

235.001 Definitions.

The following terms are defined in DoD 7110–1–M, Budget Guidance Manual. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Engineering development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of

this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development program areas, as appropriate. Management and support is not *research and development* except in exceptional cases. For example, construction of recreational facilities at an installation is not *research and development* work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in Defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

Research and development ordinarily covers only the following categories—

(1) Research;

(2) Exploratory development;

(3) Advanced development;

(4) Engineering development; and

(5) Operational systems development.

235.002 General.

Contracts for services or the use of facilities for research, development, or research and development may be for a term of not more than five years and may be extended for a term of not more than five years (10 U.S.C. 2352).

235.006 Contracting methods and contract type.

(b)(i) A fixed-price type contract shall not be awarded for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(*1*) By the Under Secretary of Defense for Acquisition (USD(A)) for—

(*i*) Research and development for non-major systems, if the contract is over $25 million;

(*ii*) The lead ship of a class;

(*iii*) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over $25 million, or is over $10 million and is funded with FY90 funds (Pub. L. 101–165, Section 9048) or FY91 funds (Pub. L. 101–511).

(*2*) By the contracting officer for any development not covered by paragraphs (b)(i)(C)(*1*) of this section.

(ii) Before award, submit the Government's prenegotiation position, and the proposed (and unexecuted) agreement with the contractor to the USD(A) for any action which is—

(A) An increase of more than $250 million in the price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the contract action is valued at more than $100 million; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price by more than $250 million for equivalent quantities.

(iii) Notify the USD(A) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government's estimate of the man-year effort under a research contract.

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC)—

(A) Has eligibility requirements for use of its services. Requests for information on eligibility should be addressed to DTIC-FDRB.

(B) Requires registration for use of its services. Instructions for registration are in Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.* (1)(A) The Office of Naval Research has responsibility on behalf of all of DoD for negotiating these basic agreements, except for basic agreements with Federally Funded Research and Development Centers;

(B) When using a basic agreement—

(*1*) Incorporate it by reference in section I of the contract; and

(*2*) Incorporate any special clause requirements in section H.

235.015–70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy.* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide

the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, which approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

235.015–71 Short form research contract (SFRC).

(a) *Scope.* This section prescribes procedures for contracting within the U.S. for research on a cost-reimbursement basis with educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Definitions.* As used in this section—

(1) *Educational institution* means an institution of higher learning which—

(i) Provides facilities for teaching and research; and

(ii) Is authorized to grant academic degrees.

(2) *Nonprofit organization* means—

(i) Organizations of the type—

(A) Described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)); and

(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability.* (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principal purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302–1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principal investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by work-days, work-months, or work-years;

(3) The executed representations on DD Form 2222–1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

(ii) The description of the property should be detailed enough to enable the contracting officer—

(A) To determine whether the Government will furnish such property under FAR 35.014 and FAR 45.302–1; and

(B) For property which may be contractor-acquired (versus Government-furnished)—

(*1*) To accept it as advance notification required by FAR 52.244–2; and

(*2*) To authorize acquisition at time of award;

(iii) If the offeror proposes to acquire facilities (FAR 45.301), the offeror shall include a written statement which—

(A) Explains why acquiring these items with contract funds is necessary; and

(B) Expresses the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources;

(iv) Special test equipment or components proposed. Individual items of less than $1,000 may be grouped by category (FAR 45.307–2);

(6) A SF 1411, Contract Pricing Proposal Cover Sheet, or acceptable substitute. FAR 52.244–2(b) prescribes information required for subcontracts;

(7) Markings complying with FAR 15.509 on the title page and each restricted sheet if the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation. In addition, the offeror should state in the offer or check Block A on page 2 of the DD Form 2222–2 if the offeror grants the Government permission to have nongovernment evaluators review the proposal;

(8) The following statement:

"This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 235.015–71(i) in effect on the effective date of the contract or such other dates as may be mutually agreed upon."

(9) Any other applicable FAR or DFARS clauses agreed to by the parties;

(10) Monthly expenditure estimates by which incremental funding periods may be calculated; and

(11) An executed DD Form 2222–2, Short Form Research Contract Research Proposal Cover Page.

(e) *Contracting procedures.*

(1) The contracting officer may award a SFRC under full and open competition (FAR Subpart 6.1) when the proposal—

(i) Is in response to a broad agency announcement under FAR 6.102(d)(2);

(ii) Contains the information required by 235.015–71(d); and

(iii) Has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(2) The contracting officer may award an SFRC under other than full and open competition (FAR subpart 6.3) when—

(i) The proposal is an unsolicited research proposal submitted, evaluated, and accepted under FAR subpart 15.5, which meets the criteria of FAR 6.302–1; or

(ii) Award is necessary to establish or maintain an essential engineering research or development capability under FAR 6.302–1.

(3) When a research proposal (solicited or unsolicited) is satisfactory to the Government, the contracting officer should accept the proposal by executing a SFRC incorporating—

(i) The proposal by reference, or

(ii) The statement of work by reference.

(4) When acceptance of the entire research proposal is not advantageous to the Government, the contracting officer should use the acceptable parts of the research proposal. These parts may be either attached or incorporated by reference to develop a contract for execution by both parties. In this event, the contractor must sign the SFRC before the Government signs.

(5) Use the DD Form 2222, Short Form Research Center (SFRC) Modification, to effect modifications.

(6) The initial dollar amount and period of performance specified in the award document shall include the initial research program only. The SFRC shall identify separately the options, periods of performance, and costs, if appropriate.

(7) FAR 35.014 applies to vesting of title in property to organizations defined in 235.015–71(b). DD Form 2222 shall identify property, title to which is not vested in the contractor, or for which a determination of title is deferred.

(8) The offeror's submission of its proposal under this section 235.015–71 constitutes the offeror's agreement to be bound by all terms and conditions of the resulting contract.

(f) *Advance payments.* The contracting officer shall ensure that SFRCs awarded to institutions and organizations authorized to receive advance payments under FAR Subpart 32.4 are clearly marked to read "Advance Payment Pool Contract."

(g) *Method of funding.* If incrementally funded, the SFRC shall specify—

(1) The total estimated cost for the full period of the research program, both funded and unfunded; and

(2) The amount of funds currently obligated.

(h) *Uniform contract format.* The SFRC is exempt from uniform contract format requirements (FAR 15.406).

(i) *SFRC clauses.* (1) Include in the contract any FAR or DFARS clause agreed to by the parties and incorporate it by reference or full text, as appropriate.

(2) The following clauses should be incorporated by reference in all SFRC awards of $25,000 or more. Clauses with a single asterisk (*) apply to educational institutions only. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.202–1 Definitions
FAR 52.203–1 Officials Not to Benefit
FAR 52.203–3 Gratuities
FAR 52.203–5 Covenant Against Contingent Fees
FAR 52.203–6 Restrictions on Subcontractor Sales to the Government
FAR 52.203–7 Anti-Kickback Procedures
252.203–7001 Special Prohibition on Employment
**FAR 52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
FAR 52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
252.209–7000 Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty
FAR 52.215–1 Examination of Records by Comptroller General
FAR 52.215–2 Audit—Negotiation
FAR 52.215–26 Integrity of Unit Prices
**FAR 52.215–30 Facilities Capital Cost of Money (Applies if contract is subject to commercial cost principles, FAR Subpart 31.2)
**FAR 52.215–31 Waiver of Facilities Capital Cost of Money (Applies if contractor does not propose facilities capital cost of money.)
FAR 52.215–33 Order of Precedence
FAR 52.216–7 Allowable Cost and Payment
*FAR 52.216–15 Predetermined Indirect Cost Rates (Applies only when the contractor has an executed negotiation agreement with the cognizant contract administration office. Predetermined rate agreements in effect on the date of the contract shall be incorporated in the contract schedule.)
FAR 52.219–8 Utilization of Small Business and Small Disadvantaged Business Concerns
FAR 52.219–13 Utilization of Women-Owned Small Businesses
FAR 52.220–3 Utilization of Labor Surplus Area Concerns
FAR 52.222–3 Convict Labor
FAR 52.222–26 Equal Opportunity (Add Alternate I as a special provision when applicable.)
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
FAR 52.222–36 Affirmative Action for Handicapped Workers
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era
FAR 52.223–6 Drug-Free Workplace

FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons
252.225–7016 and Restriction on Acquisition of Foreign Machine Tools
and Alternate I (if applicable)
FAR 52.227–1 and Alternate I Authorization and Consent
FAR 52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement
FAR 52.227–14 Rights in Data—General (Specify applicable Alternate in contract.)
252.227–7013 and Alternate I Rights in Technical Data and Computer Software
252.227–7018 Restrictive Markings on Technical Data
252.227–7029 Identification of Technical Data
**252.227–7030 Technical Data—Withholding of Payment
FAR 52.228–7 Insurance—Liability to Third Persons Alternates I and II, if applicable)
**252.231–7000 Supplemental Cost Principles (Applies to nonprofit institutions, when allowability of costs is determined under FAR Subpart 31.2)
FAR 52.232–23 Assignment of Claims
FAR 52.232–25 Prompt Payment
FAR 52.233–1 Disputes
FAR 52.233–3 and Alternate I Protest After Award
252.235–7004 Option to Extend the Term of the Contract
252.235–7005 Contractor-Acquired Property
252.235–7006 Title to Contractor-Acquired Property
252.235–7007 Advance Payments
252.235–7008 Inspection and Acceptance
252.235–7009 Restriction on Printing
FAR 52.242–1 Notice of Intent to Disallow Costs
252.242–7001 Certification of Indirect Cost
252.242–7004 Material Management and Accounting System
FAR 52.243–2 and Alternate V Changes—Cost-Reimbursement
FAR 52.244–2 and Alternate I Subcontracts (Cost-Reimbursement and Letter Contracts)
FAR 52.244–5 Competition in Subcontracting
FAR 52.245–5 and Alternate I Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts.)
FAR 52.247–63 Preference for U.S.-Flag Air Carriers
FAR 52.251–1 Government Supply Sources
252.251–7000 Ordering from Government Supply Sources
FAR 52.253–1 Computer Generation of Forms by the Public

(3) The following clauses should be incorporated by reference in all SFRC contracts of $100,000 or more. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions
252.203–7000 Statutory Prohibitions on Compensation to Former Department of Defense Employees
FAR 52.222–2 Payment for Overtime Premiums (The word "zero" is inserted in the blank space indicated by an asterisk.)
FAR 52.223–2 Clean Air and Water Act (Applies if contract amount exceeds the dollar amount set forth in the preamble to the clause.)
**FAR 52.230–3 Cost Accounting Standards (If contract is not exempt under FAR 30.201.)
**FAR 52.230–4 Administration of Cost Accounting Standards (If contract is not exempt under FAR 30.201.)
**FAR 52.230–5 Disclosure and Consistency of Cost Accounting Practices (If contract is not exempt under FAR 30.201.)
252.231–7001 Penalties for Unallowable Costs
252.233–7000 Certification of Claims and Requests for Adjustment or Relief

(4) The following clauses should be incorporated by reference, if applicable.

FAR 52.215–22 Price Reduction for Defective Cost or Pricing Data
FAR 52.215–24 Subcontractor Cost or Pricing Data (Applies only if FAR 52.215–22 applies.)
FAR 52.215–27 Termination of Defined Benefit Pension Plans (Applies if certified cost and pricing data are required and cost determinations are subject to FAR Subpart 31.2.)
252.215–7000 Pricing Adjustments (Applicable if FAR 52.215–23, 24, or 25 applies.)
FAR 52.216–8 Fixed Fee (Applies in cost-plus-fixed-fee contracts.)
FAR 52.216–11 and Alternate I Cost Contract—No Fee
FAR 52.216–12 and Alternate I Cost Sharing Contract—No Fee
252.225–7000 Pricing Adjustments (Applies if FAR 52.215–23, 24, or 25 applies.)
252.225–7023 Reporting of Subcontracts (Applies only when contract action exceeds $500,000, or when any modification increases contract amount to more than $500,000.)
FAR 52.227–11 Patents Rights—Retention by the Contractor (Short Form)
252.227–7034 Patents—Subcontracts
252.227–7039 Patents—Reporting of Subject Inventions
FAR 52.232–9 Limitation on Withholding of Payments
FAR 52.232–17 Interest
FAR 52.232–20 Limitation of Cost (Applies only when contract is fully funded.)
FAR 52.232–22 Limitation of Funds (Applies only when contract is incrementally funded.)
FAR 52.232–28 Electronic Funds Transfer Payment Methods
FAR 52.246–23 Limitation of Liability
FAR 52.246–24 Limitation of Liability—High Value Items
FAR 52.246–25 Limitation of Liability—Services
FAR 52.249–5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions). (Applies if work is done on a no-profit or no-fee basis)
FAR 52.249–6 Termination (Cost Reimbursement) (Applies if work is performed on a fee or profit basis.)
FAR 52.249–14 Excusable Delays (Applies only to contracts in which FAR 52.249–6 applies.)

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Public Law 99–661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.070 Indemnification against unusually hazardous risks.

235.070–1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354 and if authorized by the Secretary concerned, or designee under 10 U.S.C. 2356, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as "unusually hazardous;"

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070–2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85–804. Public Law 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85–804 must also comply with FAR subpart 50.4.

235.070–3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070–1, use either—

(a) The clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States, its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235–7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

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236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 236.1—General

236.102 Definitions.

(1) A–E means architect-engineer.

(2) *Construction activity* means an activity at any organizational level of the DoD that—

(i) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(ii) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

(3) *Network analysis system* means recognized scheduling systems that show the duration, sequential relationship, and interdependence of various work activities, e.g., critical path method.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(i) In Block 2 of the SF 1420, Performance Evaluation—Construction Contracts, enter the contractor establishment code from Item B5A of the DD 350, Contracting Action Report, Individual.

(ii) In Block 5 of the SF 1420, enter the telephone number of the Government office that will retain the official record copy of the report.

(c) *Distribution and use of performance reports.* (1) Send each contractor performance evaluation report to the central data base immediately upon its completion.

(A) The central data base—

(*1*) Is operated by—

U.S. Army Engineer Division, North Pacific, ATTN: CENPD–CT, P.O. Box 2870, Portland, OR 97208–2870, Telephone: (503)326–3459/4910

(*2*) Keeps reports on file for six years.

(B) For computer access to the files, contact the North Pacific Division for user log-on and procedures.

(2) Use performance records when making responsibility determinations under FAR 9.1.

(A) For each contract expected to exceed $1,000,000, retrieve all performance records on file in the central data base for all prospective contractors that have a reasonable chance of being selected for award. The central data base will provide—

(*1*) Overall current performance ratings;

(*2*) Descriptions of contracts on which ratings are based (e.g., type of facility, contract value, applicable performance elements); and

(*3*) A telephone number to obtain transcripts and documentation of pertinent evaluation details.

(B) Consider using the performance records in the data base for lower value contracts and to assess a contractor's performance record for reasons other than an award decision, such as subcontractor approval and awards for excellence.

236.203 Government estimate of construction costs.

(c)(i) Designate the Government estimate as "For Official Use Only," unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(ii) For sealed bid acquisitions—

(A) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(B) After the bids are read and recorded, remove the "For Official Use Only" designation and read and record the estimate as if it were a bid, in the same detail as the bids.

236.206 Liquidated damages.

See 212.204 for instructions on use of liquidated damages.

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are involved.

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriation acts restrict the use of cost-plus-fixed fee contracts for

construction and A–E services. The Assistant Secretary of Defense (Production and Logistics) must specifically approve such contracts in writing when—

(a) They are estimated to exceed $25,000;

(b) They will be performed within the U.S., except Alaska; and

(c) They are funded by a military construction appropriation act.

236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Network analysis systems.

Use head of the contracting activity approved procedures for preparing and using network analysis systems, whether contractor prepared, or Government prepared.

236.274 Construction in foreign countries.

When a technical working agreement with a foreign government is required for a construction contract—

(a) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(b) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(1) Acquisition of all necessary rights;

(2) Expeditious, duty-free importation of labor, material, and equipment;

(3) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(4) Applicability of workers' compensation and other labor laws to citizens of the U.S., the host country, and other countries;

(5) Provision of utility services;

(6) Disposition of surplus materials and equipment;

(7) Handling of claims and litigation; and

(8) Resolution of any other foreseeable problems which can appropriately be included in the agreement.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.

236.303–70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(b) Before opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows—

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any combination if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder's price for the combination is less than the price offered by any other responsive, responsible bidder.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

(1) For cost-plus-fixed-fee contracts, negotiate the fee for a prime contractor using departmental procedures approved by the Assistant Secretary of Defense (Production and Logistics).

(2) For cost-plus-incentive-fee contracts, negotiate the target fee for a prime contractor using the criteria and fee schedule in departmental procedures to determine—

(i) The reasonableness of the target cost;

(ii) The maximum and minimum fees to be established; and

(iii) The fee adjustment formula.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

(1) 252.236–7000, Modification Proposals-Price Breakdown; and

(2) 252.236–7001, Contract Drawings, Maps, and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

(1) 252.236–7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either—

(i) 252.236–7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require—

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236–7004, Payment for Mobilization and Demobilization. Use

this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236–7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236–7006, Cost Limitations, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236–7007, Additive or Deductive Items, if the procedures in 236.303–70 are being used.

(6) 252.236–7008, Contract Prices—Bidding Schedule, if the contract will contain only unit prices for some items.

Subpart 236.6—Architect-Engineer Services.

236.601 Policy.

(1) 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—

(i) A–E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and

(ii) An estimated total contract price of $300,000 or more.

(2) During the 21 day period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602–1 Selection criteria.

(a)(i) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY—— Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(4) Use performance evaluation data from the central data base identified in 236.201.

(6) The primary factor in A–E selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A–E firms, include small and small disadvantaged business firms and firms that have not had prior DoD contracts—

(*1*) Use data extracted from the Defense Contract Action Data System (DCADS) compiled from DD Form 350, Individual Contracting Action Report. DCADS data may be obtained from the central data base identified in 236.201(c)(1).

(*2*) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition.

(B) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

236.602–2 Evaluation boards.

(a) Preselection boards are authorized, if the lists they develop are approved by the head of the construction activity. If used, preselection boards will—

(i) Be formally constituted;

(ii) Consist of at least three members; and

(iii) Prepare a preselection list of the maximum practicable number of qualified firms using data described in FAR 36.603, and any other pertinent information.

236.602–4 Selection authority.

(a)(i) The following selections require special approval—

(A) The estimated contract price exceeds $500,000;

(B) The firm to be selected has already been awarded contracts totaling over $500,000 during the current calendar year by the construction activity; or

(C) Supplemental work added to an existing contract causes the total contract price to exceed $500,000. Special approval is not, however, required for supplemental work added to a contract under the clause at FAR 52.243–1, Changes-Fixed Price.

(ii) Special approval means approval by the next higher organizational level above the construction activity or as established in contracting activity procedures and must be obtained prior to negotiation with the A–E firm.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three firms remains. The reasons for finding a firm or firms unqualified must be recorded.

236.604 Performance evaluation.

(a)(2) Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A–E's performance.

(c) Distribution and use of performance reports.

(i) Forward each performance report to the central data base identified in 236.201(c) after completing the review. The procedures in 236.201 also apply to A–E contracts.

(ii) File and use the SF 1421, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

236.606 Negotiations.

236.606–70 Statutory fee limitation.

(a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for A–E services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.

(b) The six percent limit also applies to contract modifications, including modifications involving—

(1) Work not initially included in the contract. Apply the six percent limit to the revised total estimated construction cost.

(2) Redesign. Apply the six percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the six percent statutory limitation.

(c) The six percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price

attributable to the other services is not subject to the six percent limit.

236.609 Contract clauses.

236.609-70 Option for supervision and inspection services.

(a) Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when—

(1) The contract will be fixed price; and

(2) Supervision and inspection services by the A-E may be required during construction.

(b) Include the scope of such services in appendix A of the contract.

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies and Services, (see 213.505-2).

PART 237—SERVICE CONTRACTING

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 237.1—Service Contracts—General

237.104 Personal services contracts.

(b)(i)Authorization to acquire the personal services of experts and consultants is included in Public Law 101-165, section 9002. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(*1*) The duties are of a temporary or intermittent nature;

(*2*)Acquisition of the services is advantageous to the national defense;

(*3*) DoD personnel with necessary skills are not available;

(*4*)Excepted appointment cannot be obtained;

(*5*) A nonpersonal services contract is not practicable;

(*6*)Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(*7*) Any other determination required by statues has been made.

(ii) Personal service contracts for direct health care services are authorized by 10 U.S.C. 1091. Policy and procedures including the applicable pay cap and approval requirements are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. The contracting officer must ensure that the requiring activity provides the contracting officer with a copy of the approval to enter into a personal services contract for direct health care.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15, except the following which shall not exceed the highest rate payable to a GS-18—

(A) Professional engineering services primarily involving research and development; or

(B) Professional services involving physical sciences, natural sciences, or medicine.

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed one year.

The nature of the duties must be—

(i) Temporary (not more than one year); or

(ii) Intermittent (not cumulatively more than 130 days in one year).

(2) The following categories of service contracts, funded by annual appropriations, are authorized to extend beyond the end of the fiscal year—

(i) One year contracts for maintenance of tools or facilities (see 10 U.S.C. 2410a(1));

(A) Tools generally are items found in supply groups 51 and 52, such as hand and power tools, gauges, measuring devices, etc.

(B) Examples of facilities maintenance services include—

(*1*) Custodial or housekeeping services;

(*2*) Security or fire protection services;

(*3*) Refuse collection;

(*4*) Grounds or surfaced area maintenance;

(*5*) Heating systems operation and maintenance;

(*6*) Military family housing maintenance;

(*7*) Energy monitoring control systems maintenance and repair;

(*8*) Commissary refrigeration maintenance and repair;

(*9*) Medical facility real property maintenance management;

(*10*) Hospital aseptic maintenance management; and

(*11*) Animal or pest control;

(ii) One year contracts for depot maintenance (see 10 U.S.C. 2410a(3));

(iii) Multi-year service contracts;

(iv) One year requirements or indefinite quantity contracts, as defined in FAR 16.503 and FAR 16.504, in which the minimum quantities are certain to be ordered in the fiscal year current at the

beginning of the contract term (but see FAR 32.705–1(b));

(v) Personal service contracts for experts or consultants; or

(vi) Contracts for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Advisory and Assistance Services

237.203 Types of advisory and assistance services.

(d) *Engineering and technical service.*

(i) Engineering and technical services consist of—

(A) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(B) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities; and

(C) Field service representatives, which are employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

(ii) Every contract for engineering and technical services alone or as part of an end item, shall—

(A) Show those services as a separately priced line item;

(B) Contain definitive specifications for the services; and

(C) Show the work-months involved.

(iii) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203–70 Acquisition of audit services.

(a) *General policy.* (1) Departments and agencies shall not contract for audit services unless the cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization, or temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) DoDD 7600.2, Audit Policies, provides DoD audit policies.

(3) DoDD 7600.6, Audit of Nonappropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of nonappropriated fund organizations.

(4) DoDD 7600.7–M, Internal Audit Manual, chapter 20, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

(b) *Contract period.* Except in unusual circumstances, contracts for recurring audit services shall be awarded for a one year period with at least two option years.

(c) *Approvals.* Contracting officers shall not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Solicitation provisions and contract clauses.* (1) Use the provision of 252.237–7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237–7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

237.205 Management controls.

DoD procedures are in DoDD 4205.2, DoD Contracted Advisory and Assistance Services.

237.206 Requesting activity responsibilities.

(b) On acquisitions for studies, the purchase request package must contain a signed statement from the technical officer responsible for the study stating that the Defense Technical Information Center (DTIC) and other information sources have been queried, that evidence of those queries are on file, and no existing scientific or technical report could fulfill the requirement.

(c) The authority, without redelegation authority (see DoDD 4205.2), to approve the use of advisory and assistance services in contracts over $50,000 is—

(i) An SES manager;

(ii) A general or flag officer;

(iii) An officer in 0–6 grade filling a general or flag officer level position; or

(iv) An officer in 0–6 grade who has subordinate SES personnel.

237.270 Master agreements.

Section 2304 of title 10, U.S.C., authorizes award of master agreements under which orders may be issued for specific contract advisory and assistance services (CAAS). The authority to award master agreements expires April 15, 1994.

237.270–1 Establishing agreements.

(a) Use this section only for types of advisory and assistance services described in FAR 37.203.

(b) Establish agreements using competitive procedures.

(c) Use the procedures for basic ordering agreements (see FAR 16.703) except—

(1) Synopsize solicitations for agreements as if they were service contracts expected to exceed $25,000;

(2) Establish agreements with at least three of the sources submitting offers; and

(3) Establish agreements for a period not to exceed two years, and do not extend them.

237.270–2 Ordering procedures.

(a) Ordering procedures for master agreements are the same as for basic ordering agreements, except that requests for proposals for individual orders need not be synopsized, nor is a justification and approval required. Orders under master agreements are an additional circumstance permitting full and open competition after exclusion of sources (FAR subpart 6.2).

(b) Before placing an order under a master agreement, the contracting officer—

(1) Must reasonably expect that at least two sources with established agreements will submit offers or an order cannot be placed against an agreement;

(2) Shall request offers from all agreements holders;

(3) Shall ensure the statement of work clearly specifies the tasks to be performed;

(4) Shall accept the offer most advantageous to the Government, considering all relevant factors specified in the request for offers;

(5) Shall synopsize issued orders in accordance with FAR 5.302; and

(6) Shall ensure orders have an identifiable deliverable.

237.270–3 Limitation.

The total value of orders issued under master agreements in a fiscal year by any contracting activity (as defined in 202.101) shall not exceed 30 percent of the value of all contracts for advisory and assistance services awarded by that activity during fiscal year 1989. This limitation may be increased from 30 percent to not more than 50 percent if—

(a) The head of the contracting activity (HCA) waives the 30 percent limitation. Each waiver shall be in the form of a determination and finding prepared and processed in accordance with department/agency procedures.

The determination and finding must specify that the use of master agreements is necessary to further the policy of acquiring advisory and assistance services on the basis of the task to be performed rather than on the basis of the number of hours provided; and

(b) The agency publishes a notice of the waiver in the **Federal Register** and 60 days have passed since the notice of the HCA waiver appeared in the **Federal Register**. **Federal Register** notices shall be forwarded for publication in accordance with agency procedures.

237.270–4 Reporting requirements.

(a) Each department and agency shall provide an annual report to OSD, ATTN: OUSD(A)DP(CPA), not later than November 15 of each year. The report control symbol is DD–P&L(A) 1849. The report shall include—

(1) The total number of master agreements awarded (with names of contractors and type of CAAS being acquired) and estimated dollar value of each agreement;

(2) The number of task orders awarded under each master agreement (by contractor) and dollar value of each (including modifications); and

(3) The period covered by the report.

(b) Each department and agency shall centrally maintain the following information, for all master agreements expected to involve work in excess of $2 million (including modifications), on a fiscal year basis—

(1) The number of bid protests filed, number sustained, and number of awards terminated during the competition for master agreements and task orders;

(2) The program's effect on the procurement administrative leadtime for CAAS;

(3) Statements of work describing the services contracted for and the source evaluation criteria used to evaluate proposals for award;

(4) The level of small business participation in the program; and

(5) The number of contracts where a contractor certified that a conflict of interest exists under the regulations implementing section 8141 of the National Defense Authorization Act for FY89, the nature of the conflict of interest, and the steps taken to resolve such conflicts of interest among firms that qualify for master agreements.

Subpart 237.70—Mortuary Services

237.7000 Scope.

This subpart contains acquisition procedures for contracts for mortuary services (the care of remains) for military personnel within the U.S. Departments/agencies may use these procedures as guidance in areas outside the U.S. for both deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies and Services/Request for Quotations, to obtain mortuary services.

237.7002 Area of performance.

Determine and define the geographical area to be covered by the contract using the following general guidelines—

(a) Use political boundaries, streets, or other features as demarcation lines.

(b) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.

(c) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

237.7003 Distribution of contracts.

In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following—

(a) HQDA (TAPC–PEC–D), Alexandria, VA 22331.

(b) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets, NW, Washington, DC 20372.

(c) Headquarters, AFMPC–MPCCM, Randolph AFB, TX 78150.

237.7004 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.

(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237–7004, Area of Performance, and 252.237–7010, Facility Requirements, in solicitations or contracts that include port of entry requirements—

(1) 252.237–7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);

(2) 252.237–7004, Area of Performance;

(3) 252.237–7005, Performance and Delivery;

(4) 252.237–7006, Subcontracting;

(5) 252.237–7007, Termination for Default;

(6) 252.237–7008, Group Interment;

(7) 252.237–7009, Permits;

(8) 252.237–7010, Facility Requirements; and

(9) 252.237–7011, Preparation History.

(c) Use the clause at FAR 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7012, Instructions to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237–7013, Instructions to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237–7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237–7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value.

When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the clause at 252.237–7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the clause with its Alternate I when services are for bag type laundry to be provided on a bulk weight basis.

(2) Use the clause with its Alternate II when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237–7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d) (1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d) (1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237–7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

Subpart 237.72—Educational Service Agreements

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) "*Facilities*" do not include the institution's dining rooms or dormitories; and

(2) "*Fees*" does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution's normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

(a) Make no agreement under this subpart which will result in payment of Government funds for tuition or other expenses for training in any legal profession, except in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

(b) Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution's academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

Educational Service Agreement

Agreement No. _____

1. This agreement entered into on the _____ day of _____ 19____, is between the Government, represented by the Contracting Officer, and the Contractor, (name of institution), an educational institution located in _____ (city), _____ (state).

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor's institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor's normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $_____. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: _____ (name and address of activity).

Schedule Provisions

1. *Ordering procedures and services to be provided.* (a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. *Payment.* (a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit _____ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within _____ days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.* (a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish _____ copies of the orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. *Student teaching.* The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. *Termination of agreement.* (a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

General Provisions

Use the following clauses in educational service agreements—

1. FAR 52.202–1, Definitions, and add the following paragraphs (d) through (i).

(d) *Term* means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes *semester, trimester, quarter,* or any similar word the Contractor may use.

(e) *Course* means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) *Curriculum* means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) *Catalog* means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) *Tuition* means the amount of money charged by an educational institution for instruction, not including fees.

(i) *Fees* means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–1, Officials Not To Benefit.

3. FAR 52.203–3, Gratuities.

4. FAR 52.203–5, Covenant Against Contingent Fees.

5. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

6. FAR 52.215–1, Examination of Records by Comptroller General.

7. FAR 52.215–18, Order of Precedence.

8. Conflicts Between Agreement and Catalog. Insert the following clause—

Conflicts Between Agreement and Catalog

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

9. FAR 52.222–3, Convict Labor.

10. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.

11. FAR 52.233–1, Disputes.

12. Assignment of Claims. Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

13. FAR 52.252–4, Alterations in Contract, if required by department/agency procedure.

Signature Page

Agreement No.———————————
Date ———————————

The United States of America

BY: ———————————
(Contracting Officer)
Activity ———————————
Location———————————

(Name of Contractor)
BY: ———————————
(Title) ———————————

Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at Defense research and development laboratories (10 U.S.C. 2360).

237.7301 Definitions.

As used in this subpart—

(a) *Institution of higher learning* means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States, its possessions, and Puerto Rico;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) *Nonprofit organization* means any organization described by section 501(c)(3) of title 26 of the U.S.C. which is exempt from taxation under section 501(a) of title 26.

(c) *Student* means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) *Technical support* means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR part 19, FAR 13.105, or DFARS part 219. Award authority for these contracts is 10 U.S.C. 2304(a)(i) and 10 U.S.C. 2360.

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.249–12, Termination (Personal Services).

PART 239—ACQUISITION OF INFORMATION RESOURCES

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

239.001 Policy.

(a) The General Services Administration (GSA) implements its authority for the acquisition of Federal information processing (FIP) resources in the Federal Information Resources Management Regulation (FIRMR), which is codified in 41 CFR part 201. FIP resources are defined in the FIRMR at 201–4.001. Unless one of the exemptions of the Warner Amendment (10 U.S.C. 2315) applies, or unless otherwise specifically exempted, DoD must comply with FIRMR requirements.

(b) When the acquisition is subject to "The Brooks Act" (40 U.S.C. 759), the FIRMR takes precedence over this part.

(c) The Warner Amendment (10 U.S.C. 315), exempts certain DoD information resource acquisitions from the requirements of "The Brooks Act" and GSA's implementing regulations. If an acquisition is exempt under the Warner Amendment, clauses from the FIRMR do not have to be included in the solicitation or contract. However, all acquisitions for FIP resources, including those exempt under the Warner Amendment, must comply with Federal standards (see subpart 239.72).

239.001–70 Warner Amendment exemptions for Federal information processing (FIP) resources.

(a) *Exemptions.* Acquisitions for FIP resources are exempt from application

of "The Brooks Act" if the function, operation, or use of such resources—

(1) Involves intelligence activities.

(2) Involves cryptologic activities related to national security.

(3) Involves command and control of the military forces.

(4) Involves equipment as an integral part of a weapon system.

(5) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(b) *General application.* (1) The term "involves" as used in paragraphs (a) (1) through (4) of this subsection is important in determining whether an acquisition is exempt under the Warner Amendment.

(i) To be exempt, at least one of the actual intended purposes of the function, operation, or use of the equipment or service being acquired must directly relate to the activities, functions, or equipment specified in paragraphs (a) (1) through (4) of this subsection.

(ii) The equipment and services may have additional purpose(s) related to activities, functions, and equipment other than those specified in (a) (1) through (4) of this subsection, e.g., routine business and administrative purposes.

(2) In contrast to paragraphs (a) (1) through (4) of this subsection, paragraph (a)(5) exempts acquisitions for ADPE (FIP resources) used for purposes that are critical to the direct fulfillment of military or intelligence missions and which do not include ADPE (FIP resources) used for routine administrative and business applications.

(c) Determinations as to applicability of the Warner Amendment shall be made in accordance with department/agency procedures.

239.002 Delegations of procurement authority.

(1) When a delegation of procurement authority (DPA) is required, the contracting officer shall obtain the DPA before issuing the solicitation.

(2) The contracting officer shall include a clause in the solicitation and resulting contract which identifies whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA. (See FIRMR 201-39.106-4.)

Subpart 239.70—Exchange or Sale of Federal Information Processing (FIP) Resources

239.7000 Scope of subpart.

This Subpart contains unique DoD procedures for the exchange or sale of FIP resources using the exchange authority of the General Services Administration (GSA).

239.7001 Policy.

Agencies should consider exchange/sale when replacing Government-owned FIP resources. Exchange/sale is a method of—

(a) Transferring the equipment to be replaced to—

(1) Another Government agency, with reimbursement (sale); or

(2) The supplier of the replacement FIP resources for a trade-in allowance (exchange).

(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement FIP resources.

239.7002 Conditions for using exchange/sale.

(a) The requiring activity must make a written determination that—

(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement FIP resources; and

(2) The exchange/sale transaction will foster the economic and efficient accomplishment of a continuing requirement.

(b) The replacement equipment must be a FIP resource—

(1) Similar to the resource being sold or exchanged;

(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

239.7003 Procedures.

(a) Comply with—

(1) This subpart;

(2) Subpart 217.70; and

(3) DoD 7950.1-M, Defense Automation Resources Management Manual.

(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.

(c) Retain the option to exercise any exchange offer at the time of award.

(d) List and describe the exchange FIP resource in the solicitation. At a minimum include—

(1) A brief description of each item;

(2) Name of manufacturer;

(3) Equipment type;

(4) Model number; and

(5) The condition code and explanation of the code.

(e) Allow sufficient time in the contracting schedule to permit screening of the exchange FIP resource within the Government prior to contract award.

(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under DoD 7950.1-M.

(1) Send an SF 120, Report of Excess Personal Property, to the Defense Automation Resources Information Center (ATTN: DARIC-R). Prominently display the following note on the original and five copies of the SF 120.

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.

(2) Include the following additional information with the SF 120—

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The acquisition method for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The delegation of procurement authority number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced FIP resource is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see DoD 7950.1-M for disposal instructions.

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart applies to all acquisitions for computer systems. It covers both security and Privacy Act considerations.

239.7101 General.

Security requirements are in addition to provisions concerning protection of privacy of individuals (see FAR subpart 24.1).

239.7102 Security against compromising emanations.

239.7102-1 General.

(a) The National Security or Atomic Energy Acts, as amended, may require protection of information that is—

(1) Processed;

(2) Transmitted;

(3) Stored;

(4) Retrieved; or

(5) Displayed.

(b) When acquiring computer equipment to be used to process classified information, the contracting officer shall obtain from the requiring activity—

(1) A determination as to whether the equipment must provide protection against compromising emanations; and

(2) Identification of an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority.

(c) When contracts will require the use of FIP resources involving classified data, programs, etc., the contracting officer shall obtain from the requiring activity—

(1) Advice to whether to require contractors performing these services to use equipment meeting the requirements in paragraph (a) of this subsection (as prescribed in the clause at 252.239–7000, Protection Against Compromising Emanations;

(2) Information concerning any requirement for marking of TEMPEST—certified equipment (especially if to be reused); and

(3) Information on how to validate TEMPEST equipment compliance with required standards.

239.7102-2 Validation of TEMPEST compliance.

Include requirements for validation of TEMPEST compliance in section E (Inspection and Acceptance) of the contract.

239.7102-3 Solicitation provisions and contract clauses

(a) When contracting for computer equipment or systems which are to be used to process classified information, use the clause at 252.239–7000, Protection Against Compromising Emanations.

(b) When acquiring computer equipment, software, or services subject to the Privacy Act, the FIRMR clause 201.39.5202–5, Privacy or Security Safeguards, may be used in solicitations and contracts in addition to the clause at FAR 52.224–2, Privacy Act.

Subpart 239.72—Standards

239.7200 Scope of subpart.

This subpart contains guidance for implementing—

(a) Federal Information Processing Standards (FIPS); and

(b) Federal Telecommunications Standards (FED-STD).

239.7201 General.

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" which provides guidance to agencies on the use of Federal standards which apply to FIP resources. The index contains information about applicability for each standard and terminology for including standards in solicitations. FIRMR Bulletin C–3 contains additional information about the index. See FIRMR 201–20.303 and 201–39.1002 for guidance.

239.7202 Waivers.

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards, in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)), as the DoD senior information resources management (IRM) official, designated pursuant to section 3506(b) of title 44 of the U.S. Code (i.e., the Paperwork Reduction Act of 1980, as amended). The ASD(C3I) has redelegated to the senior IRM official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements. Waivers to FIP standards that are applicable to the requirements of DoD components outside the military departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations in accordance with FIRMR procedures, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior IRM official.

(c) As part of the Commerce Business Daily synopsis of a solicitation, contracting officers shall publish a notice of any determinations to waive any FIP standards that are applicable to the solicitation. If the waiver determination is made after the notice of the solicitation is published, the contracting officer shall amend the notice to announce the waiver determination.

Subpart 239.73—Acquisition of Automatic Data Processing Equipment by DoD Contractors

239.7300 Scope of subpart.

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) acquired (purchased or leased) by contractors for use in performing DoD contracts.

239.7301 Applicability.

(a) This subpart applies when—

(1) The contractor acquires ADPE for the account of the Government;

(2) The contractor acquires ADPE and title will pass to the Government; or

(3) The contractor leases ADPE and—

(i) The ADPE is not for the account of the Government;

(ii) Title will not pass to the Government; and

(iii) The contractor will charge the total cost of the lease to one or more Government contracts requiring the negotiation or determination of costs.

(b) This subpart does not apply to ADPE acquired as a component of an end item.

239.7302 Approvals and screening.

(a) The requirements of this section highlight the redistribution requirements of DoD 7950.1–M, Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301(a) (1) and (2)—

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7305.

(2) The administrative contracting officer—

(i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor's needs. The request should include the contractor's supporting documentation. The request is sent to: Director, Defense Automation Resources Information Center (DARIC), Attn: DARIC-R, Cameron Station, Alexandria, VA 22304–6100.

(ii) Upon receipt of and based on screening results from DARIC, advises the contractor that excess ADPE—

(A) Is available pursuant to DoD 7950.1–M; or

(B) Is not available and contractor may proceed with acquisition of the equipment.

(3) The contracting officer—

(i) Reviews the contractor's documentation;

(ii) Decides whether to authorize the acquisition; and

(iii) Advises—

(A) The contractor if authorization is not granted; and

(B) The administrative contracting officer if authorization is granted.

239.7303 Review and approval of leasing costs.

The cost principle in FAR 31.205–2, automatic data processing equipment leasing costs, requires the contractor to obtain contracting officer approval before incurring certain leasing costs.

(a) Before approving lease costs, meeting the criteria of FAR 31.205–2(b)(2)(iii), the contracting officer shall request and review the contractor supporting documentation described in 239.7305.

(b) The contracting officer shall conduct an annual review of leasing costs, meeting the criteria of FAR 31.205–2(d), to determine the continued need for leasing. In performing the review, the contracting officer shall request the contractor to update its supporting documentation.

(c) If the initial or annual reviews disclose no basis for nonconcurrence, the contracting officer will advise the contractor and, as appropriate—

(1) Enter into an advance agreement (see FAR 31.109);

(2) Obtain purchase option credits (see 239.7304).

239.7304 Purchase option credits.

(a) If 100 percent of the lease costs are charged to Government cost-reimbursement contracts, the rental contract shall give the Government the initial option to use any purchase credits or other benefits earned through rental payments.

(b) If less than 100 percent of the lease costs are charged to Government cost-reimbursement contracts, the contracting officer shall—

(1) Encourage the contractor to incorporate in its rental contract the right to assign accrued purchase credits to the Government;

(2) Obtain for the Government the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and

(3) Get the contractor's commitment to give the administrative contracting officer a 120-day advance notice of its intent to terminate a lease where the Government has rights in accrued purchase credits.

(c) Report purchase option credits as prescribed in DoD 7950.1–M.

239.7305 Contractor documentation.

Contracting officers may tailor the documentation requirements in paragraphs (a) through (e) of this section.

(a) *List of existing ADPE and an analysis of its use.* (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.

(b) *List of new ADPE needed and reasons why it is needed.* (1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) *Selection of computer equipment.* (1) If the acquisition is competitive—

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed;

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) *Cost.* (1) For purchases, state the ADPE cost.

(2) For leases, state the increase or decrease in monthly costs to the Government.

(e) *Lease versus purchase analysis.* When the proposed acquisition is a lease, provide a lease/purchase analysis using the format in Table 39–1, Suggested Purchase/Lease Analysis Format, or one substantially similar.

TABLE 39–1.—SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

(1) ADPS components	(2) Qty.	(3) Vendor	(4) Other avg. monthly rental/lease		(5) Instal. date	(6) Useful life (C)	(7) Orig. purchase price	(8) Equity (D)	(9) Current purchase price
			(A)	(B)					
ADP system as of date									(7–8)

	(11)	(9–11 10–11)		(12+13)	(4×6)	(14–15)
(10) Vendors purchase price	Residual value (E)	(12) Owner depreciation costs	(13) Other costs (F)	(14) Total owner costs	(15) Total rental/lease costs (G)	(16) Differential (H)
ADP system as of date						(7–8)

(A) Includes projected extra shift where necessary.
(B) Includes other costs (taxes, maintenance, insurance, etc.).
(C) Documentation must be provided and attached per FAR 31.205–2.
(D) Accrued equity on rented/leased equipment (accumulated rental credits).
(E) Residual value forecast at end of useful life.
(F) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.
(G) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.
(H) If lease is favorable, bracket differential figures.

Subpart 239.74—Telecommunications Services

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services may also meet the definition of automatic data processing equipment.

239.7401 Definitions.

As used in this subpart—

(a) *Common carrier* means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

(b) *Foreign carrier* means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

(c) *Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the State authority. The following are not "governmental regulatory bodies"—

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

(d) *Noncommon carrier* means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

(e) *Security, sensitive information,* and *telecommunications systems* have the meaning given in the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services.

(f) *Telecommunications* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

(g) *Telecommunications services* means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) *Acquisition.* (1) DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(i) On a competitive basis, except when acquisition using other than full and open competition is justified.

(ii) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices;

(iii) Making provision in telecommunications services contracts for adoption of—

(A) FCC approved practices; or

(B) The generally accepted practices of the industry on those issues concerning common carrier services where—

(*1*) The governmental regulatory body has not expressed itself;

(*2*) The governmental regulatory body has declined jurisdiction; or

(*3*) There is no governmental regulatory body to decide.

(2) DoD's unique consumer needs in both volume and technology require DoD to participate actively in the rule making process of cognizant governmental regulatory bodies. DoD also must work with the government regulatory bodies and common carriers to be sure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. DoD should make every effort to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the DoD's position in advance.

(3) If actions do not produce reasonable or lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, DoD should litigate. All contracts with the regulatory bodies should be through counsel under department/agency and Defense Communications Agency procedures.

(b) *Security.* (1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this subsection, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with FAR part 45. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary facilities as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.303–1(a) are met.

239.7403 Regulatory bodies.

The FCC and other governmental regulatory bodies publish rules and regulations on the operations of common carriers and prescribe accounting principles to use to establish rates.

239.7404 Foreign carriers.

(a) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business. In many countries, an international agreement with the host country sets guidelines for acquiring communication services. In some countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for telecommunications services.

(b) Contracts for telecommunications services in foreign countries should describe rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD should pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(c) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

239.7405 Authority to contract for telecommunications services.

(a) The General Services Administration (GSA) has exclusive

procurement authority for telecommunications services that meet the definition of Federal information processing resources in FIRMR 201–4 and that meet the applicability criteria in FIRMR 201–1. However, GSA may authorize agencies to contract for telecommunications services in certain instances under a delegation of GSA's exclusive procurement authority (see FIRMR 201–20.305).

(b) Under FIRMR 201–20.306, GSA authorizes the senior information resources management (IRM) officials of each military department and the senior IRM official of DoD to enter into multiyear contracts for telecommunications services under certain conditions. Contracting activities may enter into multiyear contracts for telecommunications services if—

(1) The senior IRM official has redelegated to the contracting office, GSA's exclusive procurement authority for FIP sources;

(2) The contract life, including options, does not exceed ten years; and

(3) The contracting activity complies with OMB budget and accounting procedures relating to appropriated funds.

(c) The senior IRM officials are—

(1) *Army.*

The Assistant Secretary of the Army (Research, Development, and Acquisition);

(2) *Navy.*

The Assistant Secretary of the Navy (Research, Development, and Acquisition);

(3) *Air Force.*

The Assistant Secretary of the Air Force (Acquisition); and

(4) *The defense agencies.*

Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(d) The ten year authority in paragraph (b) of this section applies to communications service authorizations (239.7407–2) and other types of telecommunications contracts. It does not apply to basic agreements.

239.7406 Cost or pricing data.

(a) Common carriers are not required to submit cost or pricing data before award of contracts for tariffed services, except as provided in paragraph (c) of this subsection. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation. The provisions of 10 U.S.C. 2306a and FAR 15.804 apply in these circumstances.

(c) Even when not required by 10 U.S.C. 2306a, contracting officers shall obtain certified cost or pricing data when unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2). Situations in which cost or pricing data may be necessary are described in the clause at 252.239–7009, Submission of Cost or Pricing Data—Common Carriers.

(d) The contracting officer need not get cost or pricing data for each delivery order under a basic agreement which is negotiated for use by Government ordering activities and includes detailed and approved price schedules.

(e) The contracting officer shall specify the form and detail of the cost or pricing data (see FAR 15.804–6(a)). However, for data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier if sufficient for cost or price analysis purposes.

(f) When obtaining cost or pricing data under this section, the contracting officer shall obtain a certificate of current cost and pricing data in the format shown at FAR 15.804–4(a). However, if the contracting officer is requesting cost or pricing data under paragraph (c) of this section from a common carrier furnishing telecommunications services under a tariff filed or to be filed, substitute the following certificate for that at FAR 15.804–4(a):

Certificate of Current Cost or Pricing Data

(Common Carriers)

This is to certify that to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of _____* are accurate, complete, and current as of _____**. Rates are based on the data which will be used or are currently being used to justify tariffs, or rates for telecommunications services which are not based on the data, but are based on filed tariffs. I understand that the Government will use this cost and pricing data and this certification, if appropriate, in any proceedings relative to this tariffed service.

Firm _____

Name _____

Title _____

Date of execution*** _____

*Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certification)

239.7407 Type of contract.

239.7407–1 General.

In addition to acquisition methods described in the FAR, the method described in this section may be used to acquire telecommunications services.

239.7407–2 Communication service authorizations (CSAs).

Basic agreements (see FAR 16.702) are used widely in conjunction with communication service authorizations to facilitate award of telecommunications services.

(a) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA shall—

(1) Refer to the basic agreement;

(2) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;

(3) Specify the premises involved;

(4) Cite the address for billing;

(5) Identify the disbursing office; and

(6) Provide funding information.

(b) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.

(c) Include an expiration date in each CSA.

(d) Modify CSAs to reflect any price increases.

239.7408 Special construction.

239.7408–1 General.

(a) Special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.

This may include—

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR part 36 for acquisition of "special construction."

(c) Special construction costs may be—

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. Do not make final payment for special construction charges unless the charges are approved by the contracting officer.

239.7408–2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.

239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer shall negotiate special assembly rates and charges before starting service whenever possible. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7002, Access;
(2) 252.239–7003, Facilities and Services to be Furnished—Common Carriers;
(3) 252.239–7004, Orders for Facilities and Services—Common Carriers;
(4) 252.239–7005, Rates, Charges, and Services—Common Carriers;
(5) 252.239–7006, Tariff Information;
(6) 252.239–7007, Cancellation or Termination of Orders—Common Carriers;
(7) 252.239–7008, Reuse Arrangements;
(8) 252.239–7009, Submission of Cost or Pricing Data—Common Carriers; and
(9) 252.239–7010, Audit and Records—Common Carriers.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7011, Special Construction and Equipment Charges; and
(2) 252.239–7012, Title to Communication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239–7013, Obligation of the Government;
(2) 252.239–7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and
(3) 252.239–7015, Continuation of Orders, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires a securing telecommunications.

PART 241—ACQUISITION OF UTILITY SERVICES

Sec.

241.001 Definitions.
241.002 Applicability.
241.004 Acquiring utility services.
241.004–1 Policy.
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241.004–3 GSA assistance and approval.
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241.005 Pre-award contract review.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

241.001 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

Army, the Chief of Engineers;
Navy, the Commander, Naval Facilities Engineering Command;
Air Force, the head of a contracting activity; and
Defense Logistics Agency, the Executive Director of Contracting.

241.002 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquified petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394(a) for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years: and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

241.004 Acquiring utility services.

241.004-1 Policy.

(1) Except as provided in FAR 41.004, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the U.S. may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered "prices set by law or regulation" and do not require submission of cost or pricing data (see FAR subpart 15.8).

241.004-2 Procedures.

(a)(i) *Competitive proposals.* When a new major utility service load develops or a new military installation is established, the contracting officer shall—

(A) Determine whether more than one supplier can provide the required utility services.

(*1*) Competition may be possible where dual franchises exist or where no franchise exists.

(*2*) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.

(B) Where competition exists, solicit competitive proposals from all potential suppliers.

(ii) Periodic reviews for competition.

Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—

(A) The possible loss of rights vested in the Government under the existing contract;

(B) The age and quality of the contract; and

(C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) Connection and service charges.

The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(A) No connection charge.

(B) Termination liability.

Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(C) Connection charge, refundable.

Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(D) Connection and service charges, nonrefundable.

The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(iv) Construction and labor requirements.

(A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general "backbone" system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.004-3 GSA assistance and approval.

The General Services Administration (GSA) has delegated DoD authority to enter into utility service contracts (FAR 41.003(b)); thus, contracting officers need not seek assistance or approval from GSA.

241.004-5 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.005 Pre-award contract review.

(d) Departments/agencies shall conduct their own pre-award contract reviews. FAR 41.005 (a) through (c) may be used as a guide.

241.007 Contract clauses.

241.007–70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, use the clause at 252.241–7000, Superseding Contract.

(b) Use the clause at 252.241–7001, Government Access, when the clause at FAR 52.241–4, Contractor's Facilities, is used.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(a) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(d)(i) DoD requires reimbursement, at a rate set by the Assistant Secretary of Defense (Comptroller), from non-DoD organizations, except for—

(A) Quality assurance and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (d)(i) of this section from the Assistant Secretary of Defense (Comptroller). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

242.102 Procedures.

(b)(i) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(ii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Defense Contract Management Area Operations (DCMAO), New York, NY. Contract administration offices provide services only upon request from the CCP. The CCP shall—

(A) Determine whether the request is from a friendly foreign government or an

international agency in which the United States is a participant;

(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);

(C) Ensure that the reimbursement arrangements are consistent with 242.101(d);

(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(F) Distribute the acquisition documents and related materials to contract administration offices; and

(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

Subpart 242.2—Assignment of Contract Administration

242.200 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.203 Retention of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

(A) The National Security Agency;

(B) Research and development with universities;

(C) Flight training;

(D) Consultant support services;

(E) Mapping, charting, and geodesy services;

(F) Base, post, camp, and station purchases;

(G) Operation or maintenance of, or installation of equipment at radar or communication network sites;

(H) Communications services;

(I) Installation, operation, and maintenance of space-track sensors and relays;

(J) Dependents Medicare program contracts;

(K) Stevedoring contracts;

(L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(M) Architect-engineer services;

(N) Airlift and sealift services (Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);

(O) Subsistence supplies;

(P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment); and

(Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(R) Purchase orders issued via written telecommunications (See FAR 13.506).

(ii) Contract administration functions on a military installation are normally the responsibility of the installation or tenant commander. This includes contract administration responsibility for base, post, camp, or station contracts—

(A) OMB Circular A–76 type contracts;

(B) Contracts awarded by, or on behalf of, on-base activities (e.g., laboratories) and research and test facilities;

(C) Contracts for the operation and maintenance of simulators; and

(D) Contracts for contractor field teams.

(iii) The Defense Contract Management Command (DCMC) shall, upon request of the military department, perform contract administration services on a military installation provided—

(A) The contract statement of work is unrelated to the mission of the installation or on base activity, such as—

(*1*) Activation of a new weapon system;

(*2*) Major modification of an existing weapon system; or

(*3*) When a contractor's industrial operation is located on a military base because of the availability of real estate or an industrial facility; and

(B) Full contract administration responsibility is delegated to DCMC to prevent mixed CAS (i.e., more than one CAS organization performing contract administration functions at the contractor's place of performance).

(iv) DCMC shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMC preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(v) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

242.204 Supporting contract administration.

(a) In special circumstances, a contract administration office may request support from a component not listed in the DoD Directory of Contract Administration Services Components (DLAH 4105.4). An example is where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(b) When requesting support on a subcontract which includes foreign military sale (FMS) requirements, the contract administration office shall—

(i) Mark "FMS Requirement" on the face of the documents;

(ii) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

242.205 Designation of the paying office.

(1) For contracts assigned to the Defense Contract Management Command (DCMC), designate as the paying office—

(i) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the DoD Directory of Contract Administration Services Components (DLAH 4105.4), for contracts funded with DoD funds.

(ii) The department or agency payment office—if the contract is funded with non-DoD funds.

(iii) The Air Force payment office (63rd MAW/ACFMP, Norton AFB, CA)—if the contract is an Air Force contract for missile propellants.

(iv) Multiple paying offices under paragraphs (1) (i) and (ii) of this section—if the contract is funded with both DoD and non-DoD funds.

(2) For contracts not assigned to DCMC, select a paying office or offices under department/agency procedures.

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and

procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

(A) Contractor estimating systems (see FAR 15.811); and

(B) Contractor material management and accounting systems under subpart 242.72.

(8) Monitor contractor costs under subpart 242.70.

(11) The DoD lead negotiating agency under FAR subpart 42.10 (i.e., the tri-service contracting office) shall make all determinations under FAR 42.302(a)(11) (ii) and (iii) related to Cost Accounting Standard 420 for contractors requiring advance agreements for independent research and development/bid and proposal costs.

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry, and paragraph (c) of the clause at 252.225–7008, Duty-Free Entry—Qualifying Country End Products and Supplies.

(33) Also perform industrial readiness and mobilization production planning field surveys and negotiate schedules.

(39) See 223.370 for safety requirements on contracts for ammunition and explosives.

(41) In contracts with cost schedule control systems requirements (see 234.005–70)—

(A) Perform postaward surveillance of contractor progress in demonstrating that its cost schedule control systems meet the cost schedule control systems criteria;

(B) Provide assistance in the review and acceptance of the contractor's cost schedule control systems; and

(C) After acceptance of the systems, perform surveillance to monitor their continuing acceptable operation.

(b)(S–70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance and repair.

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If a visit to a contractor facility will require access to classified information, the visitors must give the contractor advance written notice (DoD 5220.22–R, Industrial Security Regulation).

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503–2 Postaward conference procedure.

Use the conference program outlined on the DD Form 1484, Post-Award Conference Record, in conducting the conference.

242.503–3 Postaward conference report.

The DD Form 1484, Post-Award Conference Record, may be used for this report.

242.570 Contract clause.

Use the clause at 252.242–7000, Postaward Conference, in solicitations and contracts.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement.

Subpart 242.7—Indirect Cost Rates

242.704 Billing rates.

(c) The administrative contracting officer or auditor shall periodically review billing rates for continued applicability. Billing rates should be established on a year-to-year basis.

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer (CACO) and individual administrative contracting officers (ACO) shall jointly decide whether negotiations will be conducted on a coordinated or centralized basis. When they are conducted on a coordinated basis, individual ACOs are responsible for coordinating with the CACO to ensure consistency of cost determinations.

(b) *Procedures.* (1) Require DoD contractors to submit a copy of their final indirect cost rate proposals to the contract auditor.

(3) The contracting officer shall (10 U.S.C. 2324(f))—

(A) Not resolve any questioned costs until obtaining—

(*1*) Adequate documentation on the costs;

(*2*) The contract auditor's opinion on the allowability of the costs.

(B) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(C) Ensure that all categories of costs designated in the report of the defense contract auditor, as questioned with respect to a proposal for settlement, are resolved in such a manner that the amount of the individual questioned costs considered allowable will be reflected in the negotiation memorandum.

(4) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

242.705–2 Auditor determination procedure.

(b) *Procedures.*

(2)(iii) The contractor and the auditor shall sign the agreement.

(v) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer. The DCAA Form 1 details the items of exception and advises the contractor that requests for reconsideration should be submitted in writing to the administrative contracting officer.

242.770 Certificate of indirect costs.

242.770–1 General.

This section implements 10 U.S.C. 2324(h).

242.770–2 Procedure.

(a) Do not accept any proposal to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor using the certificate of indirect costs in the clause at 252.242–7001, Certification of Indirect Costs.

(b) Do not agree to billing rates or final indirect cost rates unless they are based on a certified proposal.

242.770–3 Waiver of certification.

(a) The agency head may waive the certification requirement when—

(1) It is determined to be in the interest of the United States; and

(2) The reasons for the determination are put in writing and made available to the public.

(b) Waivers may be appropriate for contracts with—

(1) Foreign governments or international organizations, such as subsidiary bodies of the North Atlantic Treaty Organization;

(2) State and local governments that are subject to OMB Circular A-87;

(3) Educational institutions subject to OMB Circular A-21; and

(4) Nonprofit organizations subject to OMB Circular A-122.

242.770-4 Failure to certify.

(a) If the contractor has not certified its proposal for billing rates or indirect cost rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(b) Rates established unilaterally should be—

(1) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(2) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

242.770-5 Penalties for unallowable costs.

10 U.S.C. 2324 (a) through (d) prescribes penalties for submission of unallowable costs in final indirect cost rate proposals (see subpart 231.70 for penalties and administrative contracting officer responsibilities).

242.770-6 Contract clause.

Use the clause at 252.242-7001, Certification of Indirect Costs, in all solicitations and contracts which provide for—

(a) Interim reimbursement of indirect costs;

(b) Establishment of final indirect cost rates; or

(c) Contract financing that includes interim payment of indirect costs, e.g., progress payments based on cost (FAR subpart 32.5) or progress payments based on percentage or stage of physical completion.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A corporate administrative contracting officer need not obtain the approval of the individual administrative contracting officers to disallow items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870-5(b) for invoice procedures.

(b) *Auditor receipt of voucher.*

(i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

(C) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(D) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer—

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) Include in the technical evaluation an opinion on the potential relationship of proposed IR&D/B&P projects to relevancy requirements in 231.205-18.

(c) Include in the determination the potential relationship of proposed IR&D/B&P projects to the relevancy requirements in 231.205-18.

242.1006 Conducting negotiations.

(a)(5) Ensure that the requirements of 231.205-18 are met.

242.1007 Content of advance agreements.

(e) The agreement shall specifically note that—

(i) A relevancy review was performed; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the relevancy test at the time of negotiation.

(f)(2) Only costs incurred for IR&D/B&P projects meeting the ceiling requirements of FAR 31.205-18 and the relevancy requirements of 231.205-18 are allowable.

242.1008 Administrative appeals.

Department/agency appeals hearing groups shall have three members—acquisition, technical, and legal. The acquisition member shall be the chairperson. Determinations of the appeals hearing groups are final decisions.

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a)(i) During its initial review of the contract, the contract administration office (CAO) determines the extent of production surveillance to be performed by assigning contracts to one of three surveillance categories—

(A) Category 1 surveillance consists of review and evaluation of the contractor's plan for production and progress toward successful accomplishment of the plan. Contracts needing category 1 surveillance are normally—

(*1*) Criticality designator A; and

(*2*) Complex; or

(*3*) With contractors having a poor performance history in general or on the same or similar items or services.

(B)(*1*) Category 2 surveillance consists of inquiries to or meetings with the contractor to—

(*i*) Determine whether the contractor will perform on schedule;

(*ii*) Investigate the cause and duration of any anticipated delay; and

(*iii*) Perform periodic follow-up and expediting of supplies or services not delivered on time.

(*2*) Contracts needing category 2 surveillance are normally—

(*i*) Criticality designator A contracts not assigned to category 1; or

(*ii*) Criticality designator B contracts where the contractor has a poor production performance history.

(C) Category 3 surveillance includes inquiry and expediting effort 30 days after the contractor fails to deliver or perform within the schedule, and periodically thereafter. Contracts not otherwise assigned belong in category 3, i.e.—

(*1*) Criticality designator B contracts not assigned to category 2; and

(*2*) Criticality C contracts.

(ii) Regardless of assigned category, if the contract administration office (CAO) sends the contracting office a report on an actual or anticipated delinquency, the CAO shall provide continuous information on the problems causing the delinquency and the corrective actions being taken. Delinquency includes the contractor's failure, regardless of reason, to—

(A) Meet the contract delivery or performance schedule; or

(B) Maintain performance progress necessary to meet the contract delivery or performance schedule.

(b) The CAO shall assign a surveillance category regardless of the contract's dollar value.

242.1105 Assignment of criticality designator.

(1) Contracting officers shall—

(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD Directive 4410.6, Uniform Materiel Movement and Issue Priority System; and

(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.

242.1106 Reporting requirements.

(a) See also—

(i) DoDI 7000.10, Contract Cost Performance, Funds Status and Cost/Schedule Status Reports; and

(ii) For cost/schedule control system requirements on major systems acquisitions, 234.005–70.

(b)(i) Within 4 working days after receipt of the contractor's report, the contract administration office (CAO) shall provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO shall add comments and recommend a course of action.

(c)(i) CAOs may report using—

(A) DD Form 375–2, Delay in Delivery (Flash Notice);

(B) DD Form 375, Production Progress Report;

(C) MILSCAP Revised Delivery Forecast (RDF) system; or

(D) Message, letters, or facsimile.

(ii) The contracting office shall acknowledge receipt of the CAO report.

242.1107 Contract clause.

(b) When using the clause at FAR 52.242–2, include the following instructions in the contract schedule—

(i) Frequency and timing of reporting (normally 5 working days after each reporting period);

(ii) Contract line items, exhibits, or exhibit line items requiring reports;

(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(iv) The following requirements for report content—

(A) The problem, actual or potential, and its cause;

(B) Items and quantities affected;

(C) When the delinquency started or will start;

(D) Actions taken to overcome the delinquency;

(E) Estimated recovery date; and/or

(F) Proposed schedule revision.

242.1107–70 Additional clauses.

When cost/schedule status reporting (C/SSR) is required on acquisitions for other than major systems (i.e., the Contract Data Requirements List includes DI–F–6010A), use in solicitations and resulting contracts the clause at 252.242–7005, Cost/Schedule Status Report. Cost/schedule status reporting normally is not imposed on contracts of less than $10 million.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) For contracts awarded by the Military Departments, provide notices to the following addressees instead of individual contracting or contract administration offices—

Army	HQ, U.S. Army Material Command, ATTN: AMCCC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.
Navy	Office of the Assistant Secretary of the Navy (RDA) Procurement Policy, Washington, DC 20350–1000.
Air Force	HQ, U.S. Air Force Systems Command, ATTN: PKCP, Andrews AFB, DC 20334–5000.
National Aeronautics and Space Administration.	National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HP, Washington, DC 20546.

(2)(A) Lists for notices of a successor in interest should include the information at FAR 42.1204(c)(2).

(B) Lists for notices of a name change should include the information at FAR 42.1205(a)(3).

(C) On notices sent to the addressees in paragraph (b)(1) of this section, include a consolidated list for all subordinate contracting offices of the addressee.

(d)(i) Before making any substantial alterations or additions to the novation agreement format at FAR 42.1204(e), coordinate with those addressees in paragraph (b)(1) of this section that have contracts with the contractor. Resolve any objections before executing the agreement.

(ii) If the National Aeronautics and Space Administration (NASA) wants a separate agreement with the contractor, continue to process the agreement only for DoD.

(e) Also, make distribution to—

(i) The addressees in paragraph (b)(1) of this section—two copies; and

(ii) The appropriate Military Traffic Management Command (MTMC) area command for agreements affecting contracts and basic agreements for storage and related services for personal property of military and civilian personnel—two copies—

Commander	Commander.
Eastern Area	Western Area.
Military Traffic Management Command.	Military Traffic Management Command.
ATTN: MTE–LO	Oakland Army Base.
Bayonne, NJ 07002	ATTN: MTW–LO, Oakland, CA 94626.

(f)(4)Additional distribution instructions—

(A) Send two copies to the address in paragraph (b)(1) of this section. The list of contracts may be confined to those issued by that department.

(B) Do not send copies to NASA or the MTMC commands in paragraph (e)(ii). They will issue their own modifications.

Subpart 242.14—Traffic and Transportation Management

242.1401 General.

(b)(12) Chapter 39 of the Defense Traffic Management Regulation (DTMR) (AR 55–355, NAVSUPINST 4600.70, AFM 75–2, MCO P4600 14A, DLAR 4500.3) contains methods for tracing and expediting shipments.

242.1402 Volume movements within the continental United States.

(a)(2) In reporting planned and actual volume movements—

(A) The contracting officer—

(*1*) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement under chapters 12 and 13 of the DTMR.

(*2*) Sends a copy of the volume movement report to the contract administration office.

(B) The contract administration office submits a volume movement report when—

(*1*) Significant changes are made to the movement requirements; or

(*2*) The contracting office did not submit a report.

(C) Include the destination country, foreign forwarder, and, if known, port of embarkation on volume movement

reports for foreign military sale shipments.

242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term commercial bills of lading includes the use of any commercial form or procedure. Appendix J of the DTMR lists carriers and carrier associations that provide transportation within the continental United States under commercial forms and procedures.

242.1404 Shipments by parcel post or other classes of mail.

242.1404–2 Contract clauses.

When using FAR 52.213–1, Fast Payment Procedures, do not use FAR clauses 52.242–10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1404–2–70 Additional clauses.

(a) Use the clause at 252.242–7002, Submission of Commercial Freight Bills for Audit, when the Government will reimburse contractor transportation costs under a cost reimbursement contract.

(b) Use the clause at 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions, when using the clause at FAR 52.242–10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or FAR 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1405 Discrepancies incident to shipment of supplies.

(a) See also chapter 41 of the Defense Traffic Management Regulation (DTMR) for discrepancy procedures.

242.1470 Demurrage and detention charges.

(a) Procedures for payment or collection of demurrage or detention charges are contained in chapter 38 of the DTMR.

(b) Carrier demurrage rules usually allow for a "free time" for loading or unloading cars or for any other purpose, and impose charges for cars held beyond this period. If a contractor detains railroad cars beyond the "free time," the contractor has to pay the carrier's published tariff charges for demurrage.

(c) Detention results when a shipper or consignee holds motor carrier equipment beyond a reasonable period for loading, unloading, forwarding directions, or any other reason. Detention rules and charges are not uniform; they are published in individual carrier or agency tenders.

Subpart 242.70—Monitoring Contractor Costs

242.7000 Scope.

This subpart provides guidelines for—

(a) Monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business; and

(b) Eliminating duplication in Government monitoring of contractors' costs.

242.7001 Policy.

Effective management of contract costs is essential to the efficient and economical performance of Government contracts. Contractors are responsible for managing and controlling their direct and indirect costs; however, DoD must systematically monitor the management of contractors' costs to ensure these responsibilities are met.

242.7002 Responsibilities.

242.7002–1 Departments and agencies.

(a) Departments and agencies should conduct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs (cost monitoring) at—

(1) All major contractor locations when—

(i) Sales to the Government during the contractor's next fiscal year are expected to exceed $100 million on other than firm fixed-price and fixed-price with escalation contracts;

(ii) The contract administration office determines the cost benefits to be derived from monitoring the individual contractors with less than $100 million in other than firm fixed-price and fixed-price with escalation contracts would be warranted; or

(iii) The Government's share of indirect costs for these sales is at least 50 percent of the total indirect costs.

(2) Other critical locations with significant Government business where specifically directed by the head of the contracting activity.

(b) Departments and agencies are responsible for designating the cost monitoring sites and discontinuing them when the criteria are no longer met.

242.7002–2 Contract administration offices.

(a) Contract administration offices (CAOs) which are designated as cost monitoring sites are responsible for assigning a cost monitoring specialist (CMS) to conduct the program. The CMS may be the administrative contracting officer or any other CAO employee whose normal function relates to evaluation of contractor performance.

(b) The administrative contracting officer is responsible for—

(1) Forwarding cost monitoring review reports to the contractor;

(2) Considering review results in contract negotiations;

(3) Ensuring the contractor implements corrective action recommended in the cost monitoring review reports; and

(4) Resolving disputes with the contractor regarding cost monitoring review findings, conclusions, or recommendations.

(c) The cost monitoring coordinator is responsible for managing the cost monitoring effort within the CAO and coordinating planned effort with the contract auditor. This includes—

(1) Preparing and maintaining an annual written cost monitoring plan for reviewing contractor operations (see 242.7003);

(2) Maintaining an inventory of CAO, Defense Contract Audit Agency, and other Government reports on significant issues relating to monitoring costs;

(3) Performing in-depth functional reviews of contractor activities, including assisting Government personnel in obtaining access to pertinent contractor policies, procedures, and related data;

(4) Advising the administrative contracting officer (ACO) and CAO management of corrective action recommended to improve inefficient or uneconomical contractor conditions, policies, or practices, including preparing, for the ACO's consideration when appropriate, a Notice of Intent to Disallow or Not Recognize Costs;

(5) Continuously tracking the status of recommendations made to the contractor concerning cost performance stemming from all Government reports;

(6) Keeping the contracting officer, program manager, contract auditor, and other responsible officials informed of issues affecting economical contract performance; and

(7) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of its cost control functions.

242.7002–3 Audit and other organizations.

(a) The contract auditor is responsible for assisting the CMS by performing the portion of cost monitoring reviews and related analyses which requires access

to the contractor's financial and accounting records supporting proposed cost or pricing data. (This does not preclude the program manager, contracting officer, ACO, cost monitoring coordinator, or other representatives from reviewing contractor records and data necessary to the performance of their duties.)

(b) Audit organizations, program offices, contracting activities, and any other organizations within DoD with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, shall submit to the cost monitoring coordinator—

(1) An annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at cost monitoring locations (see 242.7003); and

(2) Revisions to scheduled visits or audit plans, within 30 days of issuance.

242.7003 Annual cost monitoring plan.

242.7003-1 Description.

The annual cost monitoring plan—

(a) Is a schedule for reviewing contractor activities that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs; and

(b) Should stress the performance of in-depth functional reviews to detect deficiencies in policies, practices, and procedures.

242.7003-2 Selecting the activities.

(a) The cost monitoring specialist (CMS), assisted by the contract auditor, ultimately selects the activities for the plan. To ensure that all Government interests are considered in the selection, the CMS should invite contract administration office (CAO), Defense Contract Audit Agency (DCAA), and other interested Government representatives to a meeting before the beginning of each Government fiscal year to identify areas to be reviewed during the coming year.

(b) The selection team should consider the following data in the selection process—

(1) Contractor forecasts for the coming year supporting direct and indirect costs by functional centers of its cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(2) Organizational charts for the contractor's entire operation (CAO responsibility);

(3) Outline of the contractor's accounting system showing the flow of costs by function (DCAA responsibility);

(4) Determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(5) List of recent reviews and audits performed by CAO, DCAA, and other Government representatives that would affect the selection; list should show outstanding weakness and deficiencies in the contractor's operations (CAO responsibility);

(6) Evidence of under and over staffing (CAO-DCAA responsibility);

(7) Significant departures from established contractor productivity standards (CAO responsibility);

(8) Major financial variances from forecasts in prior years (DCAA responsibility);

(9) Evidences of idle or under-used capacity (CAO-DCAA responsibility); and

(10) Any visits or audit plans scheduled by other Government organizations and identified to the CMC (CAO responsibility).

242.7003-3 Tailoring the plan.

The cost monitoring specialist should tailor the plan to review contractor activity, considering—

(a) The extent of competition in awarded contracts;

(b) The contractor's operating methods;

(c) The nature of the work;

(d) Acquisition cycle stage;

(e) Business and industry practices;

(f) Types of contracts involved;

(g) Degree of technical and financial risk;

(h) Ratio of Government/commercial work; and

(i) Extent that performance efficiencies have been previously demonstrated.

242.7003-4 Contents of the plan.

(a) The plan should—

(1) Provide coverage for each significant activity of the contractor over a period of two to three years;

(2) Be updated to reflect changed conditions as the year progresses; and

(3) Be consistent with any schedule and resource limitations of participating organizations.

(b) The plan must identify the organizations having the primary responsibility for performing the reviews—

(1) The contract administration office (CAO) reviews, and signs reports on, the technical aspects of contractor activities requiring minimal or no access to contractor financial and accounting records;

(2) DCAA reviews, and signs reports on, the financial and accounting aspects of contractor operations requiring minimal or no technical consideration; and

(3) The cost monitoring specialist and DCAA jointly review, and jointly sign reports on, activities requiring significant CAO and DCAA expertise.

(c) The plan should include reviews required by the contracting officer and DFARS. Reviews will be performed by the assigned organization in paragraph (b) of this subsection, except when DFARS makes a specific organizational assignment. For example, Subpart 244.3 makes the CAO responsible for leading contractor purchasing system reviews and 215.811 makes the DCAA auditor responsible for leading estimating system reviews.

242.7003-5 Plan approval.

The heads of the local contract administration and Defense Contract Audit Agency offices approve the annual cost monitoring plan.

242.7004 Reviews.

(a) Perform reviews as scheduled in accordance with the plan.

(b) Hold interim meetings with the contractor as necessary to clarify information. Hold an exit conference at the conclusion of reviews.

(c) Prepare reports at the conclusion of reviews. Reports on joint reviews shall represent the mutually agreed upon findings, conclusion, and recommendations of the Defense Contract Audit Agency auditor and the contract administration office. Forward all reports through the administrative contracting officer to the contractor.

Subpart 242.71—Voluntary Refunds

242.7100 General.

(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.

(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—

(1) Confirm that there are no readily available contractual remedies; and

(2) Advise whether the proposed action would jeopardize or impair the Government's rights.

242.7101 Solicited refunds.

(a) Request voluntary refunds only when—

(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(c) Voluntary refunds may be requested during or after contract performance.

242.7102 Disposition of voluntary refunds.

A contract modification, rather than a check, is the preferred means of effecting a solicited or unsolicited refund transacted before final payment.

(a) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(b) For checks—

(1) Advise the contractor to—

(i) Make the check payable to the agency which awarded the contract;

(ii) Forward the check to the contracting officer or when the contract is assigned to another office for administration, to that office; and

(iii) Include a letter with the check—

(A) Identifying it as a voluntary refund;

(B) Giving the contract number involved; and

(C) Where possible, giving the appropriation and account number to be credited.

(2) Forward the check to the office responsible for control of funds.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.

This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for all contractors to have an MMAS that—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements;

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(d) Conforms to the standards at 252.242–7004(f), except when all of the contracts and subcontracts are—

(1) Awarded under the set-aside procedures of FAR part 19;

(2) Greater than the small purchase threshold set forth in FAR part 13; and

(3) Cost reimbursement or fixed-price contracts with progress or other contract financing provisions.

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

(a) $50 million or more; or

(b) $10 million or more (but less than $50 million); and

(c) The contracting officer determines it to be in the best interests of the Government (e.g., significant MMAS problems are believed to exist).

242.7204 Responsibilities.

(a) The contracting officer shall—

(1) Through use of the clause at 252.242–7004, Material Management and Accounting System, apply the disclosure, demonstration, and maintenance requirements to large business contractors meeting the criteria in 242.7203;

(2) Consider whether to apply the disclosure, demonstration, and maintenance requirements to other large business contractors under 242.7203(b) after concurrence from, or at the request of, the administrative contracting officer; and

(3) Not apply the disclosure, demonstration, and maintenance requirements to small businesses, educational institutions, or nonprofit organizations.

(b) For contractors subject to the disclosure, demonstration, and maintenance requirements, the administrative contracting officer (ACO) determines the adequacy of the contractor's MMAS and pursues correction of deficiencies.

(c) The contract auditor shall—

(1) Assist the ACO in evaluating the contractor's MMAS;

(2) Assess the significance of contractor deficiencies and provide the ACO an estimate of the resulting adverse material impact to the Government; and

(3) Assist the ACO in evaluating the contractor's correction of deficiencies.

242.7205 Review procedures.

(a) *System Evaluation.* Cognizant contract administration and audit activities shall jointly establish and manage programs for evaluating the MMAS systems of contractors subject to disclosure, demonstration, and maintenance requirements and annually establish a schedule of contractors to be reviewed. They shall—

(1) Conduct reviews as a team effort.

(i) The administrative contracting officer—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (i.e., industrial specialists, engineer, property administrator, auditor, etc.).

(ii) The team leader—

(A) Advises the ACO and contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare a review report.

(4) Conduct a review every 3 years. The ACO, with advice from the auditor, may lengthen or shorten the 3 year period based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Disposition of evaluation team findings.* The team leader shall document the evaluation team findings and recommendations in a report to the ACO. If there are significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO shall immediately provide a copy of the report to the contractor upon receipt from the team leader.

(i) The ACO shall notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are deficiencies, the ACO shall request the contractor to provide a

written response within 30 days from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees, request rationale in the written response.

(2) *Evaluation of the contractor's response.* The administrative contracting officer, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains deficiencies which need correction;

(ii) The deficiencies are significant enough to result in the reduction or suspension of progress payments or of payments under public vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Reduction or Suspension of payments.* (i) When the administrative contracting officer (ACO) determines that there is a significant MMAS deficiency, the ACO shall reduce progress payment claims by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or suspend questionable costs on public vouchers in accordance with FAR 42.803). The reductions or suspensions shall remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the team's report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's self-assessment, demonstration, and corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO shall not fully reinstate withheld amounts until the contractor corrects the deficiency, or until the impact of the deficiency becomes immaterial.

(4) *Notification of administrative contracting officer determination.* (i) The administrative contracting officer (ACO) shall notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Deficiencies needing correction;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce or suspend progress payments or public vouchers because of significant deficiencies.

(ii) The Government does not approve or disapprove the contractor's MMAS system. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there is a significant material management and accounting system deficiency until the time the deficiency is corrected, all field pricing reports for that contractor shall contain a recommendation relating to proposed cost or pricing data adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of significant MMAS deficiencies in reviews of the contractor's estimating system (215.811).

(5) *Monitoring contractor's corrective action.* The administrative contracting officer (ACO) and auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take further action. Actions for consideration may include—

(i) Elevate the issue to higher level management;

(ii) Further reduce or suspend progress payments;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system.

(iv) Take appropriate contractual action, i.e., disallow charges as unreasonable; and

(v) Issue cautions to contracting activities regarding the award of future contracts.

242.7206 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts which exceed the small purchase limitation in FAR 13.000 and—

(a) Are not awarded under the set-aside or section 8(a) procedures of FAR part 19; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments or other Government financing.

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.

This subpart provides the requirements for conducting a Contractor Insurance/Pension Review (CIPR).

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the reasonableness of insurance/pension costs in Government contracts. Insurance/pension specialists assist ACOs in making these determinations by conducting CIPRs. A CIPR is an in-depth evaluation of a contractor's—

(1) Insurance program;

(2) Pension plan;

(3) Other deferred compensation plans; and

(4) Related policies, procedures, practices, and costs.

(b) As the DoD Executive Agency, the Defense Logistics Agency performs CIPRs at all contractor locations meeting criteria in 242.7302.

(c) Insurance/pension specialists are located at the Defense Contract Management Districts in Los Angeles and Chicago and at the Defense Contract Management Area Operations in New York.

(d) The CIPR should be the only formal review of a contractor's insurance/pension program except for periodic tests of the system performed by contract administration and DCAA, or any special reviews initiated by the administrative contracting officer. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, of if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) A CIPR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications to either (except when the negotiated price is based on established catalog or market prices). Reviews of selected insurance and pension elements may be conducted for contractors not meeting these criteria if

significant problems have been identified.

(b) A CIPR shall be conducted at least every two years for contractors who continue to meet the requirements. A more or less frequent cycle may be appropriate under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead review, or subsequent to mergers or divestitures.

(c) Special reviews may be performed in the intervening period—

(1) To follow-up contractor implementation of recommendations and verify Government recovery of credits; or

(2) When information reveals a deficiency or major change in the contractor's insurance/pension program.

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR or special review under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist;

(4) Reviewing the CIPR report, advising the contractor of the results, and telling the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR; and

(6) Ensuring adequate follow-up on all CIPR recommendations.

(b) The insurance/pension specialist is responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and Defense Contract Audit Agency a copy of the schedule;

(2) Heading the team that conducts the review;

(3) Maintaining complete documentation for CIPR reports;

(4) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(5) Preparing and distributing the final CIPR report;

(6) Providing the final audit report as an attachment to the CIPR report;

(7) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(8) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) The Defense Contract Audit Agency auditor is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data; and

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report.

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) Contract administration offices (CAOs) are the designated representatives of DoD for the administration of contracts (see FAR 42.202 and 42.302). DoD activities shall use CAOs to perform contract administration service functions at or near contractor facilities (see 242.203(a)(i) and (v).

(b) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(c) Program managers should carefully assess the number of technical representatives required to perform the non-CAS technical functions so as to keep the total assigned in-plant to the minimum necessary.

(d) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (COR) (see 201.602).

242.7401 Procedures.

(a) When the program, project, or system manager determines that a technical representative is required, the manager shall issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties which cannot be resolved between the program office and the defense plant representative office will be escalated.

(b) The program, project, or system manager shall furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (a) of this section.

(c) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(d) The program manager or designee and the contract administration office, at the local level, shall negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements may be included in an existing MOA, if one exists, or as a separate MOA.

(e) The technical representative shall keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office shall also keep the technical representative fully informed of contractor discussions which relate to technical matters within the purview of the technical representative's assigned duties.

PART 243—CONTRACT MODIFICATIONS

Sec.

Subpart 243.1—General

243.102 Policy.
243.105 Availability of funds.
243.107 Contract clause.
243.107–70 Identification of foreign military sale (FMS) requirements.

Subpart 243.2—Change Orders

243.204 Administration.
243.205 Contract clauses.
243.205–70 Engineering change proposals.

243.205–71 Pricing of contract modifications.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR subpart 1.3.

Subpart 243.1—General

243.102 Policy.

(b)(i) See subpart 217.74 for limitations on issuing undefinitized contract actions.

(ii) Modifications of letter contracts are subject to the same policies and procedures as modifications of definitive contracts.

243.105 Availability of funds.

(a) 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7, 1983, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

243.107 Contract clause.

For DoD, the *specifically authorized representative* (SAR) referred to in the clause at FAR 52.243–7, Notification of Changes, is a *contracting officer's representative* as defined in 202.101 and as discussed in subpart 201.6.

243.107–70 Identification of foreign military sale (FMS) requirements.

Identify contract modifications that add FMS requirements by clearly marking "FMS Requirement" on the front. Within the modification, cite each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

Subpart 243.2—Change Orders

243.204 Administration.

(b) *Definitization.* The administrative contracting officer (ACO) must review change orders issued by the contracting officer to ensure compatibility with the status of performance. If the contractor has progressed beyond the effective point specified in the change order, the ACO must determine the earliest practical point at which the change order could be made effective and advise the contracting officer. The contracting officer must issue another change order to correct, revise, or supersede the first change order, then definitize by supplemental agreement citing both change orders.

243.205 Contract clauses.

243.205–70 Engineering change proposals.

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change. When the contracting officer wants this information submitted in the format prescribed by MIL–STD–480 or 481, use the clause at 252.243–7000, Engineering Change Proposals. (The contracting officer must consult technical personnel before determining which MIL–STD to use.) Use the clause with its Alternate I, when appropriate, to discourage submission of a large number of small dollar, contractor originated engineering change proposals.

243.205–71 Pricing of contract modifications.

Use the clause at 252.243–7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.
244.303 Extent of review.
244.304 Surveillance.
244.305 Granting, withholding, or withdrawing approval.
244.305–70 Granting, withholding, or withdrawing approval.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

The administrative contracting officer (ACO) is responsible for reviewing the contractor's purchasing systems. Members of other organizations such as audit or program management activities should not conduct separate reviews of a contractor's purchasing system, but may participate in a review conducted for the ACO. These organizations may, if they suspect a problem, recommend that the ACO initiate a special review.

244.303 Extent of review.

Appendix C contains additional guidance for conducting contractor's purchasing systems reviews (CPSR) and other purchasing system reviews. Normally, the purchasing system analyst (PSA) conducts these reviews on behalf of the ACO. Departments/agencies may establish review boards to evaluate CPSR reports before the PSA submits them to the ACO.

244.304 Surveillance.

(b) The ACO, or the PSA with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. The weaknesses, for example—

(i) May arise because of—

(A) Major changes in the contractor's purchasing policies, procedures, or key personnel; or

(B) Changes in plant workload or type of work.

(ii) May be discovered—

(A) During reviews of subcontracts submitted under advance notification and consent (FAR subpart 44.2); or

(B) From information provided by Government personnel.

244.305 Granting, withholding, or withdrawing approval.

244.305–70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

(1) Present the review team's recommendations, signed by the ACO;

(2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and

(3) Not comment on the pending or planned decision to grant or withhold approval of the contractor's purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor's response under paragraph (a)(2) of this subsection.

(c) The ACO should completely review the report and consider the contractor's response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—

(1) Shall request the PSA to verify that the contractor has—

(i) Corrected the deficiencies; and

(ii) Implemented any other ACO recommendations.

(2) Should ask for a review of purchasing policies and procedures issued since the last review.

PART 245—GOVERNMENT PROPERTY

Sec.

Subpart 245.1—General

245.104 Review and correction of contractor's property control systems.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.
245.302 Providing facilities.
245.302–1 Policy.
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245.310 Providing agency-peculiar property.
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Subpart 245.4—Use and Rental of Government Property

245.401 Policy.
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245.405 Contracts with foreign governments or international organizations.
245.407 Non-Government use of plant equipment.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.
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Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.
245.603 Disposal methods.
245.603–70 Contractor performance of plant clearance duties.
245.603-71 Disposal of contractor inventory for NATO cooperative projects.
245.604 Restrictions on purchase or retention of contractor inventory.
245.606 Inventory schedules.
245.606–3 Acceptance.
245.606–5 Instructions for preparing and submitting schedules of contractor inventory.
245.606–70 Instructions for completing DD Form 1342, DoD Property Record.
245.607 Scrap.
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245.607–2 Recovering precious metals.
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245.608 Screening of contractor inventory.
245.608–1 General.
245.608–2 Standard screening.
245.608–5 Special items screening.
245.608–7 Reimbursement of cost for transfer of contractor inventory.
245.608–70 Contractor inventory redistribution system (CIRS).
245.608–71 Screening industrial plant equipment.
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245.610 Sale of surplus contractor inventory.
245.610–1 Responsibility.
245.610–3 Proceeds of sale.
245.610–4 Contractor inventory in foreign countries.
245.612 Removal and storage.
245.612–3 Special storage at the Government's expense.
245.613 Property disposal determinations.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.
245.7002 Duties and responsibilities of plant clearance officers.

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.
245.7101–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).
245.7101–2 DD Form 1149, Requisition and Invoice Shipping Document.
245.7101–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.
245.7101–4 DD Form 1640, Request for Plant Clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verifications and determination of allocability.
245.7202 Establishing a plant clearance case.
245.7203 Assigning plant clearance case numbers.
245.7204 Preparing inventory disposal report.
245.7205 Reporting excess and surplus contractor inventory.
245.7206 Transmitting DD Form 1342, DoD Property Record.

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.
245.7302 Competitive sales.
245.7302–1 Property descriptions.
245.7302–2 Lotting.
245.7302–3 Alternate bids.
245.7302–4 Basis for sale.
245.7302–5 Mailing lists.
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245.7304 Informal bid procedures.
245.7305 Sale approval and award.
245.7306 Sales services.
245.7307 Non-competitive sales.
245.7307–1 General.
245.7307–2 Justification.
245.7308 Antitrust notification.
245.7309 Mandatory terms and conditions—formal invitations.
245.7309–1 Inspection.
245.7309–2 Condition and location of property.
245.7309–3 Consideration of bids.
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245.7309–5 Title.
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245.7309–9 Weighing.
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245.7309–13 Eligibility of bidders.
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245.7310–1 Demilitarization.
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245.7310–3 Liability and insurance.
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245.7310–5 Controlled substances.
245.7310–6 Radioactive material.
245.7310–7 Scrap warranty.
245.7310–8 Antitrust clearance.
245.7311 Optional conditions.
245.7311–1 Sales and use tax liability.
245.7311–2 Safety, security, and fire regulations.
245.7311–3 Bid deposits.
245.7311–4 Other special conditions.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 245.1—General

245.104 Review and correction of contractor's property control systems.

(a) The property administrator shall perform property administration in accordance with DoD 4275.5–M, Manual for the Performance of Contract Property Administration.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

Agency-peculiar property, as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

Facilities project means a Government project to provide, modernize or replace facilities for use by a contractor in performing a Government contract or subcontract.

Industrial plant equipment (IPE) means plant equipment in Federal stock group 34 with an acquisition cost of $15,000 or more used for cutting, abrading, grinding, shaping, forming, joining, heating, treating, or otherwise altering the physical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations. IPE is further identified in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

Mapping, charting, and geodesy (MC&G) property is defined in the clause at 252.245–7000, Government Furnished Mapping, Charting and Geodesy Property.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items

relative to maintenance, supply, processing, assembly or research and development operations. OPE excludes equipment categorized as IPE.

Provide means either to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

245.302 Providing facilities.

245.302-1 Policy.

(a)(4)(A) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing a request for facilities. Submit requests for approval of facilities projects—

(*1*) To the Secretaries of the Military Departments and the directors of defense agencies for Government-owned facilities projects if the project—

(*i*) Is a research and development-funded effort not exceeding $3 million per fiscal year; or

(*ii*) Is funded from procurement appropriations, approved on a location basis, and does not exceed $5 million for all property efforts during one fiscal year; or

(*iii*) Is in support of a major system or subsystem (including ammunition-related projects) and the total investment will not exceed $25 million during the projected acquisition or maintenance effort.

(*2*) To DASD(P&L)(PR) for projects exceeding the limitations in paragraphs (a)(4)(A)(*1*).

(B) The contracting officer shall coordinate the Determination and Finding with the program or project manager.

(C) Departments and agencies must submit reports or facilities projects to the House and Senate Armed Services Committees—

(*1*) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(*2*) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, Fiscal Year 19____, Military Construction Project Data, to notify congressional committees of projects which are not included in the annual budget.

(b)(1)(A) *Industrial plant equipment.* Before acquiring industrial plant equipment—

(*1*) Submit a DD Form 1419, DoD Industrial Plant Equipment Requisition, to the Defense Industrial Plant Equipment Center (DIPEC), Memphis, TN 38114, in accordance with AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment, to determine whether existing, reallocable Government-owned facilities can be used.

(*2*) Do not acquire any item listed on the DD Form 1419 until a certificate of nonavailability is received from DIPEC.

(B) *Automatic data processing equipment.* The administrative contracting officer submits contractor requests to acquire automatic data processing equipment to the Director, Defense Automation Resources Information Center (Attn: DARIC-R), Cameron Station, Alexandria, VA 22304-6100, in accordance with DoD 7950.1-M, Defense Automation Resources Management Manual.

245.302-2 Facilities contracts.

Terminate facilities contracts when Government production and research property is no longer required for the performance of Government contracts or subcontracts, unless termination is not in the best interest of the Government. The contractor is not allowed to extend the time for use of property provided under the facilities contract without Government authorization.

245.303 Providing material.

245.303-2 Procedures.

When a contractor will be responsible for preparing requisitioning documentation, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at 251.102(e)2.b(2).

245.307 Providing special test equipment.

245.307-2 Acquiring special test equipment.

(b) *Notice and approval.* (1) The review requires a written evaluation from the appropriate technical specialist.

245.310 Providing agency-peculiar property.

(c) All Government-furnished mapping, charting and geodesy (MC&G) property is under the control of the Director, Defense Mapping Agency (DMA). (See DoDD 5105.40, Defense Mapping Agency (DMA)).

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contract the Director, DMA(PP), 8613 Lee Highway, Fairfax, VA, 22031-2137 for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for material to be returned to the Government.

245.310-70 Contract clause.

Use the clause at 252.245-7000, Government-Furnished Mapping, Charting and Geodesy (MC&G) property, in solicitations and contracts when MC&G property is to be furnished.

Subpart 245.4—Use and Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

245.403 Rental—Use and charges clause.

(1) The DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. Major defense equipment is defined in DODD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, as any item of significant combat equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million.

(2) When these cost thresholds are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause when administratively practicable.

245.405 Contracts with foreign governments or international organizations.

(1) *Approval.* A contractor may use Government production and research property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer shall grant approval only if—

(i) The use will not interfere with foreseeable requirements of the United States;

(ii) The work is undertaken as a DoD foreign military sale; or

(iii) For a direct commercial sale, the foreign country or international

organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(2) *Use charges.* (i) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(ii) When a particular foreign government or international organization has funded the acquisition of specific production and research property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(3) *Waivers.* (i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with paragraph (1)(iii) of this section.

245.407 Non-Government use of plant equipment.

(a)(i) Non-Government use of industrial plant equipment (IPE) exceeding 25 percent requires prior approval of the—

(A) Assistant Secretary of the Army (RD&A);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (a)(i) of this section may be delegated to the head of a contracting activity. Any redelegation requires the approval of OASD(P&L)(PR).

(iii) To determine percentage—

(A) Compute the percentage of non-Government use on time available for use. Use contractor's normal work schedule as represented by the scheduled production shift hours.

(B) Use a base time period which is neither less than three months nor more than one year.

(C) Use may be averaged at a single plant for all items costing less than $25,000.

(iv) Contractors should submit requests for non-Government use of IPE to the contract administration office at least six weeks before the projected use. The requests shall include:

(A) Total number and acquisition cost of IPE items; and

(B) For each unit of IPE with an acquisition cost of $25,000 or more, an itemized list including nomenclature, plant equipment code, year of manufacture and acquisition cost.

(v) Approving officials shall retain for periodic review, documentation of the circumstances justifying non-Government use of IPE.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.

245.505-3 Records of material.

If adequate controls are in place to meet the requirements of the clause at 252.242-7004, Material Management and Accounting System, the contractor's material control system may physically commingle inventories that may include materials for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts. Government-furnished material (GFM) may not be physically commingled with other material, nor may GFM be used on contractor's commercial work.

245.505-5 Records of plant equipment.

(a) The contractor may use DD Form 1342, DoD Property Record, as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE)—

(1) Upon receipt and acceptance of each item of IPE including items which, though part of a manufacturing system, would otherwise qualify as IPE;

(2) Whenever major changes occur in the data initially submitted to DIPEC (as specified by DLAM 4215.1);

(3) When IPE, including general purpose components of special test equipment which otherwise qualify as IPE, is no longer required for the purpose authorized or provided; or

(4) When disposal is completed.

245.505-14 Reports of Government property.

(1) The contractor's property control system shall provide an annual report, for contracts with Government property—

(i) For all DoD property for which the contractor is accountable;

(ii) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse of the form; and

(iii) Furnished, in duplicate, to the property administrator no later than October 31 of each year.

(2) Prime contractors are responsible for reporting all Government property accountable to the contract, including that at subcontractor and alternate locations.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

(1) *Controlled substances* means—

(i) Narcotic, depressant, stimulant, or hallucinogenic drug or substance;

(ii) Any other drug or substance controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(iii) A drug or substance required to be controlled by international treaty, convention or protocol.

(2) *Demilitarization* means the act of destroying the offensive or defensive characteristics of equipment or material to prevent its further military or lethal use.

(3) *Production scrap* means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

(4) *Serviceable or usable property* means property that has a potential for use or sale value "as is" or with minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8.

245.603 Disposal methods.

245.603-70 Contractor performance of plant clearance duties.

(a) *Authorization.* (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if—

(i) A plant clearance officer is on site at the facility where the contractor's property disposal function operates; and

(ii) The volume of plant clearance warrants performance by the contractor.

(2) The written authorization shall, as a minimum—

(i) Designate the contractor as an "accredited contractor";

(ii) Identify the plant clearance actions to be performed;

(iii) State that the Government may cancel part of or all of the authorization to perform plant clearance actions; and

(iv) Provide for plant clearance officer participation when required.

(b) *Government oversight and assistance.* (1) The contract administration office will ensure regular evaluation of the contractor's performance of the plant clearance function and any corrective action required.

(2) The plant clearance officer shall—

(i) Evaluate the adequacy and ensure compliance with contractor procedures;

(ii) Ensure discrepancies are promptly resolved;

(iii) Advise the contractor of screening and inventory schedule requirements;

(iv) Respond to contractor requests to withdraw Government-furnished property from inventory schedules;

(v) Evaluate physical, quantitative, and technical allocability of contractor inventory prior to disposal using Standard Form 1423, Inventory Verification Survey, as a guide;

(vi) Direct contractor to delay disposition of nonallocable inventory pending a contracting officer decision;

(vii) With the contractor's assistance, establish criteria for review and approval of selected contractor disposal decisions;

(viii) Complete first endorsement section of DD Form 1640, Request for Plant Clearance, on referrals from plant clearance officers at prime contract administration offices for the disposal of subcontractor inventory; forward inventory schedules to the contractor for processing; and forward completed case file to the referring activity; and

(ix) Work with the contractor, screeners, and buyers to ensure that the Government receives maximum reutilization and disposal proceeds.

(c) *Accredited contractor plant clearance duties.* The accredited contractor shall—

(1) Ensure inventory schedule acceptability. Use DD Form 1637, Notice of Acceptance of Inventory, if desired;

(2) Suspend disposition of property when assets are determined nonallocable (FAR 45.606–3);

(3) Withdraw property from inventory schedules and notify the affected screening activities. Obtain plant clearance officer approval for withdrawal of Government furnished property from inventory schedules (FAR 45.606–4);

(4) Determine method of disposal under established priorities and document disposal decisions and actions;

(5) Assign the automatic release date and the surplus release date;

(6) Initiate prescribed screening and effect resulting transfers and donations;

(7) Account for disposal of all contractor inventory and application of proceeds and submit to the plant clearance officer a Standard Form 1424, Inventory Disposal Report, or equivalent;

(8) Maintain the donable file and release property to eligible donees (FAR 45.609);

(9) Prepare, approve, sign, and maintain official plant clearance files and required forms (245.7101);

(10) Not conduct noncompetitive sales of surplus contractor inventory; and

(11) Notify the plant clearance officer in advance when bidding on property.

245.603–71 Disposal of contractor inventory for NATO cooperative projects.

(a) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(b) Disposal of such property may include a transfer of the U.S. interest in the property to one of the other governments participating in the agreement, or the sale of the property.

(c) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell inventory may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard; or

(ii) Is a member of the armed forces of the United States, including the Coast Guard; and

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2)(i) A contractor's authority to approve a subcontractor's sale, purchase, or retention at less than cost, and the subcontractor's authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—

(A) A sale by a subcontractor to the next-higher tier contractor or to an affiliate of such contractor or of the subcontractor; or

(B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) *Demilitarization.* The contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within the DoD, in accordance with Defense Demilitarization Manual, DoD 4160.21–M–1. In unusual cases the plant clearance officer may authorize the purchaser to perform the demilitarization; however, the purchaser shall not be granted such authorization if the inventory is dangerous.

(4) *Classified inventory.* Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(5) *Dangerous inventory.* Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606 Inventory schedules.

245.606–3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, complete and send the contractor a DD Form 1637, Notice of Acceptance of Inventory.

(b) To assist in verifying inventory allocability, the plant clearance officer shall follow the instructions in 245.7201.

245.606–5 Instructions for preparing and submitting schedules of contractor inventory.

(d) *General instructions for completing forms.*

(4) The contractor shall use the following codes together with the disposal codes 1 through 9, X, and S (e.g., A1, F7, SS) to indicate the condition of the property—

A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

B—New, used, repaired, or reconditioned property; serviceable and issuable or for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and

remaining shelf life of three to six months.

F—Economically reparable property which requires repair, overhaul or reconditioning; includes reparable items which are radioactively contaminated.

H—Property which has been determined to be unserviceable and does not meet repair criteria.

S—Property that has no value except for its basic material content.

(e) *Instructions for completing specific forms.*

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(ii) *Description.*

For termination inventory included in a settlement proposal, include cost of inventory acquired for performance of the entire contract in column F1 and cost of inventory acquired solely for the terminated portion of the contract in column F2. Cost of inventory acquired for the entire contract must be prorated between the terminated and nonterminated portions.

245.606-70 Instructions for completing DD Form 1342, DoD Property Record.

(a) The contractor shall list excess industrial plant equipment (IPE) on DD Form 1342, DoD Property Record, and submit it to the Government property administrator for review and transmittal to the plant clearance officer. For numerically controlled IPE, the contractor shall prepare and submit DD Form 1342, section VI, (page 2), Numerically Controlled Machine Data.

(b) Upon receipt of the DD Form 1342, the plant clearance officer will—

(1) Designate the 75th day from the date of receipt as the automatic release date (ARD) and the 90th day as the screening completion date (SCD); and

(2) Enter the ARD in Block 24 of the DD Form 1342.

245.607 Scrap.

245.607-1 General.

(a)(i) The contractor may request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap. If approved, the contractor may make a single descriptive entry on an inventory schedule, generally describing the property and indicating its approximate total cost. The plant clearance officer will establish a plant clearance case and perform limited screening.

(ii) If the contractor has an approved scrap procedure, routine disposal of production scrap and spoilage is authorized, and a plant clearance case is unnecessary. The contractor may similarly dispose of worn, broken, mutilated, or otherwise rejected parts from overhaul and repair contracts with the approval of the plant clearance officer.

(iii) In addition to segregating scrap to maximize proceeds, the contractor may also consolidate sales of Government and contractor scrap if approved by the plant clearance officer. When a consolidated sale is approved, the plant clearance officer shall waive the scrap warranty required at 245.607-70.

(iv) When a contractor's approved scrap procedure does not require physical segregation of Government and contractor scrap, the plant clearance officer shall ensure the proceeds of scrap sale are equitably distributed.

245.607-2 Recovering precious metals.

(b) The plant clearance officer shall obtain disposition instructions from the Defense Reutilization and Marketing Service, Attn: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, MI 49017-3092, for precious metals (i.e., silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium), including scrap and items containing recoverable quantities of these metals.

245.607-70 Scrap warranty.

(a) If the contractor sells its inventory as scrap to anyone, including a holding contractor, the contractor shall include in the sales contract a signed copy of DD Form 1639, Scrap Warranty.

(b) The contracting officer may release the contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(1) The sale price of the scrap; and

(2) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(c) The contractor shall pay the consideration to the Government and the Government may execute the release even though the contract containing the warranty was not made directly with the Government.

(d) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer's scrap warranty, the Government will release the first buyer from liability under the original warranty.

245.608 Screening of contractor inventory.

245.608-1 General.

(a) The plant clearance officer shall arrange for inspection of property at the contractor's plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor's operations.

245.608-2 Standard screening.

(b)(1) For the first 30 days, property screening will be limited to the contracting agency and the requiring agency, when they are not the same. The requiring agency shall have priority for retention of listed items.

245.608-5 Special items screening.

(a) *Special test equipment with standard components.* (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose components which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(2) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(*1*) General Services Administration—STE unit, less any standard components, and nonreportable standard components;

(*2*) Defense Industrial Plant Equipment Center—IPE components;

(*3*) Contractor Inventory Redistribution System—OPE components; and

(*4*) Defense Automation Resources Information Center—ADPE components.

(d) *Procedures for Automatic Data Processing Equipment (ADPE).* (1) Report ADPE that is Government-owned or leased by the contractor (with Government purchase option or other interests, including use rights) to the Defense Automation Resources Information Center (DARIC). DARIC does all required screening, including General Services Administration screening for ADPE. (See DoD 7950.1-M, Defense Automation Resources Management Manual.)

245.608-7 Reimbursement of cost to transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and

control of the Defense Industrial Plant Equipment Center.

245.608-70 Contractor inventory redistribution system (CIRS).

(a) Screen serviceable and usable contractor inventory through CIRS when it—

(1) Is listed on SF 1428, Inventory Schedule B, or SF 1434, Inventory Schedule E; and

(2) Has a national stock number, and line item acquisition value in excess of $50; or

(3) Has a line item acquisition value in excess of $500 but no national stock number.

(b) Using Standard Form 120, Report of Excess Personal Property, the plant clearance officer will send two copies of SF 1428 or SF 1434 (or authorized substitutes) to the Defense Reutilization and Marketing Service (DRMS). DRMS will notify the plant clearance officer of items processed, not accepted, or available for local area screening.

(c) Property subject to CIRS processing will be screened within DoD for 30 days. On the 31st day, unless otherwise specified on SF Form 120, appropriate items not requisitioned by DoD will be reported to the General Services Administration (GSA) for standard Federal agency and donation screening. Examples of items which are not reportable to GSA include usable hazardous cleaners and solvents.

(d) For requisitioned items, DRMS will issue shipping instructions to the plant clearance officer. During the first 45 days of the screening period, the plant clearance officer forwards any requisitions received to DRMS. After 45 days, the plant clearance officer forwards the requisition directly to GSA.

(e) The contractor sends one copy of the shipping document to DRMS when shipment has been made.

(f) Unless directed by the contracting officer, motor vehicles excess to Army and Navy contracts shall not be screened through CIRS.

245.608-71 Screening industrial plant equipment.

(a) *Reporting.* Within 15 days of receipt, the plant clearance officer will forward two copies of the DD Form 1342, DoD Property Record, to the Defense Industrial Plant Equipment Center (DIPEC), Memphis, TN 38114, for all IPE not condition coded "X" or "S". Process IPE condition coded "X" or "S" in accordance with department or agency procedures.

(b) *Screening*—(1) First 30 days. DIPEC will—

(i) Screen excess IPE against all DoD requirements with priority given to requirements of the owning department/agency through the 30th day.

(ii) For items selected, issue shipping instructions containing accounting, funding, transportation, routing recommendations, and preservation instructions.

(2) *31st through 75th day.* (i) DIPEC will report excess IPE to GSA on 31st day.

(ii) GSA will—

(A) Approve department/agency requests on first come-first served basis;

(B) Approve and forward transfer orders to the contract administration office; and

(C) Forward copies of approved transfer orders to DIPEC.

(3) *76th through 90th day.* GSA will—

(i) Provide for screening for donation;

(ii) Receive, approve and forward donation applications to the contract administration office; and

(iii) Send copies of approved applications to DIPEC.

(4) *After 90th day.* If DoD requirement is identified, and item is available, ship item against the requirement unless compelling reasons exist for not shipping item.

(c) The plant clearance officer shall ensure that a copy of the shipping document is submitted to DIPEC when IPE is transferred use-to-use or use-to-storage within DoD.

(d) When GSA sells IPE that is excess to ownership but not to DoD requirements, report the sale to DIPEC in accordance with department/agency procedures.

245.609 Donations.

Agencies may donate, with GSA approval and without expense to the United States, certain material not needed by DoD to certain organizations such as veterans' organizations, soldiers' monument associations, State museums, and incorporated educational, not for profit museums. For further guidance, see DoD 4160.21-M, Defense Reutilization and Disposal Manual.

245.610 Sale of surplus contractor inventory.

245.610-1 Responsibility.

(a) See Subpart 245.73 for sales of contractor inventory under the control of DoD.

245.610-3 Proceeds of sale.

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the contracting officer; or

(iv) Forwarded to the plant clearance officer. The plant clearance officer—

(A) Within two days after receipt will send the proceeds and a DD Form 1131, Cash Collection Voucher, to the designated disbursing officer. Identify on the DD Form 1131 the contractor name and contract number; or

(B) For contractors with an approved scrap procedure, will ensure the proceeds are appropriately applied to an overhead account. The plant clearance officer may assign a representative who, with the assistance of the contract auditor, shall periodically validate that proceeds from sales of production generated scrap are collected and applied to the appropriate account.

(2) Except as prescribed in paragraph (1)(iv)(B) of this subsection, the plant clearance officer will not close the plant clearance case until verification is received that the credit has, in fact, been properly applied.

245.610-4 Contractor inventory in foreign countries.

(1) Normally, DRMS disposal activities shall be used to dispose of surplus contractor inventory located outside the United States or Canada. However, if authorized by the contracting officer, a contractor may sell or make other disposition of inventory in foreign countries.

(2) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that—

(i) The sales contract or other document transferring title include the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in (*name of country*). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of $1,000 United States dollars or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (*name and address of Contracting Officer*), and

(ii) The contracting officer approve sales contracts, resales, or exports. Approval is permitted only if—

(A) The proposed purchaser's name is not on the list of Parties Excluded from Procurement Programs; and

(B) The sales contract or other document forbids exports by purchasers and subpurchasers to communist areas (FAR 25.702) or other prohibited destinations.

245.612 Removal and storage.

245.612-3 Special storage at the Government's expense.

(a) Before authorizing storage, the contracting officer shall ensure funds are available to pay for the storage and related tasks. In addition, the contracting officer shall ensure an annual review of the need for continued storage at Government expense.

(b) All storage contracts or agreements shall be fully funded and separately priced and shall include all allocable costs.

245.613 Property disposal determinations.

The plant clearance officer shall—

(1) Record the reason for disposing of the property—

(i) As scrap and salvage;

(ii) By abandonment or destruction; and

(iii) By noncompetitive sale;

(2) Use DD Form 1641, Disposal Determination/Approval, to record disposal determinations; and

(3) File the completed form in the plant clearance case file.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.

(a) The head of a contracting activity for the Defense Logistics Agency, or the head of the contract administration office for other departments and agencies shall select, appoint, or terminate (in writing) property administrators and plant clearance officers.

(b) In selecting qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Accept or reject inventory schedules and DD Forms 1342, DoD Property Record;

(c) Conduct or arrange for inventory verification;

(d) Initiate screening and process resulting transfer and donation actions;

(e) Perform final plant clearance of contractor inventory;

(f) Conduct pre-inventory scrap determinations;

(g) Evaluate the contractor's procedures for property disposal;

(h) Determine the appropriate method of disposal;

(i) Survey contractor-conducted sales;

(j) Account for all contractor inventory reported by the contractor;

(k) Advise and assist the contractor, inventory control manager, other Federal agencies, or higher headquarters in actions regarding disposal of contractor inventory;

(l) Approve method of sale, evaluate bids, and approve sale prices for contractor-conducted sales;

(m) Recommend the reasonableness of selling expenses on contractor-conducted sales;

(n) Secure antitrust clearance, if required; and

(o) Advise the contracting officer on all property disposal matters.

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7101-1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7101-2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory. Donations of industrial plant equipment may be shipped via DD Form 1149. This form may also be used to consolidate contractor inventory redistribution system-directed shipments going to the same destination.

245.7101-3 DD Form 1348-1, DoD Single Line Item Release/Receipt Document.

Use for shipments of excess industrial plant equipment and contractor inventory redistribution system (CIRS) inventory.

245.7101-4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.

Use the following guidance for verifying inventory schedules—

(a) *Allocability.* (1) Review contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) *Condition.* Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

(1) Identify the case number (see 245.7203);

(2) Indicate the contractor's name and contract number;

(3) Note the word "Termination" if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

245.7203 Assigning plant clearance case numbers.

(a) Use a three-part, 11-character number constructed as follows:

(1) Part 1: DoD Activity Address Number (6-character alphanumeric code) assigned to the contract administering activity.

(2) Part 2: Locally assigned 4-character consecutive alphanumeric code, beginning each calendar year with 001 continuing as necessary through ZZZ. The fourth digit is the last number of the calendar year.

(3) Part 3: The 11th character is a single letter identifying the department/agency:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—NASA
D—Other DoD Activities
O—Non-DoD Activities

(b) Record the plant clearance number on DD Form 1635, Plant Clearance Case Register, or mechanized equivalent.

245.7204 Preparing inventory disposal report.

(a) Prepare Standard Form 1424, Inventory Disposal Report, for each completed plant clearance case. For terminated contracts, prepare a consolidated Inventory Disposal Report for each termination docket.

(b) Distribute the report to the contracting officer and to any other activities having an interest in the inventory disposal.

(c) Items on the form are self-explanatory except:

(1) Item 12—Insert net change due to shortages, overages, errors, pricing, or withdrawals, etc. Explain in item 16, Remarks.

(2) Item 14—Insert amount contractor is retaining or purchasing at full acquisition cost (see FAR 45.605–1).

(3) Item 15—Insert acquisition cost and net credit (full credit less approved handling, transportation, and restocking charges for items returned to supplier).

(4) Item 16—Insert the acquisition cost for all transfers accomplished. For lines 16A and 16B, insert subtotals as indicated.

(5) Item 18—Insert acquisition cost and gross proceeds. When approved sale costs are reimbursed from proceeds, show net proceeds in Item 26, Remarks.

(6) Items 20 and 21—Use to identify and report transactions not otherwise identified, such as assets shipped to a government precious metals reclamation activity, etc. Further explanation may be provided in Item 26, Remarks, if necessary.

(7) Item 25—Totals dispositions must equal amounts on line 13 and must reflect all disposal actions within the case.

(8) Item 26—Show the specific disposition of proceeds reported in Items 14, 15, and 18. Also indicate amounts deleted for specific contractor claims, or applied as a credit to the claim. Explain any entry requiring explanation.

245.7205 Reporting excess and surplus contractor inventory.

(a) Contract administration offices with plant clearance responsibilities will—

(1) Use DD Form 1638, Report of Excess and Surplus Contractor Inventory, or mechanized equivalent, to report the disposition of contractor inventory. Do not include disposition actions transferred to other offices. Unless headquarters of the administering activity directs otherwise, complete only the column total for each line of this report.

(2) Prepare quarterly reports for periods ending March 31, June 30, September 30, and December 31. Activities preparing manual reports will submit duplicate reports to the headquarters of the administering activity within ten working days after the close of the report period. (Report Control Symbol DD(I&L)(Q)1430).

(b) Items on the report are self-explanatory except:

(1) Line 1—Insert totals from line 7 of the preceding report.

(2) Line 2—Insert net changes due to shortages, overages, errors, or withdrawals (other than purchases or retention at cost).

(3) Line 3—Insert total excess inventory reported by contractors during the report period.

(4) Line 5—Insert total plant clearance cases completed during the report period. Do not report cases as completed until all property is disposed. Acquisition cost must equal line 19.

(5) Line 8—Insert amount retained or withdrawn at full cost.

(6) Line 9—Insert acquisition cost in the "Acquisition Cost" column and insert acquisition cost less handling, transportation, or restocking charges, in the "Proceeds" column.

(7) Line 10—Insert acquisition cost of all transfers completed during the report period. On lines 10A through 10H, insert subtotals representing transfers to the agency indicated. Exclude amounts on lines 10A through 10H when computing line 19 totals.

(8) Line 12—Insert the acquisition cost and gross proceeds. When sale costs are reimbursed from proceeds, show net proceeds in remarks.

(9) Lines 14 and 15—Used to identify and report other transactions.

(10) Line 18—Insert Section II totals. Line 18 acquisition cost must equal acquisition cost on line 5.

245.7206 Transmitting DD Form 1342, DoD Property Record.

As a minimum, the plant clearance officer will provide the following information in a letter forwarding DD Forms 1342 to DIPEC—

(a) Number of DD Forms 1342 included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor's name and address;

(e) Contract number;

(f) Contracting activity that awarded the contract under which the contractor acquired the equipment;

(g) Location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A statement advising that the automatic release date will not be extended;

(j) A note stating that—

(1) Request for transfer or shipment must include appropriate fund citations for packing, crating, and handling charges; and

(2) Government bills of lading (GBLs) should be furnished or, if shipment will be accomplished by other than GBL, DIPEC must cite transportation funds; and

(k) The plant clearance officer's signature block.

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.

(a) Screening must be completed before any surplus contractor inventory sale.

(b) Except as provided in 245.7307, sales of surplus contractor inventory shall be competitive.

(c) The headquarters of the contract administration activity must approve the use of auctions, spot bids, or retail sales.

245.7302 Competitive sales.

245.7302-1 Property descriptions.

(a) Describe the property as "used" or "unused." Indicate if unused property is still in the manufacturer's original containers. Qualifying statements such as "well-preserved" or "repairs required" are authorized. Do not use condition codes or the terms "new" or "salvage."

(b) Property descriptions must be accurate and adequate for identification by prospective bidders. Use commercial terminology and original manufacturer and brand name, if applicable.

245.7302-2 Lotting.

(a) Consider combining property into lots when the quantities, value, or nature of the property makes it uneconomical to sell separately.

(b) When lotting is appropriate and economically practical—

(1) Size the lots to encourage bidding by small businesses or individuals;

(2) Lot unused items by make or manufacturer, except when quantities or dollar values are small;

(3) Lot commercially similar items when practicable;

(4) Lot used and unused items separately unless quantities, value, or nature of property makes it uneconomical to sell separately;

(5) Size lots large enough to ensure the selling costs are not disproportionate to the anticipated proceeds.

245.7302-3 Alternate bids.

Offerors may be solicited to bid for groups or for the entire offering by use of the following:

Item _____ (Alternate Bid)

This item consists of all property listed and described in Items _____ to _____, inclusive. Award under this item will be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items _____ to _____, inclusive.

245.7302-4 Basis for sale.

(a) *Unit price basis*—requires the offeror to state the bid price in terms of the quantity or weight generally applied in commercial sales of similar items.

(b) *Lot price basis*—requires the offeror to submit a bid for the entire lot. Use the lot price basis of sale only when property cannot be sold by unit measure or the potential sales return is small.

245.7302-5 Mailing lists.

(a) The plant clearance officer will ensure the contractor solicits a sufficient number of bidders to obtain adequate competition.

(b) When large quantities of property, special commodities, or unusual geographic locations are involved, the plant clearance officer is encouraged to obtain additional listings from: Defense Reutilization and Marketing Service, Attn: DRMS–OCR, 74 North Washington Avenue, Battle Creek, MI 49017–3092.

245.7303 Formal bid procedures.

(a) The contractor will use formal invitations for bid unless the plant clearance officer approves use of informal bid procedures.

(b) The contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(c) For large sales, the contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(d) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the contractor may, when the results are expected to justify the additional expense—

(1) Display a notice of the proposed sale in appropriate public places.

(2) Publish a sales notice in appropriate trade journals or magazines and local newspapers.

(e) When the acquisition cost of the property to be sold at one time, in one place, is $250,000 or more, the contractor shall send a notice of the proposed sale to: U.S. Department of Commerce, Commerce Business Daily, Sales Section, P.O. Box 5999, Chicago, IL 60680.

(1) The contractor shall send the CBD notice at least 20 days before bid opening, or date of sale.

(2) CBD notices shall be—

(i) Double spaced and in synopsis form suitable for printing;

(ii) Transmitted by fastest mail available; and

(iii) Contain the following information in the order listed:

(A) Name and address of contractor issuing the invitation for bids;

(B) Name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained;

(C) Description of the property to be sold including, when desired, the total estimated acquisition cost;

(D) The number of the invitation or sale;

(E) The date of the sale or bid opening;

(F) The type of sale, i.e., sealed bid, spot bid, auction; and

(G) The location of the property.

(f) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the contractor will submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative.

245.7304 Informal bid procedures.

(a) Upon approval of the plant clearance officer, the contractor may issue informal invitations to bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is maintained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(b) Bids by the contractor or its employees shall be submitted to the plant clearance officer prior to soliciting bids from other prospective bidders.

245.7305 Sale approval and award.

The plant clearance officer will—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

245.7306 Sales services.

When sale services are needed, the plant clearance officer will document the reasons in the case file and make arrangements directly with the Defense Reutilization and Marketing Service (DRMS) or General Services Administration (GSA). The arrangements will include a requirement to return all proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

245.7307 Non-competitive sales.

245.7307-1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer

determines that this method is essential to expeditious plant clearance;

(2) The sale is otherwise justified on the basis of circumstances listed in 245.7307–2;

(3) The Government's interests are adequately protected; and

(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

245.7307–2 Justification.

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government's interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

245.7308 Antitrust notification.

(a) When contractor inventory with an acquisition cost of $3 million or more; or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-P&L(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);

(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);

(3) Acquisition cost of property;

(4) Manner of sale, indicating whether by—

(i) Sealed bid (specify number of bidders solicited and bids received);

(ii) Auction or spot bid (state how sale was advertised); or

(iii) Negotiation (explain why property was not sold competitively);

(5) Proposed purchaser's name, address, and trade name (if any) under which proposed purchaser is doing business;

(6) If a corporation, provide state and date of incorporation, and name and address of—

(i) Each holder of 25 percent or more of the corporate stock;

(ii) Each subsidiary; and

(iii) Each company under common control with proposed purchaser;

(7) If a partnership, provide—

(i) Name and address of each partner; and

(ii) Other business connections of each partner;

(8) Nature of proposed purchaser's business (indicate whether its scope is local, statewide, regional, or national);

(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(10) Estimated net worth of proposed purchaser; and

(11) Intended use of property.

(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required to provide the information required in paragraph (a) of this subsection.

245.7309 Mandatory terms and conditions—formal invitations.

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309–1 Inspection.

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309–2 Condition and location of property.

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale "as is" and "where is." If the Invitation provides that the Contractor will load, then "where is" means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306–8, Variations in Quantity or Weight, and 245.7306–10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

245.7309–3 Consideration of bids.

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

(1) May be on any or all items;

(2) Must be submitted on the unit basis specified for that item;

(3) Must cover the total number of units designated for that item; and

(4) Unit prices govern.

245.7309–4 Payment.

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306–8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309-5 Title.

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309-6 Delivery and removal of property.

(a) Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser's expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.

(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by Purchaser's removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309-7 Default.

If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309-8 Variations in quantity or weight.

When property is sold on a "unit price" basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309-9 Weighing.

(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—

(1) Contractor scales;

(2) Certified scales; or

(3) Other scales acceptable to both parties.

(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for freight purposes. The Purchaser shall pay switching charges.

245.7309-10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309-11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309-12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309-13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b) .

245.7309-14 Claims liability.

The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

245.7310 Special term and conditions.

When necessary, include the special conditions of this section in formal invitations.

245.7310-1 Demilitarization.

When demilitarization of property is required, whether on or off contractor or Government premises, the invitation must include the following clause:

(a) *Demilitarization.*

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth below:

(1) For property located in the United States insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense, Demilitarization Manual;

(2) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1, Defense Demilitarization Manual.

(b) *Demilitarization on Government Premises.*

Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been completed and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all cost incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(c) *Demilitarization on Non-Government Premises.* Property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel. Title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization.

(d) *Failure to Demilitarize.* If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(1) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(2) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser will all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(3) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

245.7310–2 Performance bond.

Performance bonds are required when work, other than loading, is to be performed by the purchaser and a bond is considered necessary to ensure performance. Generally, performance bonds shall be 100 percent of the estimated cost of the work to be performed. If a 100 percent performance bond would be disadvantageous to the Contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work. Include the following condition when performance bonds are required:

Performance Bond

Within ten days after notice of award, the Purchaser shall furnish a performance bond in the sum of $_____ to cover the Purchaser's obligations. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until the bond has been received.

245.7310–3 Liability and insurance

When the work to be performed by the purchaser warrants, use the following:

Liability and Insurance

The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(a) Standard workers' compensation and employer's liability insurance required under State and Federal statutes. However, the Contractor may waive this requirement upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law.

(b) Bodily injury liability insurance in an amount not less than $300,000 for any one occurrence; and

(c) Property damage liability insurance.

245.7310–4 Dangerous property.

The following warning shall be included when it cannot be certified that the property is completely harmless:

Dangerous Property

Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

245.7310–5 Controlled substances.

The sale of controlled substances, e.g., narcotics, stimulants, depressants, or hallucinogenic drugs, shall be subject to the following special conditions:

(a) *Controlled Substances.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances as a medical practitioner, dealer or manufacturer of controlled substances.

(b) *Narcotic Drugs and Chemicals.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics.

245.7310–6 Radioactive material

The following shall be used whenever the property offered for sale is capable of emitting ionized radiation:

Radioactive Material

Purchasers are warned that the property may be capable of emitting ionized radiation. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from all such claims. The Purchase should warn possessors or users of the property that it may be capable of emitting ionized radiation.

245.7310–7 Scrap warranty.

The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap Warranty

The Purchaser represents and warrants that the property will be used only as scrap, and will not be resold until—

(a) Scrapping has been accomplished; or

(b) The Purchaser obtains an identical warranty from any subsequent purchaser.

245.7310–8 Antitrust clearance.

When property with an acquisition cost of $3 million or more is to be sold, include the following in the invitation:

Antitrust

When the property offered for sale has an acquisition cost of $3 million or more, or consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to 60 days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not create or maintain a situation inconsistent with the antitrust laws.

245.7311 Optional conditions.

The following special conditions of sale may be added at the option of the contractor:

245.7311–1 Sales and use tax liability.

For purchases of property subject to a state sales or use tax, a special condition of sale may stipulate that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

245.7311–2 Safety, security, and fire regulations.

245.7311–3 Bid deposits.

245.7311–4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 246.1—General

246.101 Definitions.

Metrology is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality assurance is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality audit is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the quality program or the specification or contract requirements of the product or service.

Quality program is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine—

(1) The adequacy of the technical requirements relating to quality; and

(2) Product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(1) Reliability;
(2) Safety;
(3) Interchangeability; and
(4) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470–2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(1) All requirements;
(2) All characteristics; or
(3) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection;

(B) Must periodically analyze the need to continue, change, or discontinue the instructions; and

(C) Must advise the contract administration office of the results of the periodic analyses.

246.104 Contract administration office responsibilities.

(f) The contract administration office shall continue to follow any specific written instructions received from the contracting office until the contracting office acts on a recommendation.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(b)(i) *Inspection System Requirements.* MIL-I-45208 requires that the contractor establish and maintain an inspection system.

MIL-I-45208 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When technical requirements require control of quality by both in-process and final end-item inspection, including such elements of the manufacturing process as—

(*1*) Measuring and testing equipment;

(*2*) Drawings and changes;

(*3*) Inspection; and

(*4*) Documentation and records.

(ii) *Quality Program Requirements.* MIL-Q-9858 requires that the contractor establish and maintain a quality program.

MIL-Q-9858 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When the technical requirements of the contract require—

(*1*) Control of work operations;

(*2*) In-process controls and inspection; and

(*3*) Attention to other factors such as—

(*i*) Organizations;

(*ii*) Planning;

(*iii*) Work instructions;

(*iv*) Documentation control; and

(*v*) Advanced metrology.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

246.204 Application of criteria.

(1) Use the following Table 46-1, Contract Quality Requirements Guide, to implement FAR 46.204 Table 46-1 for higher-level contract quality requirements.

TABLE 46-1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of Contract	
Technical Description	Complexity	Application	Quality Requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal	Non-Complex	Critical	MIL-I-45208
Military-Federal	Complex	Non-Critical Peculiar	MIL-I-45208
Military-Federal	Complex	Critical	MIL-Q-9858

(2) When purchasing a commercial item, the technical, quality assurance, and contracting activities must work together to tailor contract quality requirements to—

(i) Eliminate or minimize special Government testing, quality control, and inspection requirements. Consider—

(A) The item's application;

(B) The cost objectives of the acquisition; and

(C) The item's reliability as established in the commercial market;

(ii) Maximize use of the certificate of conformance consistent with FAR 46.504; and

(iii) Provide for examination and acceptance at the most economical point (source or destination).

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246-7000, Material Inspection and Receiving Report, is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries.—(i) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(*1*) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(2) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(1) May ask NATO countries to perform quality assurance;

(2) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications.* (A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See Subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

(1) Contracting officers shall use the following MIL–STD–109 definitions in determining conformance with contract requirements—

(i) *Critical nonconformance* is a nonconformance that judgment and experience indicate—

(A) Is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or

(B) Is likely to prevent performance of a vital agency mission.

(ii) *Major nonconformance* is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the usability of the supplies or services for their intended purpose.

(iii) *Minor nonconformance* is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

(2) Contracting officers shall ensure that—

(i) Nonconformances are identified; and

(ii) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;

(ii) Shall request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(iii) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

246.408 Single-agency assignments of Government contract quality assurance.

246.408-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85–726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408-72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470-1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470-2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470-3 Assessment of additional costs.

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246–2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470–4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470–5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770–8).

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Weapon systems (see 246.770);

(2) Commercial supplies or services (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208, Inspection System Requirement, or MIL–Q–9858, Quality Program Requirements; or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

246.705 Limitations.

(a) Warranties in the clause at 252.246–7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227–7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246–6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246–7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246–7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770–1 Definitions.

As used in this section—

(a) *At no additional cost to the Government* means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

(b) *Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

(c) *Essential performance requirements* means the operating capabilities and maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

(d) *Initial production quantity* means the number of units of a weapon system contracted for in the first program year of full-scale production.

(e) *Mature full-scale production* means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

(f) *Weapon system* means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

(ii) Self-propelled, towed and fixed guns, howitzers and mortars;
(iii) Helicopters;
(iv) Naval vessels;
(v) Bomber, fighter, reconnaissance and electronic warfare aircraft;
(vi) Strategic and tactical missiles including launching systems;
(vii) Guided munitions;
(viii) Military surveillance, command, control, and communication systems;
(ix) Military cargo vehicles and aircraft;
(x) Mines;
(xi) Torpedoes;
(xii) Fire control systems;
(xiii)Propulsion systems;
(xiv) Electronic warfare systems; and
(xv) Safety and survival systems.
(2) The term does not include—
(i) Commercial items sold in substantial quantities to the general public (see FAR 15.804–3(c)); or
(ii) Spares, repairs, or replenishment parts; or
(iii) Related support equipment (e.g., ground-handling equipment, training devices and accessories, ammunition), unless an effective warranty would require inclusion of such items.

246.770–2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or an estimated total procurement cost in excess of $10 million unless—
(1) Each contractor for the weapon system provides the Government written warranties that—
(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract),
(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and
(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and
(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—
(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;
(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or
(iii) Equitably reduce the contract price; or
(3) A waiver is granted under 246.770–8.
(b) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection, such as including an essential performance requirement warranty in other than a mature full-scale production contract.
(c) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.
(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.
(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that contractor (see 246.770–5).

246.770–3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, or other program uncertainties, while ensuring that the Government still acquires the basic warranties described in 246.770–2. Tailoring shall not be used as a substitute for acquiring a warranty waiver.
(1) Tailoring may affect remedies, exclusions, limitations, and duration provided such are consistent with the specific requirements of this section (see also FAR 46.706).
(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.
(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).
(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.
(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.
(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770–4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770–2 on any property furnished the contractor by the Government, except for—
(a) Defects in installation;
(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or
(c) Modifications made to the property by the contractor.

246.770–5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770–6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.
(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.
(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.
(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any

tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770-7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the warranty is not cost effective, initiate a waiver request under 246.770-8.

246.770-8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Assistant Secretary of Defense (Production and Logistics). The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapons system warranties required by 246.770-2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major Weapon Systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Other Weapon Systems.* For weapon systems that are not major Defense acquisition programs for the purpose of 10 U.S.C. 2432, waiving officials must submit an annual report not later than February 1 of each year. List the waivers granted in the preceding calendar year in the report and include an explanation of the reasons for granting each waiver.

(3) *Weapon Systems Not in Mature Full-Scale Production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers, notifications, and reports to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770-2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver (if the waiver request is based on cost effectiveness, include the results of the cost-benefit analysis);

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the weapon system, e.g., warranties, commercial or other guarantees obtained on individual components; and

(vi) Exercise date of the warranty option, if applicable.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

PART 247—TRANSPORTATION

Sec.

Subpart 247.1—General

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Traffic Management Regulation lists the carriers and carrier associations that have agreed to provide transportation under commercial forms and procedures within CONUS.

247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104-3 Cost-reimbursement contracts.

(a) Section 10721 rates do not apply to foreign military sale (FMS) shipments.

(i) On shipments of stock fund items from a contractor to a depot, when some of the items in a specific transportation unit are clearly for FMS—

(A) Section 10721 rates do not apply to FMS items shipped on a separate bill of lading; and

(B) Section 10721 rates do apply to the non-FMS items.

247.104-5 Citation of Government rate tenders.

(a) See section XI, chapter 32 of the Defense Traffic Management Regulation for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

247.105 Transportation assistance.

(a)(i) Transportation assistance includes all transportation factors, such as—

(A) Freight rates (for evaluation of bids or routing purposes);

(B) Other transportation costs;

(C) Transit agreements;

(D) Time in transit;

(E) Port handling charges; and

(F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC), through its eastern and western area commands, is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services. See chapters 1 and 2 of the Defense Traffic Management Regulation for the locations and geographical areas of jurisdiction of each area headquarters.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity; i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or ther costs from the MSC;

(D) Of supplies between points outside the CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, Department of the Army, Attn: DALO-TSP, Washington, DC 20310-0570
Navy: Naval Supply Systems Command, Code 051, Washington, DC 20390-5000
Air Force: Applicable overseas Air Force Command, Pacific Air Forces/LGT, Hickam AFB, HI 96853, Space Command/LKT, Peterson AFB, CO 80914, U.S. Air Forces in Europe/LGT, APO NY 09012
Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 20380

(E) When requesting rates and related costs for the evaluation of bids or proposals, include the bid opening or proposal due date and the expected date of initial shipment, if established.

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

This section contains procedures peculiar to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.

247.270-2 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity.

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270-3 Type of contract.

Normally, use an indefinite-quantity type contract.

247.270-4 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including car loading and unloading or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

247.270-5 Evaluation of bids and proposals.

Require that offers include and evaluate on the basis of—

(a) Tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates which apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

247.270-6 Award of contract.

Make the award to the contractor that is otherwise eligible for award and offers the lowest overall acceptable bid or proposal after evaluating the—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

247.270-7 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated—

(a) 252.247-7000, Hardship Conditions, as appropriate;

(b) 252.247-7001, Price Adjustment, when using sealed bidding;

(c) 252.247-7002, Revision of Prices, when using negotiation;

(d) 252.247-7003, Termination, when it is desirable to permit either party to terminate the contract;

(e) 252.247-7004, Indefinite Quantities-Fixed Charges, when the contract will provide for the payment of fixed charges;

(f) 252.247-7005, Indefinite Quantities-No Fixed Charges, when the contract will not provide for the payment of fixed charges;

(g) 252.247-7006, Removal of Contractor's Employees; and

(h) 252.247-7007, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

This section contains procedures peculiar to the preparation of personal

property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.

247.271-2 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts awarded through sealed bidding to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer shall—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.34–R, Personal Property Traffic Management Regulation;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will not preclude bidding by small business firms.

247.271-3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity shall contract for the estimated requirements of all activities in the area. The installation commanders concerned shall designate the activity by mutual agreement.

(2) The Commander, MTMC, shall designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services which exceed contractor capabilities available under contracts. Use small purchase procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—

(A) Hoisting or lowering of articles;

(B) Waiting time;

(C) Special packaging; and

(D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

(A) Packing and unpacking;

(B) Movement;

(C) Inventorying; and

(D) Removal of debris.

(iii) Each personal property shipping activity shall determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7009, Evaluation of Bids); or

(B) Using small purchase procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows—

(1) CONUS personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041–5050.

(2) In the European and Pacific areas, personal property shipping activities shall send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247–7008, Evaluation of Bids. When adding "additional services" items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247–7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34–R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement "No Requirement."

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, 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.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c) (1) through

(5) of this subsection, as a request for deviation through MTMC area commands/field offices to HQ, MTMC.

(d) The clause at 252.247–7010, Scope of Contract.

(e) The clause at 252.247–7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period shall not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216–18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.506(b), document the oral orders in accordance with departmental/agency instructions.

(g) The clause at 252.247–7012, Ordering Limitation.

(h) The clause at 252.247–7013, Contract Areas of Performance.

(i) The clause at 252.247–7014, Demurrage.

(j) When using the clause at FAR 52.216–21, Requirements, see 216.505(d) which prescribes use of Alternate I at 252.247–7015.

(k) The clause at 252.247–7016, Contractor Liability for Loss and Damage.

(l) The clause at 252.247–7017, Erroneous Shipments.

(m) The clause at 252.247–7018, Subcontracting.

(n) The clause at 252.247–7019, Drayage.

(o) The clause at 252.247–7020, Additional Services.

(p) The clauses at FAR 52.247–2, Permits, Authorities, or Franchises; FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed; FAR 52.247–13, Accessorial Services—Moving Contracts; and FAR 52.247–17, Charges.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305–10 Packing, marking, and consignment instructions.

(b) Consignment instructions shall include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows—

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(2) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD);

(3) Commercial and Government Entity (CAGE) Handbook H4/H8; or

(4) Transportation Control and Movement Document.

Reporting procedures and instructions shall comply with DoD Regulation 4500.32–R, MILSTAMP.

(B) Project code, when applicable;

(C) Transportation priority;

(D) Required delivery date; and

(E) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

(ii) Non-MILSTRIP shipments shall include data similar to paragraph (b)(i)(A) through (D) of this subsection and the applicable portion of paragraph (b)(i)(E) with the notation "Non-MILSTRIP."

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (E) of this subsection, the following, when appropriate—

(A) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) If a contract is assigned for any contract administration function listed in FAR Subpart 42.3, to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, then include in instructions the—

(A) Modification serial number; and, if a new line item is created by the issuance of shipping instructions;

(B) New line item number; and

(C) Existing line item number, if affected.

(v) For petroleum, oil and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone, teletype, or telegram.

247.305–70 Returnable cylinders and other containers.

(a) Use the clause at 252.247–7021, Returnable Cylinders and Other Containers, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. A variation of the clause may also be used in contracts for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers when the contractor is to retain title to the containers.

(b) The contracting officer may modify the 30 day time period specified in the clause to comply with customary commercial practice.

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone, teletype, or telegram.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark "CONFIRMATION" in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed in subpart 247.3 to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, within five working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instructions being confirmed; and

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32–R, MILSTAMP.

247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in

the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, the DoD.

(b) Does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 1241(b). The 1954 Act is applicable to the DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in the DoD exceeding the 1954 Act's requirements.

(c) Is an approved class deviation from FAR subpart 47.5 in its entirety (but see 247.571(c)).

247.571 Policy.

(a) DoD contractors shall transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and notices are given and approvals received in accordance with this subpart;

(2) The Secretary of the Navy determines that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the Government are higher than charges to private persons for the transportation of like goods.

(b) Contracts shall provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c) The Cargo Preference Act of 1904 does not apply to ocean transportation of—

(1) Products obtained for contributions to foreign assistance programs; or

(2) Products owned by agencies other than the DoD. In these cases, FAR subpart 47.5 applies.

247.572 Procedures.

247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer shall ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.573(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the Act will apply to the contract, and it must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) When the contracting officer is notified that the contractor or subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC).

(2) The freight charges to the Government, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons, the contracting officer may approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting a waiver, the contracting officer shall request advice, oral or written, from the Commander, MSC.

(ii) In advising the contracting officer whether to grant the waiver, the Commander, MSC, shall consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable, the contracting officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(1) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and

(4) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

247.572–2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts of affreightment;

(4) Dedicated contractor contracts of affreightment; and

(5) Ocean bills of lading.

(b) Coordinate these acquisitions, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(c) The Commander, MSC, is authorized to make any determination as to the availability of U.S.-flag vessels, in order to ensure the proper utilization of Government and private U.S. vessels.

(d) All solicitations for ocean transportation services for supplies owned by the military departments shall provide a preference for U.S.-flag vessels as an evaluation factor.

(e) The contracting officer shall not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The contracting officer determines that no U.S.-flag vessels are available, and obtains approval of the Commander, MSC; or

(2) The contracting officer determines that the freight charges proposed by U.S.-flag vessels to the Government are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander; MSC; or

(3) The Secretary of the Navy determines (see paragraph (f) of this subsection) that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(f) When the contracting officer concludes, based solely on economic considerations, that the charge offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer will send a report through the head of the contracting activity to the Commander, MSC.

(1) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(2) The Commander, MSC, will forward the report, if in agreement with the contracting officer, to the Secretary of the Navy for a determination.

(3) The report shall be in determination and finding format; take into consideration the factors in 247.572–1(d)(3); and include, as appropriate—

(i) An analysis of the carrier's cost in accordance with FAR subpart 15.8, or profit in accordance with DFARS Subpart 215.9. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(ii) A description of efforts taken pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report is the referral to higher authority; and

(iii) An analysis of whether the cost is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration such factors as—

(A) The differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(B) A comparison of rates charged by other U.S.-flag carriers on comparable routes;

(C) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.); and

(D) Any other relevant economic and financial considerations affecting the Government.

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, in full text, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(b) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, in full text, except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

PART 248—VALUE ENGINEERING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 248.2—Contract Clauses

248.270 Supplemental clause.

When one of the clauses prescribed by FAR subpart 48.2 is used and the contracting officer wants value engineering change proposals submitted in the format prescribed by MIL–STD–480 or 481, use the clause at 252.248–7000, Preparation of Value Engineering Change Proposals.

PART 249—TERMINATION OF CONTRACTS

Sec.

Subpart 249.1—General Principles

249.102 Notice of termination.
249.105 Duties of termination contracting officer after issuance of notice of termination.
249.105–1 Termination status report.
249.105–2 Release of excess funds.
249.108 Settlement of subcontract settlement proposals.
249.108–4 Authorization for subcontract settlements without approval or ratification.
249.109 Settlement agreements.
249.109–7 Settlement by determination.
249.110 Negotiation memorandum.

Subpart 249.5—Contract Termination Clauses

249.501 General.
249.501–70 Special termination costs.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.
249.7001 Congressional notification on significant contract terminations.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 249.1—General Principles.

249.102 Notice of termination.

Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to confirm all notices and amendments of notices of termination.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

When the contract administration office receives a termination notice, it will under RCS:DD(I&L)(Q&AR)1411—

(i) Prepare a DD Form 1598, Contract Termination Status Report;

(ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;

(iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and

(iv) Submit a final report within 30 days after closing the termination case.

249.105–2 Release of excess funds.

The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. The final recommendation to

release excess funds should include the appropriations and allocated amounts.

249.108 Settlement of subcontract settlement proposals.

249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(1) Is subject to the screening requirements in FAR 45.608.

(2) Shall not be disposed of until screening is completed when the cost of that equipment is used in determining the amount of the claim.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

249.110 Negotiation memorandum.

(a)(i) *Fixed price contracts.* Use the format in Table 49-1, Settlement Memorandum-Fixed Price Contracts, for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) *Cost-reimbursement contracts.* Use Part I of the format in Table 49-1 and Part II of the format in Table 49-2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

TABLE 49-1.—SETTLEMENT MEMORANDUM-FIXED PRICE CONTRACTS

Part I—General Information

1. Identification. (Identify memorandum as to its purpose and content.)
   a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
   b. Names and titles of both contractor and Government personnel who participated in the negotiation.
2. Description of terminated contract.
   a. Date of contract and contract number.
   b. Type of contract (e.g., fixed price, fixed price incentive).
   c. General description of contract items.
   d. Total contract price.
   e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).
3. Termination notice.
   a. Reference termination notice and state effective date of termination.
   b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
   c. State whether termination notice was amended, and explain any amendment.
   d. State whether contractor stopped work on effective termination date. If not, furnish details.
   e. State whether the contractor promptly terminated subcontracts.
   f. Statement as to the diversion of common items and return of goods to suppliers, if any.
   g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
   a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnished information for each claim.)
   b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
   c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

Part II—Summary of Contractor's Claim and Negotiated Settlement

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO negotiated amount
1. Contractor's costs as set forth on settlement proposal. Metals, raw materials, etc.. Total					
2. Profit					
3. Settlement expenses					
4. Total					
5. Settlement with subs					
6. Acceptable finished product					
7. Gross Total					
8. Disposal and other credits					
9. Net settlement					
10. Partial, progress & advance payments					
11. Net payments requested					

Part III—Discussion of Settlement

1. Contractor's cost.
   a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
   b. In the case of a lump sum settlement, comment on the general basis for and major for and major factors concerning each element of cost and profit included.
   c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
   d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
   e. Comment on any unadjusted contractual changes which are included in the settlement.
   f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
   g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
4. Subcontractor's settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the terminations contracting officer, as well as the net amount of each.
5. Partial payments. Furnish the total amount of partial payments, if any.
6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
8. Assignments. List any assignments, giving name and address of assignee.
9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
11. Government property. State whether all Government property has been accounted for.
12. Special tooling. If involved, furnish comment on disposition.
13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

Tabular Summary for Complete or Partial Termination

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)		
Gross settlement:		
Less: disposal credits—Prime		
Net settlement—Less:		
Prior payment credits (this settlement)		
Previous partial settlements		
Other credits or deductions		
Net payment:		
Total contract price (complete termination)		
Contract Price of Items Terminated (for partial termination)—Less:		
Total payments to date		
Net payment from this settlement		
Fund reserved for reservations		
Reduction in contract price		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.
15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-2.—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

Part II—Summary of Settlement

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.
2. Comments. Explain tabular summaries.
   a. Summary of final settlement (see Table 49-3).
      (1) Explain why the auditor's final report was not available for consideration, if applicable.
      (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
      (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
      (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
      (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
      (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
      (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
      (8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
      (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
      (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
      (11) Show number and amounts of settlements with subcontractors.

(12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement		$
Less: Disposal credits		
Net settlement		
Less: Prior payments		
Other credits or deductions		
Total		
Net payment		$
Total contract estimated cost plus fixed fee		
Less: Net settlement		
Estimated reserve for exclusions		

Final contract price:
(Consisting of $_____ for reimbursement of costs and $_____ for adjusted fixed fee) _____ _____
Reduction in contract price (credit) _____ _____

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-3.—SUMMARY OF SETTLEMENT

		Amount claimed	Amount allowed
1. Previous reimbursed costs—Prime and Subs		$	$
2. Previous unreimbursed costs			
3. Total cost settlement		$	$
4. Previous fees paid—Prime		$	$
5. Previous fees unpaid—Prime			
6. Total fee settlement		$	$
7. Gross settlement			
		$	$
Less: Deductions not reflected in Items 1-7			
a. Disposal credits	$		
b. Other charges against contractor arising from contract	$		
8. Net settlement			$
Less: Prior payment credits			
9. Net payment			$
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous settlements			$
Aggregate net amount of previous partial settlements			$
Aggregate net payment provided in previous partial settlements			$
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.			$

TABLE 49-4.—UNREIMBURSED COSTS SUBMITTED ON SF 1437 *

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expenses				
7. Fee				
8. Settlement expense				
9. Settlement with subs				
10. Total costs (Items 1-9)				

* Expand the format to include recommendations of technical personnel as required.

Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, "Canadian Agreement" (for a copy of the LOA or for questions on its currency, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, (703) 697–9351, DSN 227–9351));

(2) Policies in the Canadian Agreement and part 249; and

(3) The Manual of Procedure on Termination of Contracts, Department of Supply and Services (Canada).

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contracts Settlement Committee of the Supply and Services Canada (SSC) has approved settlements with Canadian subcontractors when the Manual of Procedure on Termination of Contracts, SSC, requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation (CCC) should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO, Defense Contract Management Area Operations, Ottawa, for settlement. The TCO will inform the CCC of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the CCC termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—OSA, OCLL, (SACLL), ASA (I&L)

(2) Navy—Chief of Legislative Affairs (OLA–N)

(3) Air Force—SAF/AQC

(4) Defense Advanced Research Projects Agency—CMO

(5) Defense Communications Agency—Contract Management Division (Code 260)

(6) Defense Intelligence Agency—RSQ

(7) Defense Logistics Agency—DLA–PP

(8) Defense Mapping Agency—HQ DMA (AQ)

(9) Defense Nuclear Agency—Chief, Office of Procurement, OATR

(10) National Security Agency/Central Security Service—Chief, Office of Contracting

(11) On-Site Inspection Agency—Acquisition Management Office (AM)

(12) Strategic Defense Initiative Organization—Director of Contracts (Code CT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as "For Official Use Only" unless the information is classified.

(d) Include the following in the request for clearance—

(1) Contract number, date, and type of contract;

(2) Name of the company;

(3) Nature of contract or end item;

(4) The reason for the termination;

(5) Contract price of the items terminated;

(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community;

(8) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;

(9) Total number of subcontractors involved and the impact in this area; and

(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a response not later than two working days after receipt of the request.

(f) This reporting requirement is assigned RCS:DD(I&L)(AR) 1412.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
250.001 Definitions.

Subpart 250.1—General

250.104 Reports.
250.105 Records.

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.
250.201–70 Delegations.
250.202 Contract adjustment boards.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.
250.305 Processing cases.
250.305–70 Record of request.
250.305–71 Processing cases to contract adjustment boards.
250.305–72 Processing by the board.
250.306 Disposition.
250.306–70 Record of disposition.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.
250.403–70 Indemnification under contracts involving both research and development and other work.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

250.001 Definitions.

As used in this part,

Secretarial level means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

Subpart 250.1—General

250.104 Reports.

Prepare reports required by this section in accordance with DoDI 4105.69, Miscellaneous Procurement Report. Department and agency supplements identify officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(1) Departments and agencies will—

(i) Prepare a preliminary record when a request for a contract adjustment under FAR 50.3 is filed (see 250.305–70).

(ii) Prepare a final record stating the disposition of the request (see 250.306–70).

(iii) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by this Part 250. Records shall be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.

(2) A suggested format for the record is in Table 50–1, Record of Request for Adjustment. This format permits the information required for the preliminary and final records to be combined on one form.

(3) The following instructions are provided for those items which are not self-explanatory:

(i) *Extent of performance as of date of request.* State degree of completion of contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state date of completion and whether final payment has been made.

(ii) *Award procedure.* State whether contract was awarded under sealed bidding or negotiated procedures. Cite specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 2304(c)(1).

(iii) *Type of contract.* State type of contract (see FAR Part 16); e.g., FFP (firm fixed-price).

(iv) *Category of case.* State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.

(v) *Amount or description of request.* If the request is expressed in dollars, state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., "Cancellation" or "Modification." Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(vi) *Action below Secretarial level.* State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as "Withdrawn," "Denied," "Approved," or "Forwarded." If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (v) of this section). The date should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) *Action by contract adjustment board and date.* State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) *Implementation and date.* State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

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☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85-804	FINAL ☐
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS ☐ SMALL BUSINESS		
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY		
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST
ACTION BELOW SECRETARIAL LEVEL		DATE
ACTION BY CAB		DATE
IMPLEMENTATION		DATE
ADDITIONAL DATA OR REMARKS		
DATE THIS RECORD SIGNED	SIGNATURE	

BILLING CODE 3810-01-C

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority under FAR Subpart 50.4 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity; however, see FAR 50.201(d) for indemnification authority.

250.201-70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements.

(b) *Defense Agencies.* Subject to the restrictions on delegations of authority in 250.201(b) and FAR 50.201, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the Under Secretary of Defense (Acquisition) (USD(A)) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted through the Director of Defense Procurement, Office of the USD(A), to the Secretary of Defense for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) *Approvals.* The service Secretary or agency director must approve any delegations in writing.

250.202 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). If a request is filed with an administrative contracting officer (ACO), the ACO shall promptly forward it to the PCO for appropriate action. If filing with the PCO is impracticable, requests may be filed with the following addresses for forwarding to the cognizant PCO:

(1) Office of the Secretary of Defense—Washington Headquarters Service, Attn: RE&F-AM.

(2) Army—Forward to the head of the contracting activity listed in Part 202 that appears to be the cognizant office for the contract or commitment involved.

(3) Navy—Assistant Secretary of the Navy (RD&A), Attn: Procurement Policy.

(4) Air Force—Deputy Assistant Secretary (Contracting), Attn: SAF/AQCX.

(5) Defense Advanced Research Projects Agency—Director, CMO.

(6) Defense Communications Agency—Attn: Code PA.

(7) Defense Intelligence Agency—Assistant Deputy Director for Procurement, Attn: RSQ.

(8) Defense Logistics Agency—The Commander of the Defense Supply Center involved.

(9) Defense Mapping Agency—Director, DMA, Attn: AQ.

(10) Defense Nuclear Agency—Director, DNA, Attn: OAPR.

(11) National Security Agency—Director, NSA.

(12) On-Site Inspection Agency—Director, OSIA, Attn: DSP.

(13) Strategic Defense Initiative Organization—Director, SDIO.

250.305 Processing cases.

250.305-70 Record of request.

At the time the request is filed, the activity will prepare the record described at 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

250.305-71 Processing cases to contract adjustment boards.

(a) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, two copies of the following:

(1) A letter stating—

(i) The nature of the case;

(ii) The basis for the board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304). Arrange the findings chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn;

(v) The recommended disposition; and

(vi) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.

(2) The contractor's request

(3) All evidentiary materials

(4) All endorsements, reports and comments of cognizant Government officials

(b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302-1(a)) should also provide—

(1) The information required by FAR 50.304 (a) and (b), and

(2) Findings as to—

(i) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

(iii) The forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

250.305-72 Processing by the board.

Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision will be sent to the appropriate official for implementation.

250.306 Disposition.

250.306-70 Record of disposition.

(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

(1) Two copies of the memorandum of decision;

(2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and

(3) One copy of a final record, as described at 250.105.

(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.

250.403-70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85–804.

(a) The use of Public Law 85–804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR subpart 50.4.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Sec.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.
251.106 Title.
251.107 Contract clause.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.
251.205 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Authorization to Purchase form Government Supply Sources.

(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors may use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

TABLE 51–1.—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

Subject: Authorization to Purchase from Government Supply Sources

(Contractor's Name)

(Contractor's Address)

1. You are hereby authorized to use Government sources in performing Contract No. _____ for the Department of _____, as follows: (Insert applicable purchasing authority given to the contractor.)
2. a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor). Insert the following statement in the order:

   This order is placed under written authorization from _____dated _____ ([1]_____).

   In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

   b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the:
   (1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSAFEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2); copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); or
   (2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M; copies are available from the Defense Logistics Agency, ATTN: DLA–XPD, Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304–6100).
3. ([3])
4. This authority is not transferable or assignable.
5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25–6–M) Activity Address Code [2] to which this Authorization applies is _____.
6. This Authorization expires _____.

(Contracting Officer)

[1] Insert "a copy of which is attached," "a copy of which you have on file," or other suitable language, as appropriate.

[2] The sponsoring service assumes responsibility for monitoring and controlling all activity address codes used in the letters of authority.

[3] Insert other provisions, as necessary.

251.106 Title.

(b) Title to property having an acquisition cost of less than $5,000 shall vest in the contractor under the circumstances described in FAR 51.106(b).

251.107 Contract clause.

Use the clause at 252.251–7000, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251–1, Government Supply Sources.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

(a)(2)(A) See FAR 28.307–2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.

Use the clause at 252.251–7001, Use of Interagency Fleet Management System (IFMS)Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.

SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

Subpart 252.2—Texts of Provisions and Clauses

252.201–7000 Contracting officer's representative.
252.203–7000 Statutory prohibitions on compensation to former Department of Defense employees.
252.203–7001 Special prohibition on employment.
252.203–7002 Display of DoD hotline poster.
252.204–7000 Disclosure of information.
252.204–7001 Commercial and Government Entity (CAGE) code reporting.
252.204–7002 Payment for subline items not separately priced.
252.205–7000 Provision of information to cooperative agreement holders.
252.206–7000 Domestic source restriction.
252.208–7000 Intent to furnish precious metals as government-furnished material.
252.209–7000 Acquisition from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
252.209–7001 Disclosure of ownership or control by a foreign government that supports terrorism.
252.210–7000 Brand name or equal.
252.210–7001 Availability of specifications and standards Not listed in DODISS, data item descriptions Not listed in DoD 5010.12–L, and plans, drawings, and other pertinent documents.
252.210–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.
252.210–7003 Acquisition streamlining.

252.210–7004 Alternate preservation, packaging, and packing.
252.210–7005 Bill of materials.
252.211–7000 Termination—commercial items.
252.211–7001 Invoice and payment—commercial items.
252.211–7002 Changes—commercial items.
252.211–7003 Patent and copyright indemnification—commercial items.
252.211–7004 Inspection and acceptance—commercial items.
252.211–7005 Limitation of liability—commercial items.
252.211–7006 Title and risk of loss—commercial items.
252.211–7007 Telegraphic submission of offers—commercial items.
252.211–7008 Facsimile submission of offers—commercial items.
252.211–7009 General solicitation information and definitions—commercial items.
252.211–7010 Price reduction for defective cost or pricing data—contract modifications—commercial items.
252.211–7011 Audit of contract modifications—commercial items.
252.211–7012 Certifications—commercial items—competitive acquisitions.
252.211–7013 New material—commercial items.
252.211–7014 Contract award—commercial items.
252.211–7015 Technical data and computer software—commercial items.
252.211–7016 Technical data and computer software—withholding of payment—commercial items.
252.211–7017 Certification of technical data and computer software conformity—commercial items.
252.211–7018 Late submissions—modifications and withdrawals of offers—commercial items.
252.211–7019 Late submissions—modifications and withdrawal of offers—commercial items (overseas).
252.211–7020 Business type certification—commercial items.
252.211–7021 Clauses to be included in contracts with subcontractors and suppliers—commercial items.
252.215–7000 Pricing adjustments.
252.215–7001 Availability of contractor records.
252.215–7002 Cost estimating system requirements.
252.215–7003 Industrial modernization incentive program.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 13.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., –7000, –7001, –7002. Department or agency supplemental

provisions or clauses use four digit sequential numbers in the 9000 series.

Subpart 252.2—Text of Provisions And Clauses

252.201-7000 Contracting officer's representative.

As prescribed in 201.602–70, use the following clause:

Contracting Officer's Representative (Dec. 1991)

(a) *Definition. Contracting officer's representative* means an individual designated in accordance with subsection 201.602–2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

252.203-7000 Statutory prohibitions on compensation to former Department of Defense employees.

As prescribed in 203.170–4, use the following clause:

Statutory Prohibition on Compensation to Former Department of Defense Employees (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Armed Forces* means the uniformed military services, excluding the U.S. Coast Guard.

(2) *Compensation* means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity, and which has a fair market value in excess of $250. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services performed by the individual.

(3) *Defense contractor* means an entity (including affiliates and subsidiaries which clearly engage in the performance of Department of Defense (DoD) contracts) that contracts directly with the DoD to supply goods or services. "Defense contractor" does not include a State or local government.

(4) *Designated agency ethics official* means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act, as amended.

(5) *Former DoD employee* means a person who served in the DoD in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for grade GS–13 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

(6) *Former DoD official* means—

(i) A former DoD employee who spent the majority of working days during the last two years of DoD service performing a procurement function relating to:

(A) A DoD contract, at a site or plant that was owned or operated by the Contractor, and which was the principal location of such person's performance of that procurement function; or

(B) A major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision making responsibilities with respect to a contract for that system through contact with the Contractor;

(ii) An individual who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and an individual who served in the Armed Forces in the pay grade of 07 or higher, if such individual during the last two years of DoD service—

(A) Acted as one of the primary Government representatives in the negotiation with a defense contractor of a DoD contractual action in an amount in excess of $10 million; or

(B) Acted as one of the primary Government representatives in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10 million. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

(7) *Major defense contractor* means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded DoD contracts in a total amount of $10 million or more.

(8) *Major defense system* means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major defense system if—

(i) The DoD is responsible for the system and the total expenditures (based on fiscal year 1980 constant dollars) for research, development, test and evaluation for the system, are estimated to exceed $75 million or the eventual total expenditure for procurement is estimated to exceed $300 million; or

(ii) The system is designated a major system by the head of the agency responsible for the system.

(9) *Negotiation* means exchanges of positions between representatives of the Government and a contractor with the view of reaching agreement regarding respective liabilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

(10) *Primary Government representative* means, if more than one Government representative is involved in any particular transaction, the official or officials supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

(11) *Procurement-related function* (or *procurement function*) means any function relating to—

(i) The negotiation, award, administration, or approval of a contract;

(ii) The selection of a contractor;

(iii) The approval of a change in a contract;

(iv) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(v) The management of a procurement program.

(b) *Prohibition on compensation.* (1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of $250 to a former DoD official who left DoD service on or after April 16, 1987, and who, while employed by DoD, performed procurement-related functions in connection with that defense contractor. This prohibition runs for the two year period beginning on the date of the official's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for the two year period, any compensation to the former DoD official.

(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion of the DAEO is that the law is not applicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) *Report concerning former DoD employees.* (1) The Contractor shall submit a separate written report, as described in paragraph (c)(2) of this clause, for each calendar year covered by this contract (extending through final payment) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10 million or more. In multidivisional corporations, the corporate headquarters, and each segment which contracts directly with the Government, shall report separately. Each report shall list those persons employed or otherwise compensated, who are former DoD employees who left service on or after April 16, 1987, if—

(i) They were compensated by the Contractor during the reporting period; and

(ii) The compensation was provided within two years after the person left service in the DoD.

(2) The report shall contain:

(i) Each person's name and the agency in which the person was employed or served on active duty during the last two years of service with DoD;

(ii) Each person's job title(s) during the last two years of service with DoD, and a list of

major defense systems on which each person performed any work;

(iii) A complete description (exclusive of proprietary information) of any work that each person is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report. If the work is classified, the Contractor may use a generalized description which will not compromise its classified nature;

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.

(3) Submit each report not later than April 1 of the year following the end of the calendar year for which the report is being made. Send reports to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301-1600.

(4) A properly executed DD Form 1787 (Employment, Report of DoD and Defense Related) may be submitted to satisfy the reporting requirement as to any single person.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract.

(d) *Penalties for failure to comply*—(1) *Civil fines.* A Contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed $500,000.

(2) *Liquidated damages.*

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the Government as liquidated damages the greater of either $100,000, or three times the total amount of compensation paid by the Contractor to the former DoD official during the period in which such compensation was in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) *Administrative penalty.* If the Contractor knowingly fails to file a report in accordance with paragraph (c) of this clause, the Contractor shall be subject to an administrative penalty not to exceed $10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under chapter 7 of title 5, United States Code.

(e) The rights and remedies under this clause are in addition to, and do not limit, any rights afforded the Government under this contract or as otherwise provided by law.

(End of clause)

252.203-7001 Special prohibition on employment.

As prescribed in 203.570-5, use the following clause:

Special Prohibition on Employment (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Arising out of a contract with the DoD* means any act in connection with—

(i) Attempting to obtain,

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) *Conviction of fraud or any other felony* means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) *Date of conviction* means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from:

(1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) Serving on the board of directors of any DoD contractor or first-tier subcontractor; or

(3) Serving as a consultant to any DoD contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and,

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding $25,000.

(End of clause)

252.203-7002 Display of DoD hotline poster.

As prescribed in 203.7002, use the following clause:

Display of DOD Hotline Poster (Dec. 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, Attn: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

252.204-7000 Disclosure of Information.

As prescribed in 204.404-70, use the following clause:

Disclosure of Information (Dec. 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7001 Commercial and Government entity (CAGE) code reporting.

As prescribed in 204.603-70, use the following provision:

Commercial and Government Entity (CAGE) Code Reporting (Dec. 1991)

(a) The Offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter CAGE before the number.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics

Services Center (DLSC). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

252.204-7002 Payment for subline items not separately priced.

As prescribed in 204.7104-1(b)(3)(iv), use the following clause:

Payment for Subline Items not Separately Priced (Dec. 1991)

(a) If the schedule in this contract contains any contract subline items or exhibit subline items identified as not separately priced (NSP), it means that the unit price for that subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for any portion of a contract line item or exhibit line item which contains an NSP until—

(1) The Contractor has delivered the total quantity of all related contract subline items or exhibit subline items; and

(2) The Government has accepted them.

(c) This clause does not apply to technical data.

(End of clause)

252.205-7000 Provision of information to cooperative agreement holders.

As prescribed in 205.470-2, use the following clause:

Provision of Information to Cooperative Agreement Holders (Dec. 1991)

(a) Definition.

Cooperative agreement holder means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.206-7000 Domestic source restriction.

As prescribed at 206.302-3-70, use the following provision:

Domestic Source Restriction (Dec. 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

252.208-7000 Intent to furnish precious metals as Government-furnished material.

As prescribed in 208.7305(a), use the following clause:

Intent To Furnish Precious Metals as Government-Furnished Material (Dec. 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious metal*	Quantity	Deliverable item (NSN and nomenclature)

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

252.209-7000 Acquisition From subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103-70, use the following clause:

Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Dec. 1991)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts over the dollar limitation in section 13.000 of the Federal Acquisition Regulation, except those for commercial or commercial-type products.

(End of clause)

252.209-7001 Disclosure of ownership or control by a foreign government that supports terrorism.

As prescribed in 209.104-70, use the following provision:

Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism (Dec. 1991)

(a) *Definitions.*

(1) *Significant interest,* as used in this provision, means—

(i) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of ten percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(2) *Government,* as used in this provision, includes any agent or instrumentality of that government.

(b) *Disclosure.* The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. If none, leave blank.

Country	Significant interest
(1) Cuba	
(2) Iran	
(3) Iraq	
(4) Libya	
(5) North Korea	
(6) Syria	

(End of provision)

252.210-7000 Brand name or equal.

As prescribed in 210.011-70(a), use the following provision:

Brand Name or Equal (Dec. 1991)

(a) If items in this solicitation are identified as "brand name or equal," the term is intended to be descriptive not restrictive. The "brand name or equal" description is used to portray the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics which "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including products (other than the "brand name" item) of the brand name manufacturer, must—

(1) Meet the salient physical, functional, and other characteristics specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the Offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or securing any information not identified in the offer and reasonably available.

(d) Unless the Offeror clearly indicates in the offer that the product being offered is an "equal" product, the Contracting Officer will consider the offer as offering a brand name product referenced in the solicitation.

(End of provision)

252.210-7001 Availability of specifications and standards Not listed in DODISS, data item descriptions Not listed in DoD 5010.12-L, and plans, drawings, and other pertinent documents.

As prescribed in 210-011(b), use the following provision:

Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DOD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents (Dec. 1991)

Offerors may obtain the specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) _____

(Complete Address) _____

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

252.210-7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed in 210.011(b), use the following provision:

Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents (Dec. 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

_____

(Insert complete address)

(End of provision)

252.210-7003 Acquisition streamlining.

As prescribed in 210.011-70(b), use the following clause.

Acquisition Streamlining (Dec. 1991)

(a) The Government's acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)

252.210-7004 Alternate preservation, packaging, and packing.

As prescribed in 210.011-70(c), use the following provision:

Alternate Preservation, Packaging, and Packing (Dec. 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions;

(x) Packing; and

(xi) Packing gross weight and dimensions; and

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions; and

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

252.210-7005 Bill of materials.

As prescribed in 210.011-70(d), use the following clause:

Bill of Materials (Dec. 1991)

(a) The Contractor shall furnish a Bill of Materials for the supplies designated in the schedule of this contract—

(1) In the required number of copies;

(2) On DD Forms 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property, if applicable; and

(3) In accordance with the instructions in the schedule.

(b) The Contractor shall furnish revised pages of the Bill of Materials—

(1) At intervals designated in the schedule; and

(2) Incorporating the effect of any changes under the "Changes" clause.

(c) The Contractor shall furnish a final revision of the Bill of Materials, or statement that no revision is necessary, at contract completion.

(d) The Bill of Materials and all revisions or statements are subject to inspection and acceptance by the Government.

(End of clause)

252.211-7000 Termination—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Termination—Commercial Items (May 1991)

(a) The Government may terminate all or any part of this contract, at any time and for any reason, by giving written or electronic notice to contractor. The termination notice shall specify whether termination is for the convenience of the Government or default by the contractor and shall specify the effective date and time for such termination. Immediately upon receipt of the termination notice, the contractor shall take all reasonable actions to minimize the costs of the termination, including notifying its subcontractors and suppliers to take all reasonable actions. Upon termination, the contractor shall stop all work on the terminated portion of the contract and shall immediately cause its suppliers or subcontractors to cease such work.

(b) Termination for Convenience of the Government. If this contract is terminated for the convenience of the Government:

(1) The contractor shall submit its final termination settlement proposal within 90 days following receipt of the termination notice, unless extended in writing by the contracting officer upon written request of the contractor within such 90 day period.

(2) The contracting officer shall have the unilateral right to determine the amount payable, if any, under this clause if the contractor fails to submit a timely termination settlement proposal or make a timely written request for extension of the time to submit the proposal as required by paragraph (b)(1) of this clause. The contractor shall have no right of appeal regarding the contracting officer's unilateral determination if the contractor has failed to submit a timely termination settlement proposal and has failed to make a timely request for an extension of the time for proposal submission.

(3) Notwithstanding any other provision of this contract, the Government shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to the termination proposal.

(4) The Government shall pay:

(i) The reasonable, allowable and allocable costs, determined in accordance with FAR part 31, incurred by the contractor, its subcontractors and suppliers prior to the date of termination for completed work that has not previously been paid for; for work in process and materials directly related to the terminated portion of the contract, excluding the cost of any work in process or materials that can be used by, canceled or sold without cost to the contractor, its subcontractors, or suppliers; for orderly phase out of performance if requested by the Government; and, for preparation and settlement of the contractor's, its subcontractor's and supplier's termination claims; and,

(ii) A reasonable profit on the terminated portion of the work.

(5) In no event shall the sum of the termination amounts payable and any amounts paid for items delivered under the contract exceed the total contract price.

(6) The contracting officer shall deduct the amount of any claim which the Government has against the contractor under this contract from any amount due the contractor under this clause.

(7) The Government will make no payment for:

(i) Any undelivered items which are in the contractor's, a subcontractor's or a supplier's standard stock or which are readily marketable;

(ii) Finished goods, work in process or raw materials fabricated or procured by the contractor in excess of the amounts reasonably required for this contract;

(iii) Except as provided in paragraph (b)(4) of this clause, any costs which would not have been charged had the contract not been terminated; or

(iv) Claims by the contractor, its subcontractors or suppliers for any loss of anticipated profit, unabsorbed overhead, facilities rearrangement costs or rental, incident to the termination action.

(v) An amount which exceeds the product of the unit price of the terminated units multiplied by the number of units in process under this contract at the time of termination.

(8) Except for a unilateral determination under paragraph (b)(2) of this clause, if the contracting officer and the contractor fail to agree on the whole amount to be paid because of the termination of work, the contracting officer shall make a final decision regarding the amount payable under paragraphs (b) (4) through (6) of this clause and shall pay the contractor such amount. Notwithstanding the contractor's acceptance of such payment, the contractor shall have the right to appeal the contracting officer's final decision under the Disputes clause of this contract, unless the contractor has no right of appeal as provided in paragraph (b)(2) of this clause.

(9) The contractor shall protect, preserve and store, as necessary, all completed items, work in process and materials paid for by the Government as part of a termination for convenience settlement under this clause, including settlement amounts unilaterally determined by the contracting officer, pending disposition instructions from the contracting officer. The parties shall negotiate an amount for the costs, if any, for such protection, preservation and storage. Failure to agree on an amount shall be a dispute under the disputes clause of this contract.

(c) *Termination for Default.* (1) Except as provided in paragraph (c)(2) of this clause, the Government may terminate this contract or any part thereof, for default if the contractor:

(i) Repudiates or breaches any of the terms of this contract, including the contractor's warranties;

(ii) Fails to deliver items at the times and places required by the contract;

(iii) Fails to deliver items which conform to contractual requirements;

(iv) Fails to make progress so as to endanger timely delivery of items or proper completion of the contract; or,

(v) Fails to provide the Government reasonable assurances of future performance.

(2)(i) Neither party shall be liable for default caused by any occurrence beyond the reasonable control of the party and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

(ii) If the failure to perform is caused by the default of a subcontractor or supplier at any tier, and if the cause of the default is beyond the control of both the contractor and the subcontractor/supplier, and without the fault or negligence of the contractor and its subcontractors and suppliers, the contractor shall not be liable for any excess costs for failure to perform, unless the items were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(3) The Government shall provide the contractor written or electronic notice of its intent to terminate the contract for default and the specific reason therefor. If the contractor does not cure the failure within 10 days following receipt of the notice, or such longer period as may be authorized in writing by the contracting officer, the Government may terminate the contract in whole or in part. The termination shall be by written notice and shall specify the effective date and time of the termination. The contractor shall continue the work not terminated. The Government shall have no liability to the contractor incident to such termination. The contractor shall be liable to the Government for any and all damages including any costs to procure items similar to those terminated which are in excess of the costs for the terminated portion of the contract.

(4) If, after termination, it is determined that the contractor was not in default, or that the default was excusable as provided in paragraph (c)(2) of this clause, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(5) The Government shall pay for any items delivered by the contractor and accepted by the Government for which payment has not been made.

(d) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

252.211-7001 Invoice and payment—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Invoice and Prompt Payment—Commercial Items (May 1991)

(a) *Payments.* (1) Payment shall be made only for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) The Government shall pay for accepted and delivered items no later than the 30th day following receipt of a proper invoice for such items.

(3) The contracting officer, at his or her discretion and notwithstanding any other provision of this contract, may adjust any payment owed to the contractor for accepted items delivered under this contract if the contracting officer determines that previously accepted items, for which payment had been made, did not conform to the requirements of the contract or were not in the quantity or quantities stated on any prior invoice. The amount of the contracting officer's adjustment shall not exceed an amount necessary to assure that the total payments to the contractor under the contract do not exceed the amounts payable for conforming items. If the payment in question is the final payment under the contract, the contractor agrees to promptly refund the amount necessary to correct the discrepancy between the total amount payable for conforming items and the amount actually paid by the Government.

(b) *Interest penalty for late Government payments.* (1) An interest penalty will be paid to the contractor if the Government does not make payment on or before the 30th day following receipt of a proper invoice. Interest shall accrue on a daily basis beginning the 31st day following receipt of a proper invoice and ending on the date payment is made. The date payment is made shall be the date appearing on the payment check or the date an electronic funds transfer is made. The amount of interest shall be computed using the rate of interest established by the Secretary of the Treasury (published in the **Federal Register** semiannually) for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), that is in effect on the day the penalty begins.

(2) The interest penalty shall be applied only to the portion of the invoice amount approved for payment by the Government and shall be compounded in 30 day increments. Interest accrued and not paid during any 30 day period to which the interest penalty applies (the 31st through 60th, 61st through 90th, etc. day periods following receipt of a proper invoice) shall be added to the amount approved for payment and the adjusted amount shall earn interest until payment is made by the Government.

(3) The following periods of time will not be included in the determination of an interest penalty:

(i) The period taken to notify the contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(ii) The period between the defects notice and resubmission of the corrected invoice by the contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at FAR 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at FAR 52.233–1, Disputes.

(4) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(5) A penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(6) For the sole purpose of determining the date upon which entitlement to an interest penalty payment for late payment by the Government begins, the date of receipt of a proper invoice shall be:

(i) If the designated billing office fails to notify the contractor of a defective invoice within the period prescribed in subparagraph (c)(4) of this clause, the date of the corrected invoice shall be adjusted by subtracting from the date of the corrected invoice the number of days taken to provide such notification which are in excess of the number of days prescribed in subparagraph (c)(4); (i.e., 7 day notification period, 10 days taken to notify the contractor, corrected invoice date of July 1, the date of submission of a proper invoice shall be June 28).

(ii) If the Government fails to accept or reject items within a 7 day period following tender for acceptance, the Government shall be considered to have received a proper invoice from the contractor on the 7th day following the date items were tendered for acceptance; provided that such items were properly tendered in accordance with the terms of the contract clause entitled, Inspection and Acceptance—Commercial Items. This constructive receipt of an invoice shall not obligate the Government to accept the items, perform contract administration functions, or make payment for the items.

(7) Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

(c) *Invoices*—(1) Acceptance and delivery at contractor's facility. The contractor may invoice for payment upon the Government's execution of a completed DD Form 250, Material Inspection and Receiving Report, by an authorized Government official or upon receipt of any other documentation authorized in the contract to signify Government acceptance of the items.

(2) Acceptance at contractor's facility, delivery at other sites. The contractor may submit an invoice for items accepted at the contractor's facility that are required to be delivered to another site or sites specified in the contract:

(i) Upon receipt at the other site or sites if the contractor is contractually responsible for physically transporting the items to such sites; or,

(ii) Upon execution of the DD Form 250 or other documentation signifying acceptance of the items at the contractor's facility by an authorized Government official if the Government is responsible for physically transporting the items to such sites.

(3) Delivery to sites other than the contractor's facility for acceptance. The contractor may invoice for items delivered to a site or sites other than the contractor's facility for acceptance at that site or sites upon execution by an authorized Government official of a DD Form 250, or such other documentation as may be authorized in the contract, signifying that the delivered items have been accepted by the Government.

(4) The contractor shall submit an original invoice and three copies to the address designated in the contract to receive invoices. A proper invoice must include:

(i) Name and address of the contractor;

(ii) Invoice date;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any prompt payment discount offered;

(vii) Name and address of official to whom payment is to be sent; and,

(viii) Name, title, phone number of person to be notified in event of defective invoice. If the invoice does not comply with these requirements, the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated office.

(d) *Discounts for Prompt Payment.* (1) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(2) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of Clause)

252.211-7002 Changes—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Changes—Commercial Items (May 1991)

(a) Neither party to this contract may change the contract specifications, without

the written consent of the other. The contractor may submit a proposal for specification changes to the contracting officer, or the Government may request the contractor to submit such a proposal in the format specified by the contracting officer.

(b) *Unilateral Changes.* (1) The contracting officer may make changes at any time, by written order, within the general scope of this contract in the method of shipment, packaging and packing or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, delivery of items ordered under this contract, the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(2) The contractor must assert its right to an equitable adjustment within 30 days, or such other longer period as may be specified by the contracting officer, after receipt of a written change order under paragraph (b)(1) of this clause, by submitting to the contracting officer a proposal containing sufficient, detailed information to permit the contracting officer to negotiate an equitable adjustment to the price and other terms of the contract affected by the change order.

(c) *Bilateral Changes.* Specification changes may be made only within the general scope of this contract and by the written agreement of the parties. The contracting officer and the contractor shall promptly negotiate the scope and equitable adjustment, if any, to the contract price, delivery schedule or both, prior to commencement of work on each change. If the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirement, the contractor agrees to promptly negotiate a maximum price for the change. If the Government decides to proceed with a maximum priced change, the contractor agrees:

(i) To immediately commence work on the change as ordered;

(ii) To submit a proposal for establishing the definitive price for the change no later than the time specified by the contracting officer; and

(iii) That the definitive price for the change shall not exceed the agreed upon maximum price.

(d) If any change under this contract will result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, the contractor shall submit cost and pricing data in support of its proposal and to execute the certificate of current cost and pricing data at FAR 15.804–4 prior to execution of the contract modification establishing the definitive price adjustment, unless the price is exempt from the requirement to submit certified cost or pricing data in accordance with FAR 15.804–3.

(e) Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of Clause)

252.211–7003 Patent and Copyright Indemnification—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Patent and Copyright Indemnification—Commercial Items (May 1991)

The contractor shall indemnify the Government, against all claims and proceedings for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright arising under this contract, and the contractor shall hold the Government harmless from any resulting liabilities and losses, provided the contractor is reasonably notified of such claims and proceedings. The contractor's obligation shall not apply to any infringement arising from the use or sale of the items in combination with items not delivered by the contractor if such infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to the Government.

(End of Clause)

252.211–7004 Inspection and Acceptance—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Inspection and Acceptance—Commercial Items (May 1991)

(a) *Contractor Inspection and Test Responsibilities.* (1) The contractor shall maintain testing, inspection and quality assurance systems sufficient to assure that the items to be furnished under this contract shall conform with all contractual requirements. To the extent practicable, the testing, inspection and quality assurance systems shall be consistent with the contractor's standard commercial practices for such items.

(2) The contractor shall provide the contracting officer 5 working days notice of its intent to tender items for acceptance. If the items are not ready for inspection or test at the time specified by the contractor, the contractor shall reimburse the Government for any costs incurred by the Government as a result of the contractor's failure to have the items available for test and inspection.

(3) The contractor shall tender to the Government for acceptance only items that have been inspected in accordance with the contractor's inspection system and have been found by the contractor to be in conformity with contract requirements.

(4) If inspection or test will be performed at the contractor's facility or at a supplier's or subcontractor's facility, the contractor shall furnish, and shall require the suppliers or subcontractors to furnish, at no change to the price of this contract, all reasonable facilities and assistance for the safe and convenient performance of all inspections and tests.

(b) *Government Inspection and Test.* (1) The Government has the right to inspect and test all items called for by the contract when such items have been tendered for acceptance. Government inspection and/or testing shall be performed as soon as practicable following tender for acceptance. The Government assumes no contractual obligation to perform any inspection or test for the benefit of the contractor unless specifically set forth elsewhere in this contract.

(2) Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or its suppliers' or subcontractors' facilities.

(3) The Government shall not be liable for any reduction in the value of any items, including test samples, resulting from inspection or test.

(c) *Acceptance of Conforming Items.* (1) The Government shall accept conforming items as soon as practicable following tender for acceptance, unless otherwise provided in the contract. Government failure to accept or reject the items shall not relieve the contractor from responsibility, nor impose liability on the Government, for nonconforming items.

(2) Acceptance shall be conclusive, except for patent defects, latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(d) *Rejection, replacement or correction of nonconforming items.* (1) Items are nonconforming when they are defective in material or workmanship, fail to comply with contractual performance requirements or are otherwise not in conformity with contract requirements.

(2) The Government, at its sole election and as promptly as practicable after tender for acceptance, may:

(i) Reject nonconforming items, or a nonconforming lot of items, based upon the acceptance criteria contained in the contract, with or without disposition instructions;

(ii) Require the correction or replacement of nonconforming items;

(iii) Conditionally accept nonconforming items (see paragraph (e) of this clause); or,

(iv) Require an equitable reduction in the price of the contract in lieu of correction or replacement of nonconforming items.

(3) The contracting officer shall promptly notify the contractor of the Government's election regarding the nonconforming items and the contractor shall promptly remove all items rejected or required to be corrected or replaced. The contracting officer may require or permit correction or replacement in place.

(4) The contractor shall replace or correct nonconforming items within 10 days (or such longer period as may be authorized in writing by the contracting officer) following receipt of the contracting officer's notification.

(5) If the contractor fails to promptly remove rejected items that are required to be removed or fails to replace or correct the nonconforming items within 10 days or such other period specified by the contracting officer, the Government may:

(i) Remove, replace, or have the items corrected, either by itself or a third party, and charge the costs of removal, replacement or correction to the contractor; or

(ii) Terminate the contract for default.

(6) All corrections or replacements of nonconforming items shall be accomplished by the contractor at no change to the contract price including, but not limited to, all costs to make such corrected or replaced items ready for inspection, test and acceptance by the Government and all transportation costs from the original place of acceptance to the contractor's facility and return to the original

place or such other place for acceptance as may be permitted by the contracting officer, when those places are not the contractor's facility.

(7) Corrected or replaced items shall be tendered for acceptance at the place stipulated in the contract, or at such other place permitted by the contracting officer, in accordance with a reasonable delivery schedule as may be agreed upon between the contractor and the contracting officer. The contracting officer may require a reduction in contract price if the contractor fails to meet such delivery schedule.

(e) *Acceptance under Special Conditions.* The contracting officer reserves the right to require the contractor to deliver nonconforming items prior to their correction. Such items shall be conditionally accepted by the Government and subsequently re-tendered by the contractor for final acceptance following correction of the nonconformity. The contractor and the contracting officer shall negotiate an amount to be withheld from the price of items conditionally accepted pending their correction. The amount negotiated shall represent equitably the value of such correction and such amount shall be returned to the contractor upon correction of the nonconforming items. The Government shall be responsible for all risks of loss or damage to such items while they are in the Government's possession. Risk of loss shall remain with the Government until the conditionally accepted items are returned to the contractor for correction. The Government shall be responsible for all transportation costs associated with return of the conditionally accepted items to the contractor. The contractor shall be responsible for the correction of the nonconformities identified at the time of conditional acceptance, correction of any other nonconformities prior to final acceptance and for any costs associated with the return of corrected items to the Government. The schedule for such correction and return shall be negotiated between the contractor and the contracting officer.

(End of Clause)

252.211-7005 Limitation of Liability—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Limitation of Liability—Commercial Items (May 1991)

The contractor shall indemnify and hold harmless the Government, its agents, consignees, employees and representatives from and against all expenses, losses, claims, demands, or causes of action of whatever kind; including negligence, breach of express or implied warranty, failure to warn, or strict liability, and from and against all special, indirect, incidental, or consequential damages, including lost profits, of every kind whatsoever arising out of, by reason of, or in any way connected with, accidents, occurrences, injuries or losses to or of any person or property, including the Government or the Government's property, which may occur before or after acceptance of the completed items by the Government, in any way due or resulting from in whole or in part, the design, preparation, manufacture, construction, completion, warning, or failure to warn, delivery or non-delivery of items, including such as are caused by any subcontractor or supplier of the contractor.

The contractor shall pay for or reimburse the Government for all costs and expenses, including attorney's fees, arising out of any suit or claim relating to any risk described in the first paragraph of this clause.

(End of Clause)

252.211-7006 Title and risk of loss—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Title and Risk of Loss—Commercial Items (May 1991)

(a) Title to items furnished under this contract, except for commercial computer software, shall pass to the Government upon final acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title. Title to commercial computer software shall remain with the contractor.

(b) Unless the contract specifically provides otherwise, risk of loss or damage to items shall remain with the contractor until, and shall pass to the Government upon—

(1) Delivery of the items to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the items to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to items that so fail to conform to contract requirements as to give a right of rejection. Except as provided in paragraph (e) of the clause at 252.211-7004, Inspection and Acceptance—Commercial Items, the risk of loss of or damage to such nonconforming items remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

252.211-7007 Telegraphic submission of offers—commercial items.

As prescribed at 211.7004-6(b)(5), insert the following provision:

Telegraphic Submission of Offers—Commercial Items (May 1991)

(a) *Definition.*

Telegraphic offer means an offer, modification of an offer, or withdrawal of an offer that is delivered to the Government by telegram or mailgram; or, if a telex number has been provided in paragraph (g) of this provision, transmitted to the Government by telex.

(b) Telegraphic offers may be submitted in response to this solicitation. Such offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Telegraphic offers shall refer to this solicitation and include the items or sub-items, quantities, unit prices, time and place of delivery, and all representations and other information required by this solicitation. Offers in response to an invitation for bids shall include a statement of agreement with all the terms, conditions, and provisions of the solicitation. Offers in response to a request for proposals shall include a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitations.

(d) Telegraphic offers that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(e) Offerors must submit a complete, signed, original offer in confirmation of their telegraphic offer within five (5) working days from the time specified in the solicitation for receipt of offers. Failure to submit the complete, signed, original offer within the time specified may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(f) The Government shall not be responsible for any deficiencies in telegraphic offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the Government's telex equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(g) The Government's telex number is _____.

(h) The Government shall not be responsible for physical security of a telegraphic offer prior to receipt of the offer.

(End of provision)

252.211-7008 Facsimile submission of offers—commercial items.

As prescribed at 211.7004-6(b)(6), insert the following provision:

Facsimile Submission of Offers—Commercial Items (May 1991)

(a) *Definition.*

Facsimile offer means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Facsimile offers may be submitted in response to this solicitation. Facsimile offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Facsimile offers that fail to furnish required representations or information, or reject any of the terms conditions and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile offers must contain the required signatures. The offeror agrees that its facsimile signature has the same force and effect as a handwritten signature on an original document and fully signifies its intent to contract in accordance with the facsimile offer.

(e) The Government reserves the right, at its sole discretion, to accept an offer and enter into a contract solely on the basis of the facsimile offer. The Government also reserves the right to require the offeror to submit, prior to the Government's acceptance of the offer, an original, signed solicitation cover sheet. The offeror agrees to provide the original, signed, solicitation cover sheet to the contracting officer within 5 working days following the Government's request.

(f) The offeror's failure to sign a facsimile offer or to make timely submission of the original, signed, solicitation cover sheet in accordance with paragraph (e) of this provision may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(g) The Government shall not be responsible for any deficiencies in facsimile offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the receiving electronic equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(h) The Government's facsimile compatibility characteristics are as follows:

(1) Telephone number of receiving equipment: _____

(2) Compatibility characteristics. (e.g., make and model number, receiving speed, communications protocol): _____

(i) The Government shall not be responsible for physical security of a facsimile offer prior to receipt of the offer.

(End of provision)

252.211-7009 General solicitation information and definitions—commercial items.

As prescribed at 211.7004–6(b)(2), insert the following provision:

General Solicitation Information and Definitions—Commercial Items (May 1991)

(a) *General Solicitation Information.* If this solicitation has been made using Standard Form 33 the reference to solicitation provisions at FAR 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids, and FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, means the solicitation provision at 252.211–7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, and reference to the clause at FAR 52.232–8, Discounts for Prompt Payment, means paragraph (d) of the clause at 252.211–7001, Invoice and Payment—Commercial Items.

(b) *Definitions.*

(1) *Contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(2) *Offer* means either *bid* in sealed bidding or *proposal* in other than sealed bidding.

(3) *Solicitation* means an invitation for bids in sealed bidding or a request for proposal in other than sealed bidding.

(End of Provision)

252.211-7010 Price reduction for defective cost or pricing data—contract modifications—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items (May 1991)

(a) This clause is applicable only to contract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, except that it does not apply to any modification for which the price is:

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or,

(3) Set by law or regulation.

(b) If the amount of any price adjustment, either a price increase or decrease, negotiated for any modification to this contract was based upon defective data, because—

(1) The contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) A subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the contractor's Certificate of Current Cost or Pricing Data, or

(3) Any of these parties furnished data that were not accurate, complete and current, the contract price shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective cost or pricing data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)

252.211-7011 Audit of contract modifications—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Audit of Contract Modifications—Commercial Items (May 1991)

(a) If the contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the contracting officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) The contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract. Except that records pertaining to appeals, litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $500,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)

252.211-7012 Certifications—commercial items—competitive acquisitions.

As prescribed at 211.7004–6(a)(2), insert the following provision:

Certifications—Commercial Items—Competitive Acquisitions (May 1991)

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items SHALL NOT BE CONSIDERED FOR AWARD.

(2) If an offer containing the following certifications results in a contract award, the certifications shall form a material part of the contract whether or not physically attached to the contract.

(b) Definitions.

As used in this certification:

(1) *Commercial items* means items regularly used in the course of normal business operations for other than Government purposes which:

(i) Have been sold or licensed to the general public;

(ii) Have not been sold or licensed, but have been offered for sale or license to the general public;

(iii) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(iv) Are described in paragraphs (i), (ii) or (iii) that would require only minor modification in order to meet the requirements of the procuring agency.

(2) "Minor modification" means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

(c) The offeror, (insert name of offeror), hereby certifies that:

(1) The items(s) offered in response to solicitation number _____ (insert solicitation number) is (are):

_____ Commercial item(s) as defined in (b)(1)(i).*

_____ Commercial item(s) as defined in (b)(1)(ii).*

_____ Commercial item(s) as defined in (b)(1)(iii).*

_____ Commercial item(s) as defined in (b)(1)(iv).*

_____ Not a commercial item, but the item(s) offered are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.*

_____ Not a commercial item, but the item(s) offered are minor modifications of items that are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.*

_____ Not a commercial item.*

(2) The commercial item(s) offered in response to this solicitation:

(i) _____ will not be produced using Government production and research property (see FAR 45.301).

(ii) _____ will be produced using the Government production and research property (see FAR 45.301) identified below:

Government production and research property	Use authorized under contract No.	Cognizant contracting officer or contracting activity

(End of Certification)

(d) Failure to complete the certifications required in paragraph (c) of this clause shall render an offer submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal ineligible for award.

(End of Provision)

Alternate I (May 1991)

As prescribed at 211.7003-2(d), substitute the following for paragraph (a)(1) of the basic provision:

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items shall not be considered for award unless the offeror has certified that the item(s) offered in response to this solicitation are or were previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.

252.211-7013 New material—commercial items.

As prescribed at 211.7004-6(a)(2), insert the following provision:

New Material—Commercial Items (May 1991)

The offeror represents that, unless this solicitation specifies otherwise, the items to be furnished under this contract are new and are not of such age or so deteriorated as to impair their usefulness or safety. If the offeror believes that furnishing used or reconditioned items or components thereof will be in the Government's interest, the offeror shall so notify the contracting officer in writing. The offeror's notice shall include the reasons for the request along with a proposal for any consideration to the Government if the contracting officer authorizes the use of used or reconditioned items or components.

(End of Provision)

252.211-7014 Contract award—commercial items.

As prescribed at 211.7004-6(b)(2), insert the following provision:

Contract Award—Commercial Items (May 1991)

(a) The Government will evaluate offers in response to invitations for bid without discussions and will award a contract to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government considering only price and the price related factors specified in the solicitation.

(b) The Government will award a contract resulting from a request for proposals to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors specified in the solicitation, considered. The Government intends to award a contract on the basis of initial offers received in Response to a request for proposals without discussions unless discussions are necessary. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

(c) The Government may:

(1) Reject any or all offers if such action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer or any extension thereof shall result in a binding contract without further action by either party unless the offer was withdrawn:

(i) Prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or,

(ii) Prior to contract award if the offer was submitted in response to a request for proposal.

(End of Provision)

252.211-7015 Technical data and computer software—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Technical Data and Computer Software—Commercial Items (May 1991)

(a) *Definitions.*

The terms *computer software, commercial computer software, computer software documentation, commercial computer software documentation* and *technical data* are used in this clause to establish the conditions under which the contractor shall furnish, and the Government may use, technical data and computer software to be provided under this contract. As used in this clause:

(1) *Computer software* means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listings, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

(2) *Commercial computer software* means software that has been developed at private expense for the commercial marketplace and is not in the public domain. The term "commercial computer software" includes commercial computer software that has been modified or will be modified to satisfy the requirements expressed in the solicitation for this contract.

(3) *Computer software documentation* means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, which explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

(4) *Commercial computer software documentation* means the computer software documentation customarily provided to the public at, or subsequent to, the time the

* **Note:** Check one or more as appropriate. If more than one box is checked identify the items and quantities within each category.

commercial computer software is licensed or provided to the public.

(5) *Technical data* means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer software, financial or administrative data, or cost or pricing data.

(b) Technical Data (other than commercial computer software documentation) and Computer Software (other than commercial computer software).

(1) The Government may use without restrictions and for whatever purpose, technical data and computer software:

(i) Customarily provided to the public without restrictions or that are in the public domain; or,

(ii) Purchased by the Government to document the modifications to the contractor's standard commercial item configuration, its related computer software or related computer software documentation if a modified commercial item is being furnished under this contract.

(2) The Government's use of technical data and computer software purchased under this contract, other than the technical data and computer software described in paragraph (b)(1) of this clause, shall be subject to the following restrictions only:

(i) The Government shall not release or disclose the technical data and computer software to other parties without the contractor's permission except for emergency repair or overhaul of the commercial items furnished under this contract or to contractors or subcontractors who are providing support to the Government for this contract or a related contract, require access to the technical data or computer software to provide such support and who sign a non-disclosure statement; and,

(ii) The Government shall not use the technical data and computer software to manufacture additional quantities of the commercial items to be furnished under this contract or, in the case of computer software, to prepare the same or similar computer software.

(3) The Government, including contractors or subcontractors who are providing support to the Government for this contract or a related contract, may use computer software and related documentation purchased under this contract at any other facility to which the software or related documentation may be transferred; use the software and documentation with a backup computer when a primary computer is inoperative; use the software and documentation at multiple facilities, by multiple users or on a local area network; copy the computer software for safekeeping (archive) or backup purposes; and, modify the software and documentation or combine either with other software and documentation provided that the unmodified portions shall remain subject to these restrictions.

(4) The contractor shall not mark any technical data or computer software that is in the public domain; is available to the public without restrictions on its use; or, has been purchased by the Government under this contract in any manner that would restrict the Government's use, in accordance with this clause, of the technical data or computer software.

(c) *Commercial Computer Software and Commercial Computer Software Documentation.* (1) The contractor shall furnish commercial computer software or commercial computer software documentation to the Government without restrictions on the use of the software or documentation if the commercial computer software or commercial computer software documentation is customarily provided to the public without restrictions or is in the public domain. The Government shall use such commercial computer software or commercial computer software documentation for any purpose.

(2) Commercial computer software or commercial computer software documentation that is customarily provided to the public under a licensing agreement shall be furnished to the Government under the same licensing agreement that is provided by the licensor to the public or, if a specific license has been negotiated for this contract, the commercial computer software or commercial computer software documentation shall be furnished in accordance with the negotiated license. The Government shall use licensed commercial computer software or licensed commercial computer software documentation in accordance with the terms of the license.

(3) The contractor shall not place any markings on the commercial computer software or commercial computer software documentation that restrict the Government's use of such software or documentation except as provided in the license under which the commercial computer software or commercial computer software documentation shall be furnished to the Government.

(End of Clause)

252.211-7016 Technical data and computer software—withholding of payment—commercial items.

As prescribed at 211.7004–1(h)(4), insert the following clause:

Technical Data and Computer Software—Withholding of Payment—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as those terms are defined in the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) If the technical data or computer software to be delivered under this contract are not delivered within the time(s) specified by this contract or are incomplete, inadequate or otherwise not in conformance with contractual requirements, the contracting officer may withhold payment of 10 percent of the contract price (unless a lesser withholding is specified in paragraph (c)) pending correction of the nonconformity(ies) by the contractor. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the contractor's failure to make timely delivery or to deliver technical data or computer software that conform to contractual requirements arises out of causes beyond the control and without the fault or negligence of the contractor.

(c) The withholding percentage in paragraph (b) of this clause shall be _____ percent.

(d) The withholding of any amount, or subsequent payment to the contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.211-7017 Certification of technical data and computer software conformity—commercial items.

As prescribed at 211.7004–1(h)(4), insert the following clause:

Certification of Technical Data and Computer Software Conformity—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as defined in the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) All technical data and computer software delivered under this contract shall be accompanied by the following written certification:

The contractor, (name of contractor), hereby certifies that, to the best of its knowledge and belief, the technical data or computer software delivered herewith under contract number (insert contract number) are complete, accurate, and comply with all requirements of the contract.

Date: _____

Name and Title of Certifying Official: _____

(End of Certification)

This written certification shall be dated. The certifying official (identified by name and title) shall be an individual who has been authorized by the contractor to execute a binding certification on behalf of the contractor.

(c) The contractor shall identify, and provide to the contracting officer as soon as practicable following contract award but in no event later than the time of first data submission and certification, by name and title, each individual (official) authorized by the contractor to certify in writing that the technical data and computer software is complete, accurate, and complies with all requirements of the contract. The contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data and computer software. The authorized individual shall be familiar with the contractor's technical data and computer software conformity procedures and their application to the technical data and computer software to be certified and delivered.

(End of Clause)

252.211-7018 Late submissions—modifications and withdrawals of offers—commercial items.

As prescribed at 211.7004-6(b)(3), insert the following provision:

Late Submissions—Modifications and Withdrawals of Offers—Commercial Items (May 1991)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m., at the place of mailing 2 working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or,

(4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures, is subject to the conditions in subparagraphs (a) (1), (2), and (3) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by U.S. or Canadian Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding the postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the government will be considered at any time it is received and may be accepted.

(h)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received:

(i) Prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or

(ii) At anytime prior to award if the offer was submitted in response to a request for Proposal.

(2) Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and:

(i) For offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or

(ii) For other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of provision)

252.211-7019 Late submissions—modifications and withdrawal of offers—commercial items (Overseas).

As prescribed at 211.7004-6(b)(4), insert the following provision:

Late Submissions—Modifications and Withdrawal of Offers—Commercial Items (Overseas)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received:

(i) prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or

(ii) at anytime prior to award if the offer was submitted in response to a request for proposal.

(2) Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and:

(i) for offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or

(ii) for other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of provision)

252.211-7020 Business type certification—commercial items.

As prescribed at 211.7004-6(a)(3), insert the following provision:

Business Type Certification—Commercial Items (May 1991)

(a) *Definitions:* (1) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(2) *Public or private organization for the handicapped* means one which:

(i) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

(3) *Small business concern,* as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(4) *Small disadvantaged business concern,* as used in this provision, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the U.S. Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. (13 CFR part 124 generally provides that a small disadvantaged business concern is a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the voting stock of which is owned by one or more socially and economically disadvantaged individuals, and (2) whose management and daily business operations are controlled by one or more such individuals.) (See 13 CFR 124.01 through 124.110.)

(5) *Women-owned,* as used in this provision, means a small business that is at least 51 percent owned by a woman or women who is or are U.S. citizens and who also control and operate the business.

(b) *Representations*—(1) *Type of Business Organization.* The offeror represents that—

(i) If the offeror is a U.S. entity, it operates as: _____ a corporation incorporated under the laws of the State of _____; _____ an individual; _____ a partnership; _____ a nonprofit organization; or, _____ a joint venture; or,

(ii) If the offeror is a foreign entity, it operates as: _____ a corporation, registered for business in _____ (country); _____ an individual; _____ a partnership; _____ a nonprofit organization; or, _____ a joint venture.

(2) *Small Business Concern Representation.* The offeror represents and certifies as part of its offer that it _____ is, _____ is not a small business concern and that _____ all, _____ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

Note: Offerors who have represented that they are not small business concerns are not required to complete the representations and certifications in paragraphs (b)(3) through (b)(7) of this clause.

(3) *Small Disadvantaged Business Concern Representation.* (i) The offeror represents and certifies that it _____ is, _____ is not a small disadvantaged business concern.

(ii) The offeror represents that its ownership falls within at least one of the following categories (check the applicable categories):

_____ Subcontinent Asian (Asian-Indian) American (U.S. Citizen with origins from India, Pakistan, Bangladesh, or Sri Lanka);

_____ Asian-Pacific American (U.S. Citizen with origins from Japan, China, The Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan);

_____ Black American (U.S. Citizen);

_____ Hispanic American (U.S. Citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal);

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians);

_____ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or,

_____ Other (The offeror must complete (3)(iii) below if this block is checked).

(iii) Complete only if item (3)(ii) above is checked "Other."

The offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) _____ has, _____ has not made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was _____ and the offeror certifies that it _____ was, _____ was not found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

(4) *Women-Owned Small Business Representation.* The offeror represents and certifies that it _____ is, _____ is not a women-owned small business concern.

(5) *Organization for the Handicapped Representation.* (i) The offeror represents and certifies that it _____ is, _____ is not a public or private organization for the handicapped and agrees that at least 75 percent of the direct labor required in the performance of any resultant contract will be performed by handicapped individuals.

(ii) An offeror certifying in the affirmative in (5)(i) is eligible to participate in any resultant contract as if it were a small business concern.

(6) *Subcontracting Limitation.* The offeror represents and certifies that in performance of the contract it _____ will, _____ will not perform work for at least 50 percent of the cost of manufacturing the items, not including the cost of materials.

(7) Complete only if the offer has certified itself to be a small business in one of the categories of this subparagraph:

Offeror's number of employees for the past 12 months or offeror's average annual gross revenue for the last 3 fiscal years. (Check one of the following.)

No. of employees	Average annual gross revenues
_____ 50 or fewer	_____ $1 million or less.
_____ 51–100	_____ $1,000,001–$2 million.
_____ 101–250	_____ $2,000,001–$3.5 million.
_____ 251–500	_____ $3,500,001–$5 million.
_____ 501–750	_____ $5,000,001–$10 million.
_____ 751–1,000	_____ $10,000,001–$17 million.
_____ Over 1,000	_____ Over $17 million.

(c) *Labor Surplus Area Representation.* (1) Each offeror desiring to be considered as a labor surplus area (LSA) concern 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 50 percent of the contract price. 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:

Name of Company:
Street Address:
City/County:
State:

(2) The offeror's status as a labor surplus area concern may affect:

(i) entitlement to award in case of tie offers; or

(ii) offer evaluation in accordance with the Buy American Act clause, if included in this solicitation.

(3) Failure to list the location(s) of manufacture or production and the percentage(s) of cost to be incurred at each location will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as a LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of a LSA concern.

(End of Certification)

(End of Provision)

252.211-7021 Clauses to be included in contracts with subcontractors and suppliers—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Clauses To Be Included in Contracts With Subcontractors and Suppliers—Commercial Items (May 1991)

(a) *Definitions.*

Subcontractor means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

Suppliers means an entity that produces items to its own specifications, designs, or drawings for sale to others.

(b) The contractor shall not include any FAR or DFARS clause in its contracts with its subcontractors and suppliers or require its subcontractors or suppliers to include FAR or

DFARS clauses in contracts with lower tier subcontractors or suppliers unless the clause is listed in paragraphs (b)(1) through (b)(3) of this clause, is applicable at the lower tier and is included in the prime contract.

(1) *All contracts with subcontractors and suppliers.* The prime contractor shall include the following clauses in all contracts with its subcontractors and suppliers, if the clauses are applicable to such contracts, and shall require its subcontractors and suppliers to include these clauses in lower tier contracts if the clauses are applicable to a particular lower tier contract:

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
FAR 52.222–1 Notice to the Government of Labor Disputes.
FAR 52.222–22 Previous Contracts and Compliance Reports.
FAR 52.222–26 Equal Opportunity.
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
FAR 52.222–36 Affirmative Action for Handicapped Workers.
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.
252.223–7005 Notice of Radioactive Materials.
252.225–7001 Buy American Act and Balance of Payment Program.
252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
252.225–7015 United States Products Certificate (Military Assistance Program).
252.225–7016 United States Products (Military Assistance Program).

(2) *Only contracts with subcontractors.* The prime contractor shall include the following clauses in all contracts with its subcontractors, if the clauses are applicable to such contracts, and shall require its subcontractors to include these clauses in lower tier subcontracts when the clauses are applicable to a particular lower tier contract:

FAR 52.220–4 Labor Surplus Area Subcontracting Program.
FAR 52.222–25 Affirmative Action Compliance.
FAR 52.223–1 Clear Air and Water Certification.
FAR 52.223–2 Clean Air and Water.
FAR 52.225–10 Duty-Free Entry
FAR 52.225–11 Certain Communist Areas.
FAR 52.222–21 Certification of Nonsegregated Facilities.
252.211–7011 Audit of Contract Modifications—Commercial Items.
252.247–7203 Transportation of Supplies by Sea.

(3) *Only contracts with first tier subcontractors.* The prime contractor shall include the following clauses only in its first tier subcontracts if the clauses are applicable to a particular first tier subcontract:

FAR 52.209–6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
FAR 52.215–1 Examination of Records by Comptroller General.
FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.
252.203–7001 Special Prohibition on Employment.
252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(End of Clause)

252.215–7000 Pricing Adjustments.

As prescribed in 215.804–8(1), use the following clause:

Pricing Adjustments (Dec. 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data—Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data—Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

252.215–7001 Availability of contractor records.

As prescribed in 215.804–8(2), use the following clause:

Availability of Contractor Records (Dec. 1991)

(a) Upon request by the Contracting Officer, the Contractor shall make available in a timely manner to the Contracting Officer all records, documents, and other data related to—

(1) The proposed, negotiated, and incurred costs and related profit or fee;

(2) Bills of material; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating, and productivity improvement. Availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause requires the Contractor—

(1) To collect or maintain data not otherwise collected or maintained; or

(2) To maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) The records, documents, and other data shall be available for review until three years after final payment under this contract.

(End of clause)

252.215–7002 Cost estimating system requirements.

As prescribed in 215.811–70(h), use the following clause:

Cost Estimating System Requirements (Dec. 1991)

(a) *Definition.*

Estimating system means the Contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) *General.* (1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be—

(i) Consistent and integrated with the Contractor's related management systems; and

(ii) Subject to applicable financial control systems.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the contractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required; and

(ii) Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) *Estimating system deficiencies.* (1) The Contractor shall respond to a written report from the Government which identifies deficiencies in the Contractor's estimating system as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor's response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

252.215-7003 Industrial modernization incentive program.

As prescribed in 215.870-6, use the following clause:

Industrial Modernization Incentive Program (Dec. 1991)

(a) This clause applies if the Contractor has an Industrial Modernization Incentives Program (IMIP) business agreement which benefits the Government. This agreement may be directly between the Government and the Contractor, or between the Contractor and a lower-tier subcontractor, as long as Government approval has been obtained for the subcontract program.

(b) The Contractor may earn modernization incentives in accordance with the terms of its IMIP business agreement.

(c) The Contractor shall keep records of all modernization incentives earned under each IMIP business agreement.

(d) The Contractor shall include this clause in all subcontracts where the subcontractor is participating in a Government approved IMIP business agreement.

(End of clause)

252.216-7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203-4-70(a), use the following clause:

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Dec. 1991)

(a) *Definitions.*

As used in this clause,

Established price means a price which—

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Meets the criteria of FAR 15.804-3.

Unit price excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor warrants that the unit price stated for (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(4) The Contractor shall certify on each invoice that each unit price stated reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied as required.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may after that time deliver any items which the Contractor certifies, by notice received by the Contracting Officer within ten days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203-4-70(b), use the following clause:

Economic Price Adjustment—Nonstandard Steel Items (Dec. 1991)

(a) *Definitions.*

As used in this clause—

Base labor index means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

Base steel index means the Contractor's established price (see note 6) including all applicable extras of $_____ per _____ (see note 1) for _____ (see note 2) on the date set for bid opening (or the date of submission of the offer).

Current labor index means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

Current steel index means the Contractor's established price (see note 6) for that item, including all applicable extras in effect _____ days (see note 3) prior to the first day of the month in which delivery is required.

Established price is—

(1) A price which—

(i) Is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(ii) Meets the criteria of FAR 15.804-3; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see note 6.)

Labor index means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see note 4) for any particular month.

Month means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of *month.*

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to

reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the *base steel index* definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "*base labor index*" and the "*current labor index*."

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "*base steel index*" and the "*current steel index*."

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to _____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying and certifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the *base labor index* and the *current labor index;* and

(ii) The Contractor's established prices (see note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the *base steel index* and the *current steel index.*

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the certified statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "*Default*," the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes:

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the *labor index* definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the *base steel index* definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no *established price* or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208-70(a), use the following clause:

Exercise of Option To Fulfill Foreign Military Sales Commitments (Dec. 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

_____

(Insert name of country, or To Be Determined)

_____

(Insert applicable CLIN)

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.208-70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

252.217-7001 Surge option.

As prescribed in 217.208-70(b), use the following clause:

Surge Option (Dec. 1991)

(a) *General.* The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than _____ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) *Schedule.* (1) When the Production Surge Plan (DI-P-1634A) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option.* (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation.* (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

252.217-7002 Offering property for exchange.

As prescribed in 217.7005, use the following provision:

Offering Property for Exchange (Dec. 1991)

(a) The property described in item number _____, is being offered in accordance with the exchange provisions of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(b) The property is located at (insert address). Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day).

(End of provision)

252.217-7003 Changes.

As prescribed in 217.7104(a), use the following clause:

Changes (Dec. 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

(1) Drawings, designs, plans, and specifications;

(2) Work itemized;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7004 Job orders and compensation.

As prescribed in 217.7104(a), use the following clause:

Job Orders and Compensation (Dec. 1991)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders in accordance with FAR Part 14 or 15, as applicable. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217-7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

Inspection and Manner of Doing Work (Dec. 1991)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

252.217-7006 Title.

As prescribed in 217.7104(a), use the following clause:

Title (Dec. 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

252.217-7007 Payments.

As prescribed in 217.7104(a), use the following clause:

Payments (Dec. 1991)

(a) *Progress payments*, as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217-7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

Bonds (Dec. 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the Contracting Officer may require the

Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217-7009 Default.

As prescribed in 217.7104(a), use the following clause:

Default (Dec. 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7010 Performance.

As prescribed in 217.7104(a), use the following clause:

Performance (Dec. 1991)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order,—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217-7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

Access to Vessel (Dec. 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217-7012 Liability and insurance.

As prescribed in 217.7104(a), use the following clause:

Liability and Insurance (Dec. 1991)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that 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 operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event or loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

252.217-7013 Guarantees.

As prescribed in 217.7104(a), use the following clause:

Guarantees (Dec. 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217-7014 Discharge of liens.

As prescribed in 217.7104(a), use the following clause:

Discharge of Liens (Dec. 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

(b) If any lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217-7015 Safety and health.

As prescribed in 217.7104(a), use the following clause:

Safety and Health (Dec. 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217-7016 Plant protection.

As prescribed in 217.7104(a), use the following clause:

Plant Protection (Dec. 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217-7017 Time of delivery.

As prescribed in 217.7203(a)(1), use the following clause:

Time of Delivery (Dec. 1991)

(a) Ordering offices shall specify delivery locations and quantities in all oral or written delivery orders under this contract.

(b) The Contractor shall complete deliveries within the hours prescribed in the schedule of this contract and on the days specified by the order.

(c) Orders requiring delivery within 24 hours from Contractor receipt are governed by paragraph (e) of the Requirements clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(a)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Contractor shall not be required to deliver within less than _____ hours from the time the Contractor receives a delivery order.

252.217-7018 Change in plant location—bakery and dairy products.

As prescribed in 217.7203(a)(2), use the following clause:

Change in Plant Location—Bakery and Dairy Products (Dec. 1991)

(a) The Offeror shall identify in the clause in this solicitation entitled Place of Performance, all plants to be used for manufacturing, processing, and shipment. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror shall not change any place of performance between the date set for receipt of offers and the award, except where time permits and then only after receipt of the Contracting Officer's written approval.

(c) The Contractor shall not change any place of performance after contract award without advance approval by the Contracting Officer.

(End of clause)

252.217-7019 Sanitary conditions.

As prescribed in 217.7203(a)(3), use the following clause:

Sanitary Conditions (Dec. 1991)

(a) The Contractor shall ensure that all supplies delivered under this contract, and all plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of these supplies, meet the sanitary standards (including bacteriological requirements) prescribed by the specifications cited in this contract.

(b) The Government reserves the right to inspect and test at any reasonable times all plant facilities, machinery, equipment, and parts used in the production, processing, handling, storage, transportation, or delivery of supplies under this contract.

(c) The Contracting Officer or representative shall notify the Contractor in writing of any failure to meet the sanitary standards (including bacteriological requirements) prescribed by this contract. If the Contractor does not correct the failure within three days from receipt of notice, the Contracting Officer may—

(1) Terminate for default all or part of this contract; or

(2) Suspend work (wholly or partially) under the contract for ten days or any longer period considered necessary to allow correction of the failure.

(d) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(e) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on

whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(f) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(a)(3), add the following to paragraph (d) of the basic clause: In a suspension, the quantity of supplies designated in the schedule as a minimum shall be reduced by an amount proportionate to the ratio between (1) the number of days the work is suspended; and (2) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217-7020 Examination and testing.

As prescribed in 217.7203(b)(1), use the following clause:

Examination and Testing (Dec. 1991)

(a) The Government reserves the right to examine and test all products to be delivered under the contract. Examination and testing of dairy products shall be in accordance with the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR 40–70; NAVSUPINST 4355.6; AFR 161–46; and MCO 10110.44).

(b) Samples. (1) The Government shall select the samples. For purposes of this clause, the Contractor agrees that a lot consists of a day's production of the type of product delivered, or intended to be delivered, under this contract.

(2) Samples selected at origin shall be furnished at the Contractor's expense, and shall be considered representative of all the products delivered to the Government from the lot sampled.

(3) Samples selected at destination shall be furnished at Government expense, and shall be considered representative of all of that type product delivered to the Government on the date sampled.

(4) When samples are selected from containers of 1/2 gallon size or smaller, the entire contents of the container shall constitute the sample. When samples are selected from containers larger than 1/2 gallon, a 1/2 pint sample shall be taken for laboratory analysis.

(c) Deficiencies in amounts. The Contractor shall reimburse the Government for deficiencies (i.e., amounts less than required in this contract) in the amount of butterfat, milk solids non-fat, or total solids of any type of product as determined by chemical analysis. The amount of the reimbursement shall be determined in accordance with the Deficiency Adjustment clause of this contract. The Government shall not reimburse the Contractor for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(d) Deficiencies in products. (1) The Contracting Officer or representative shall notify the Contractor orally (with written confirmation) or in writing when two of the last four consecutive lots tested are nonconforming for the same specification requirements. The notice shall be in effect as long as two of the last four consecutive lots tested exceed the same limit of the specification. The Government will take additional samples between 3 and 14 days after the date of the notice.

(2) The Contracting Officer may suspend work under this contract for up to ten days when three out of the last five consecutive lots tested are nonconforming for the same specification requirement, or when any deficiency causes the production of a product which is considered to be a health hazard.

(e) Suspension. (1) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(2) The Contractor shall use the suspension period to correct the deficiencies. The Contractor shall notify the Government when corrective action is complete.

(3) The Contracting Officer shall lift the suspension only after the Government has verified the corrective action and notified the Contractor in writing.

(4) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(5) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(b)(1), add the following to paragraph (d)(2) of the basic clause:

In a suspension, the quantity of supplies designated in the schedule as minimum shall be reduced by an amount proportionate to the ratio between (i) the number of days the work is suspended; and (ii) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217-7021 Deficiency adjustment.

As prescribed in 217.7203(b)(2), use the following clause:

Deficiency Adjustment (Dec. 1991)

(a) When the Contractor is required under the Examination and Testing clause of the contract to reimburse the Government for deficiencies in the amount of butterfat, milk solids non-fat, or total solids, reimbursement shall be determined by the following formula—

(1) *Butterfat.* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value. The butterfat value is 1.30 multiplied by the average Central States top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Dairy Market News, published by the Department of Agriculture, Agricultural Marketing Service, Madison, Wisconsin.

(2) *Milk solids nonfat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value. The milk solids non-fat value is 1.45 multiplied by the average Central States top price for "Extra Grade, Non-fat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the Dairy Market News.

(3) *Total solids.* Add to the total solids delivered the total amount of any shortages for butterfat and milk solids non-fat that the Contractor has already reimbursed. Subtract this amount from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(b) The Government will not assess amounts totaling $25 or less during a monthly accounting period. Monthly periods begin on the first day of the contract period and on the same day of each succeeding month.

(c) The butterfat, milk solids non-fat, and total solids content of one type of product shall not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period.

(d) The Contractor shall identify the tare weights of all containers on the shipping documents, and furnish a copy to the Government inspector at destination. The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container.

(e) The Government shall inspect a representative sample of the line item. If volume and net weight shortages are found, the Government will adjust the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following weight factors apply:

Product	Weight factor
Chocolate flavored milk or drink.	8.8 pounds/gallon.
Milk whole fresh, buttermilk fluid, milk whole fresh, cultured, and milk skim fresh.	8.6 pounds/gallon.
Fresh cream (18 percent butterfat or less), half-and-half fresh, and cream sour cultured.	8.5 pounds/gallon.

Product	Weight factor
Fresh cream (more than 18 percent butterfat).	8.4 pounds/gallon.
Cottage cheese, butter, and other non-frozen products.	Weight on container.
Ice cream and frozen desserts.	Applicable commodity specification.

(f) Contractor reimbursement for deficient supplies does not prejudice the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217-7022 Code dating.

As prescribed in 217.7203(a)(4), use the following clause:

Code Dating (Dec. 1991)

(a) The Contractor may use a code to comply with the requirement stated in the schedule or specifications of this contract for showing a date on the labels of delivered items.

(b) Before using a code, the Contractor shall—

(1) Provide a written explanation to the Contracting Officer; and

(2) Obtain the Contracting Officer's approval in writing.

(c) The Contractor shall also obtain the Contracting Officer's written approval before making any changes in the code symbols, system, or explanation.

(End of clause)

252.217-7023 Marking.

As prescribed in 217.7203(a)(5), use the following clause:

Marking (Dec. 1991)

Commercial markings are acceptable, notwithstanding any specification references to MIL-STD-129.

(End of clause)

252.217-7024 Responsibility for containers and equipment.

As prescribed in 217.7203(a)(6), use the following clause:

Responsibility for Containers and Equipment (Dec. 1991)

(a) The Contractor shall—

(1) Maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order; and

(2) Remove all empty, reusable containers from Government premises at the time of each delivery, unless the Contracting Officer grants permission in writing for less frequent removal.

(b) The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217-7025 Containers and equipment.

As prescribed in 217.7203(b)(3), use the following clause:

Containers and Equipment (Dec. 1991)

(a) The Contractor shall ensure that dispenser containers and filling equipment used in the performance of this contract, and any Contractor-furnished refrigerated bulk milk dispenser cabinets, comply with MIL-STD-175, Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations.

(b) The Contractor shall install, service, and maintain any Contractor-furnished bulk milk dispenser cabinets to the Contracting Officer's satisfaction. The Contractor has sole responsibility for the supply, installation, maintenance, and removal of the cabinets, including labor and material costs, and for any damage to, or loss or destruction of, such cabinets.

(c) When the Contractor fails to furnish milk dispenser cabinets or milk dispenser containers as required in the schedule, or does not properly service, maintain, and repair such dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall, for as long as such conditions exist, deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers. The price per gallon for milk dispenser containers shall apply.

(d) When any loss of contents of a dispenser container occurs (including loss due to contamination, spoilage, or leakage) as a result of functional failure of the dispenser cabinet or dispenser containers, the Contractor shall immediately replace the lost contents without cost to the Government, unless such functional failure was due to a general power failure at the Government installation.

(End of clause)

252.217-7026 Identification of sources of supply.

As prescribed in 217.7303, use the following provision:

Identification of Sources of Supply (Dec. 1991)

(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

Line items	National stock No.	Commercial item (Y or N)	Source of supply			Actual mfg?
			Company	Address	Part No.	
(1)	(2)	(3)	(4)	(4)	(5)	(6)

(1) List each deliverable item of supply and item of technical data.
(2) If there is no national stock number, list "none."
(3) Use "Y" if the item is a commercial item sold in substantial quantities to the general public and was priced in the offer using established catalog or market price; otherwise, use "N". If "Y" is listed, the Offeror need not complete the remaining columns in the table.
(4) For items of supply, list all sources. For technical data, list the source.
(5) For items of supply, list each source's part number for the item.
(6) Use "Y" if the source of supply is the actual manufacturer; "N" if it is not; and "U" if unknown.

(End of clause)

252.217-7027 Price ceiling.

As prescribed in 217.7405, use the following clause:

Price Ceiling (Dec. 1991)

The definitive contract resulting from this undefinitized action shall not exceed (_____).

(End of clause)

252.217-7028 Over and above work.

As prescribed in 217.7702, use a clause substantially as follows:

Over and Above Work (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Over and above work* means work discovered during the course of performing overhaul, maintenance, and repair efforts that is—

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) *Work request* means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the

Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall—

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

252.219-7000 Small disadvantaged business concern representation (DoD contracts).

As prescribed in 219.304(b), use the following provision:

Small Disadvantaged Business Concern Representation (DoD Contracts) (Dec. 1991)

(a) *Definition. Small disadvantaged business concern,* as used in this provision, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. In general, 13 CFR part 124 describes a small disadvantaged business concern as a small business concern—

(1) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or

(2) In the case of any publicly owned business, at least 51 percent of the voting stock is unconditionally owned by one or more socially and economically disadvantaged individuals; and

(3) Whose management and daily business operations are controlled by one or more such individuals.

(b) *Representations.* Check the category in which your ownership falls—

_____Subcontinent Asian (Asian-Indian) American (U.S. citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal)

_____Asian-Pacific American (U.S. citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia)

_____Black American (U.S. citizen)

_____Hispanic American (U.S. citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain, or Portugal)

_____Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians, including Indian tribes or Native Hawaiian organizations)

_____Individual/concern, other than one of the preceding, currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act

_____Other

(c) *Certifications.* Complete the following—

(1) The offeror is ____ is not ____ a small disadvantaged business concern.

(2) The Small Business Administration (SBA) has ____ has not ____ made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made a determination, the date of the determination was ____ and the offeror—

_____Was found by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination.

_____Was found by SBA not to be socially and economically disadvantaged but circumstances which caused the determination have changed.

(d) *Notification.* Notify the Contracting Officer before contract award if your status as a small disadvantaged business concern changes.

(e) *Penalties and Remedies.* Anyone who misrepresents the status of a concern as a small disadvantaged business for the purpose of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under authority of the Small Business Act.

(End of provision)

252.219-7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

As prescribed in 219.508(d), use the following clause:

Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns (Dec. 1991)

(a) *Definitions.*

Labor surplus area, as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that, together with its first tier subcontractors, will perform substantially in labor surplus areas.

Perform substantially in labor surplus areas, as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *General.* A portion of this requirement, identified elsewhere in this solicitation, has been set-aside for award to one or more small business concerns. After offers for the non-set-aside portion have been evaluated, negotiations will be conducted for the set-aside portion.

(1) Offers on the non-set-aside portion will be evaluated and award made in accordance with the other provisions of this solicitation.

(2) The set-aside portion will be negotiated, in accordance with this clause, with small business concerns which submitted offers on the non-set-aside portion.

(c) *Award of the set-aside portion.* (1) Small business offerors on the non-set-aside portion will be selected for negotiation of the set-aside portion based on their standing—first in terms of group and then in terms of lowest responsive offer on the non-set-aside portion.

(i) Group 1—Small disadvantaged business concerns which are also labor surplus area concerns.

(ii) Group 2—Small business concerns which are also labor surplus area concerns.

(iii) Group 3—Other small disadvantaged business concerns.

(iv) Group 4—Other small business concerns.

(2) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s), except—

(i) Award of the set-aside portion to a small disadvantaged business concern will be at the lower of—

(A) The price offered by the concern on the non-set-aside portion; or

(B) A price that does not exceed the award price on the non-set-aside portion by more than ten percent.

(ii) When award under the set-aside portion is to a concern offering a nonqualifying country end product and the highest unit price in the contract(s) is for a domestic or qualifying country end product, the set-aside price will be the higher of—

(A) The highest award price for a nonqualifying country end product under the nonset-aside; or

(B) A price which, when adjusted by the Buy American Act evaluation factor, would equal the highest unit price in the contract(s).

(iii) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated using the Buy American Act evaluation factor, the set-aside price will be awarded at the evaluated price of the non-qualifying country.

(iv) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated without the Buy American Act factor—

(A) And award was made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the highest unit price in the contract(s).

(B) And award was not made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the lower of—

(*1*) The highest unit price under the contract(s) as adjusted by the Buy American Act evaluation factor; or

(*2*) The lowest offered price for a domestic or qualifying country end product which was not awarded under the nonset-aside.

(v) Where the Trade Agreements Act applies to the nonset-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(vi) Discount terms used in evaluation of the highest non-set-aside award price will apply to the set-aside award price.

(3) If negotiations are not successful for any part of the set-aside portion, the set-aside will be dissolved for that part and the requirement will be resolicited.

(d) *Token offers.* The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(e) *Eligibility for preference as a labor surplus area concern.* Small business or small disadvantaged business offerors which claim preference for the set-aside portion as a labor surplus area concern, must list the labor surplus area location(s) of offeror or first tier subcontractors, which account for more than 50 percent of the contract price.

Name of Company:
Street Address:
City/County:
State:

(f) *Agreements.*

(1) If awarded a contract as a small disadvantaged business-labor surplus area concern or as a small business-labor surplus area concern, the offeror—

(i) Will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas.

(ii) If the contract is in excess of $25,000, will submit a report to the Contracting Officer within 30 days after award that contains the following information—

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract and subcontract performance is taking or will take place.

(C) The total costs incurred and to be incurred under the contract in each of the labor surplus areas by the contractor and first tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.219-7002 Notice of small disadvantaged business set-aside.

As prescribed in 219.508-70, use the following clause:

Notice of Small Disadvantaged Business Set-Aside (Dec. 1991)

(a) *Definition. Small disadvantaged business concern,* as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *General.* Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged businesses are nonresponsive and will be rejected.

(c) *Agreement.* A small disadvantaged business manufacturer or regular dealer, which submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.508-70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.219-7003 Small business and small disadvantaged business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A), use the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (Dec. 1991)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR § 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) Except for company or division-wide commercial products subcontracting plans, the term *small disadvantaged business,* when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Public Law 101-189.

(d) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the contractor's cognizant contract administration activity.

(End of clause)

252.219-7004 Small business and small disadvantaged business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program) (Dec. 1991)

(a) *Definition. Subcontract,* as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Public Law 101-189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Public Law 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except (1) Items 17 and 18 shall not be completed; (2) Item 16, Remarks, shall be completed to include small business and small disadvantaged business goals, actual accomplishments, and percentages and small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

252.219-7005 Incentive for subcontracting with small businesses, small disadvantaged businesses, historically black colleges and universities, and minority institutions.

As prescribed in 219.708(c)(1), use the following clause:

Incentive for Subcontracting With Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions (Dec. 1991)

(a) If the Contractor exceeds the small disadvantaged business, historically black college and university, minority institution goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

(b) The Contractor will not receive this incentive if the Contracting Officer determines that exceeding the goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun or award of subcontracts planned but not disclosed in the subcontracting plan). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost contract, the limitations in FAR Subpart 15.9 may not be exceeded.

(d) This clause does not apply if the subcontracting plan is a plant, division, or company-wide commercial products plan.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.708(c)(1), add the following paragraph (b) to the basic clause and renumber the existing paragraphs (b), (c), and (d) as (c), (d), and (e).

(b) If the Contractor exceeds the small business goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

252.219-7006 Notice of evaluation preference for small disadvantaged business concerns.

As prescribed in 219.7003, use the following clause:

Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Dec. 1991)

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of—

(A) Eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225-7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference

(d) *Agreements.* (1) A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern.

(ii) Supplies, at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(3) Upon request, a historically black college or university or minority institution offeror will provide the Contracting Officer evidence that it has been determined to be an HBCU or MI by the Secretary of Education.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns, historically black colleges or universities, or minority institutions in the United States, its territories and possessions,

the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.222-7000 Restrictions on employment of personnel.

As prescribed in 222.7003, use the following clause:

Restrictions on Employment of Personnel (Dec. 1991)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (insert appropriate State), individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

252.223-7000 Hazardous material identification and material safety data.

As prescribed in 223.303, use the following clause:

Hazardous Material Identification and Material Safety Data (Dec. 1991)

(a) *Hazardous material,* as used in this clause, means—

(1) All items contained in or ordinarily cataloged under the Federal supply classes listed in table I of appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of this contract);

(2) Items identified as having hazardous characteristics in the Federal supply classes listed in table II of appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of this contract); and,

(3) Any other items to be delivered under this contract which will contain hazardous materials or expose Government personnel to those materials.

(b) The Offeror agrees that, if it is the apparently successful offeror as a result of this solicitation, it will submit before award a material safety data sheet (MSDS) meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 for all hazardous materials which it proposes to supply under the contract.

(c) If none of the items the Offeror proposes to supply under the contract are hazardous materials, the offeror must complete the following certification:

_____ The Offeror certifies that the material to be delivered under the contract is not a hazardous material as defined in paragraph (a) of this clause.

(d) Failure either to certify the items as not hazardous or to furnish the required MSDSs prior to award will result in the Offeror's being considered nonresponsible and ineligible for award.

(e) The Contractor agrees to notify the Contracting Officer promptly and to submit correct data on a new MSDS if—

(1) The composition of the items to be supplied under the contract changes after award of the contract and renders either the hazardous material data furnished in accordance with paragraph (b) of this clause or the certification furnished in accordance with paragraph (c) incomplete or inaccurate; or

(2) A revision to Federal Standard No. 313 after award of the contract renders either the hazardous material data furnished in accordance with paragraph (b) of this clause or the certification furnished in accordance with paragraph (c) incomplete or inaccurate.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing in this clause shall relieve the Contractor from complying with applicable Federal, State, or local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) Notwithstanding any other clause in this contract, the Government's rights in data furnished under this contract on the MSDSs with respect to hazardous material are—

(1) To use, duplicate, and disclose any data to which this clause applies for the purposes of—

(i) Notifying personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtaining effective medical treatment for those affected by the material; and

(iii) Enabling others to use, duplicate, and disclose the data for these purposes on behalf of the Government.

(2) To ensure that the Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

252.223-7001 Hazard warning labels.

As prescribed in 223.303, use the following clause:

Hazard Warning Labels (Dec. 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (if none, insert "none.")	Act
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223-7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370-5, use the following clause:

Safety Precautions for Ammunition and Explosives (Dec. 1991)

(a) *Definition. "Ammunition and explosives,"* as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Powdered metals; or

(v) Other materials having fire or explosive characteristics.

(b) *Safety requirements.* (1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26-M hereafter referred to as "the manual", in effect on the date of this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow

authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.* (1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.* (1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

(i) The Contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.* (1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.* (1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **Note:** The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to "the Government". The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance—Ammunition and Explosives".

(End of clause)

252.223-7003 Change in place of performance—ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

Change in Place of Performance—Ammunition and Explosives (Dec. 1991)

(a) The Offeror shall identify, in the "Place of Performance" provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223-7004 Notice of radioactive materials.

As prescribed in 223.371–3, use the following clause and insert the number of days in paragraph (a).

Notice of Radioactive Materials (Dec. 1991)

(a) *Contractor notification.* The Contractor shall notify the Contracting Officer in writing (_____) days before the delivery of items containing—

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in title 10 CFR, in effect on the date of this contract; or

(2) Other radioactive material not requiring specific licensing, but in which—

(i) The specific activity is greater than 0.002 microcurie(s) per gram; or

(ii) The activity per item equals or exceeds 0.01 microcuries.

(b) *Content of the Notice.* The Contractor's notice shall specify—

(1) The part or parts of the item(s) which contain radioactive materials;

(2) A description of the materials;

(3) The name and activity of the isotope;

(4) The manufacturer of the materials; and

(5) Any other information known to the Contractor which will put users of the items on notice of the hazards involved.

(c) *Waiver of Notice.* The Contractor may request the Contracting Officer to waive the notice requirement in paragraph (a) of this clause if there has been no change affecting the quantity of activity or the characteristics and composition of the radioactive material from previous deliveries under this contract or prior contracts. The request shall—

(1) Be submitted in writing;

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed;

(3) Cite the contract number on which the Contractor submitted the prior notification; and

(4) Cite the contracting office to which the Contractor submitted the prior notification.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in all subcontracts for items containing radioactive

material meeting the criteria in paragraph (a) of this clause.

(End of clause)

252.223-7005 Drug-Free work force.

As prescribed in 223.570-4, use the following clause:

Drug-Free Work Force (Sep. 1988)

(a) Definitions. (1) *Employee in a sensitive position,* as used in this clause, means an employe who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) *Illegal drugs,* as used in this clause, means controlled substances included in schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term *illegal drugs* does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with State or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

252.225-7000 Buy American Act—balance of payments program certificate.

As prescribed in 225.109(a), use the following provision:

Buy American Act—Balance of Payments Program Certificate (Dec. 1991)

(a) *Definitions. Domestic end product, qualifying country, qualifying country end product,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except those listed in paragraphs (c) (2) or (3) of this clause, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products:

QUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are nonqualifying country end products:

NONQUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin (If known)

(End of provision)

252.225-7001 Buy American Act and balance of payments program.

As prescribed in 225.109(d), use the following clause:

Buy American Act and Balance of Payments Program (Dec. 1991)

(a) *Definitions.* (1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense FAR Supplement.

(3) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(4) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (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).

(5) *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). Consider a component 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 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) Which the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(6) *Nonqualifying country end product* means an end product which is neither a domestic end product nor a qualifying country end product.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the

components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

252.225–7002 Qualifying country sources as subcontractors.

As prescribed in 225.109–70(a), use the following clause:

Qualifying Country Sources as Subcontractors (Dec. 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.109–70(b), use the following provision:

Information for Duty-Free Entry Evaluation (Dec. 1991)

(a) Is the offer based on furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this solicitation?

Yes ( )
No ( )

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes ( )
No ( )

(2) Has the duty on such foreign supplies been paid?

Yes ( )
No ( )

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? $_____

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(d) Offers will be evaluated on a duty included basis except to the extent that—

(1) The supplies are qualifying country end products as defined in either the Buy American Act and Balance of Payments Program or in the Buy American Act, Trade Agreements Act, and Balance of Payments Program clause of this solicitation; or

(2) The duty-free price is specified for use in the evaluation procedure.

(End of provision)

252.225–7004 Nondomestic construction materials.

As prescribed in 225.205–70, use the following clause:

Nondomestic Construction Materials (Dec. 1991)

The requirements of the Buy American Act clause of this contract do not apply to the following items:

_____

_____

(End of clause)

252.225–7005 Identification of expenditures in the United States.

As prescribed in 225.305–70, use the following clause:

Identification of Expenditures in the United States (Dec. 1991)

(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 United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment.

(2) Should be based on reasonable estimates.

(3) Shall consist of stating the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (a) (1), (2), and (3).

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under paragraphs (a)(3) (i), (ii), and (iii) will be limited to payments made pursuant to the requirements either of the United States Products and Services clause, if any, or of any other specific provision of this contract that obligates the Contractor to acquire certain materials, equipment, transportation, or services from U.S. sources.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225–7006 Buy American Act—Trade Agreements Act—balance of payments program certificate.

As prescribed in 225.407(a)(1), use the following provision:

Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate (Dec. 1991)

(a) *Definitions. Caribbean Basin country end product, designated country end product, domestic end product, nondesignated country end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the Trade Agreements Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products, and Caribbean Basin country end products over other end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Trade Agreements Act clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as *U.S. made end products* but do not meet the definition of *domestic end product:*

_____

(insert line item number)

(ii) The Offeror certifies that the following supplies are qualifying country end products:

_____

(insert line item number)

_____

(insert country of origin)

(iii) The Offeror certifies that the following supplies qualify as designated country end products:

_____

(insert line item number)

_____

(insert country of origin)

(iv) The Offeror certifies that the following supplies qualify as Caribbean Basin country end products:

_____

(insert line item number)

(insert country of origin)

(v) The Offeror certifies that the following supplies are other nondesignated country end products.

(insert line item number)

(insert country of origin)

(End of provision)

252.225-7007 Trade Agreements Act.

As prescribed in 225.407(a)(2), use the following clause:

Trade Agreements Act (Dec. 1991)

(a) *Definitions.*

(1) *Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the FAR); or

(B) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(ii) Excludes products that are excluded from the duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers;

(D) Petroleum, or any product derived from petroleum; and

(E) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country to which TSUS column 2 rates of duty apply.

(2) *Components, domestic end product, end product, nonqualifying country, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(3) *Designated country* means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed in section 25.401 of the Federal Acquisition Regulation (FAR).

(4) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(5) *Nondesignated country end product* means any end product which is not a U.S. made end product or a designated country end product.

(6) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(7) *U.S. made end product* means an article which is—

(i) Wholly the growth, product or manufacture of the United States, or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), and the Caribbean Basin Initiative as provided for in Executive Order 12260 by providing a preference for U.S. made end products and designated country end products over nondesignated country end products, except nondesignated country end products which are qualifying country end products or Caribbean Basin end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, designated country, or nondesignated country end products in the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate provision.

(1) Offerors may not supply a nondesignated country end product unless it is a qualifying country end product or a Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(2) An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed and certified under paragraphs (c)(2) (i) and (v) of the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, should not include custom fees or duty.

(End of clause)

252.225-7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605-70(a), use the following clause:

Supplies To Be Accorded Duty-Free Entry (Dec. 1991)

In accordance with paragraph (a) of the Duty-Free Entry clause and/or paragraph (b) of the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this contract, the following supplies are accorded duty-free entry:

(End of clause)

252.225-7009 Duty-free entry—qualifying country end products and supplies.

As prescribed in 225.605-70(b), use the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Dec. 1991)

(a) *Definitions.*

Qualifying country and *qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Supplies (including without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract.

(d) The Contractor warrants that—

(1) All 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

(2) The Contractor will pay duty 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.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the

notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to section XXII, chapter 98, subchapter VIII, item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, attn: Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Management Area Operations (DCMAO) New York, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Preparation of customs forms.* (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or 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;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry 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. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of foreign supplies as follows: I certify that all 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 (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;

(11) The qualifying country; and

(12) The scheduled delivery date(s).

(j) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The qualifying country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including 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. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts.

(End of clause)

252.225–7010 Duty-free entry—additional provisions.

As prescribed in 225.605–70(c), use the following clause:

Duty-free Entry—Additional Provisions (Dec. 1991)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract.

Both of these clauses apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract with a domestic concern.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. Furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number plus delivery order number, if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of foreign supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are 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 (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) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (i) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management Area Operations (DCMAO) New York, attn: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. When the shipment will be consigned to a location other than a military installation, e.g., a domestic contractor's plant, change the shipping document notation required by paragraph (f) of the clause to insert the name and address of the Contractor, agent or broker that will prepare the customs documentation for execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) Delivery order number on the Government prime contract, if applicable;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(f) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCMAO New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with §§ 10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data—

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(2) The activity address number for the contract administration office actually administering the prime contract.

(End of clause)

252.225-7011 Certification and agreement by contractors currently producing petroleum products in Angola.

As prescribed in 225.704-70, use the following clause:

Certification and Agreement by Contractors Currently Producing Petroleum Products in Angola (Dec. 1991)

(a) Definition.

Petroleum product means natural or synthetic crude; blends of natural or synthetic crude; and products refined or derived from natural or synthetic crude or from such blends.

(b) Under section 316 of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, the Department of Defense may not purchase Angolan petroleum products from companies producing oil in Angola unless a waiver is granted by the Secretary of Defense, or designee.

(c) Any Offeror producing a petroleum product in Angola, or who has an affiliate, subsidiary, or partnership enterprise producing a petroleum product in Angola, may be ineligible for award under this solicitation if it intends to use a petroleum product of Angolan origin in the performance of any resultant contract. An Offeror producing a petroleum product in Angola or who has an affiliate, subsidiary, or partnership enterprise producing oil in Angola must complete the certification in paragraph (d) of this clause.

(d) *Certification.* The Offeror certifies that the petroleum product to be supplied under any contract resulting from this solicitation (_____) DOES (_____) DOES NOT contain any Angolan petroleum product or any product derived from Angolan oil.

(e) *Agreement.* Offerors required by paragraph (c) of this clause to complete the certification in paragraph (d) and who certify in paragraph (d) that the petroleum product to be supplied does not contain any Angolan petroleum product agree that the petroleum product to be supplied under any resulting contract will not contain any Angolan petroleum product or any product derived from Angolan oil.

(End of clause)

252.225-7012 Preference for certain domestic commodities.

As prescribed in 225.7002-4(a), use the following clause:

Preference for Certain Domestic Commodities (Dec. 1991)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico—

(1) Food;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric, and coated synthetic fabric;

(8) Canvas products;

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(10) Any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply—

(1) To the extent 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;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; or

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement.

(End of clause)

252.225-7013 Domestic wool preference.

As prescribed in 225.7002-4(b), use the following provision:

Domestic Wool Preference (Dec. 1991)

Preference will be given in evaluation of offers under this solicitation 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 acquired when needed at U.S. market prices.

(a) If, on the date set for receipt of offers the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture Market News immediately preceding the date for receipt of offers) is—

(1) Not more than ten percent above the average of the prices (for usable grades) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on offers for domestically produced articles of which the wool component is 100 percent domestic wool; provided, that such offers are reasonable and otherwise acceptable.

(2) More than ten percent above the average of the prices (for usable grades) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (a)(1) of this provision, offers will be evaluated by—

(i) Adding a factor of $_____ per yard or per item to offers of articles of wool of which the wool component is 100 percent foreign wool; and

(ii) Adding that part of the factor in paragraph (a)(2)(i) of this provision which is in direct proportion to the percentage of foreign wool to offers of articles of which the wool component is a blend of domestic and foreign wool.

(b) For the purpose of paragraph (a) of this provision—

(1) The average market price of domestic wool of usable grades is the average market price of the representative grades in

subsection 225.7002–3 of the Defense FAR Supplement.

(2) The average of the prices which reflect the current incentive price established by the Secretary of Agriculture is the average of the prices in subsection 225.7002–3 of the Defense FAR Supplement for the category of wool.

(3) The evaluation factor is subject to adjustment at the date set for receipt of offers in accordance with subsection 225.7002–3 of the Defense FAR Supplement.

(c) While offers of articles of wool may be considered and evaluated, 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 Preference for Certain Domestic Commodities clause of this contract. 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.

(d) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (a) of this provision, a satisfactory quality and sufficient quantity of domestic wool cannot be acquired as and when needed at U.S. market prices.

(End of provision)

252.225–7014 Preference for domestic specialty metals.

As prescribed in 225.7002–4(c), use the following clause:

Preference for Domestic Specialty Metals (Dec. 1991)

(a) Definition.

Specialty metals means—

(1) Steel—

(i) 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

(ii) Which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(2) 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;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium base alloys.

(b) The Contractor agrees that any specialty metals incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The acquisition is for an end product of a country listed in subsection 225.872–1 of the Defense FAR Supplement; or

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 225.7002–4(c), use the basic clause with the following paragraph (d):

(d) The Contractor agrees to include this clause, including this paragraph (d), in every subcontract or purchase order unless the item being purchased contains no specialty metals.

252.225–7015 Preference for domestic hand or measuring tools.

As prescribed in 225.7003–2, use the following clause:

Preference for Domestic Hand or Measuring Tools (Dec. 1991)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on acquisition of foreign machine tools.

As prescribed in 225.7004–5(a), use the following clause:

Restriction on Acquisition of Foreign Machine Tools (Dec. 1991)

(a) For the purpose of this clause, a machine tool is considered to be of United States or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(b) Machine tools within the Federal supply classifications listed in 225.7004–1(a) of the Defense FAR Supplement, delivered as end items, shall be of United States or Canadian origin.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 225.7004–5(a), substitute the following paragraph (b) for paragraph (b) of the basic clause.

(b) Machine tools within the Federal supply classifications listed in 225.7004–1(a) of the Defense FAR Supplement, to be delivered as an end item or acquired by the Contractor on behalf of the Government, and to which title will vest in the Government, shall be of United States or Canadian origin.

252.225–7017 Restriction on acquisition of foreign valves.

As prescribed in 225.7004–5(b), use the following clause:

Restriction on Acquisition of Foreign Valves (Dec. 1991)

(a) For the purpose of this clause, a valve is considered to be of United States or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(b) The Contractor agrees that valves used in piping for naval surface ships and submarines within Federal supply classifications 4810 (valves, powered) and 4820 (valves, non-powered) delivered as end items under this contract shall be of United States or Canadian origin.

(End of clause)

252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDT&E.

As prescribed in 225.7011–5, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E (Dec. 1991)

(a) Definitions.

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) This provision implements section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100–180) prohibiting the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDT&E), to foreign governments or firms.

(c) Except as provided in paragraph (d) of this provision, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the SDI. Foreign governments and firms, however, are encouraged to submit offers since this provision is not intended to restrict SDI access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(d) The prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered

substantial where it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that the contract cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E can be performed by a foreign government or firm.

(e) The Offeror hereby certifies that (_____) it is (_____) is not a U.S. firm.

(End of provision)

252.225-7019 Restriction on acquisition of foreign anchor and mooring Chain.

As prescribed in 225.7012-4(a), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring chain (Dec. 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252.225-7020 Restriction on acquisition of foreign anchor and mooring chain—Fiscal Years 1989 and 1990.

As prescribed in 225.7012-4(b), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain—Fiscal Years 1989 and 1990 (Dec. 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States.

(b) The Contractor shall include this clause, including this paragraph (b), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252.225-7021 Restriction on acquisition of foreign anchor and mooring chain (Fiscal Year 1988).

As prescribed in 225.7012-4(c), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Year 1988) (Dec. 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States, its territories or possessions, or Canada except as provided in paragraph (b) of this clause.

(b) The Contractor may request a waiver under subsection 225.7012-3 of the Defense FAR Supplement if adequate domestic supplies of welded shipboard anchor and mooring chain are unavailable to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252-225.7022 Restriction on acquisition of polyacrylonitrile (PAN) based carbon fiber.

As prescribed in 225.7013-2, use the following clause:

Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (Dec. 1991)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify domestic or Canadian sources expeditiously.

(End of clause)

252.225-7023 Restriction on acquisition of carbonyl iron powders.

As prescribed in 225.7014-3, use the following clause:

Restriction on Acquisition of Carbonyl Iron Powders (Dec. 1991)

(a) *Definition.*

Carbonyl iron powders are particles produced from the thermal decomposition of iron penta carbonyl.

(b) *Restriction.*

The Contractor agrees that all carbonyl iron powders contained in supplies provided under this contract shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada.

(End of clause)

252.225-7024 Restriction on acquisition of night vision image intensifier tubes and devices.

As prescribed in 225.7015-3, use the following clause:

Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices (Dec. 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

252.225-7025 Foreign source restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (Dec. 1991)

(a) *Definitions.*

(1) *Antifriction bearings* means bearings.

(2) *Commercial product* means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices. It does not include items designed or developed under a Government contract or bearings and bearing components.

(3) *Domestic manufacture* means—

(i) For antifriction bearings, wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be domestically mined or produced.

(ii) For forging items, manufactured in the United States or Canada if the Canadian firm—

(A) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(B) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(iii) For high carbon ferrochrome (HCF), manufactured in the United States regardless of source of the chrome ore.

(iv) For high-purity silicon, manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

(v) For miniature and instrument ball bearings, manufactured in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

(vi) For precision components for mechanical time devices, manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

(4) *Forging items* means—

Items	Categories
Shipboard forged anchor chain.	All.
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large caliber, thick-walled cannon (105mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts, receivers, sights/ handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts, flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

(5) *High carbon ferrochrome (HCF)* means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

(6) *High-purity silicon* means N or P type with a resistivity greater than 3000 ohm-centimeter.

(7) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

(8) *Precision components for mechanical time devices* are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: Gears, pinions, posts, and plates.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain antifriction bearings, forging items, high carbon ferrochrome, high-purity silicon, miniature and instrument ball bearings, and precision components for mechanical time devices that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing antifriction bearings are commercial products.

(d) The restrictions in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with the provisions of section 225.7104 of the Defense FAR Supplement. If the restriction is waived for miniature and instrument ball bearings or precision components for mechanical time devices, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernment use.

(e) The restrictions in paragraph (b) do not include forgings incorporated in commercial vehicles, such as commercial cars and trucks, or noncombat support military vehicles.

(f) The Contractor agrees to retain records showing compliance with these restrictions until three years after final payment and to make records available upon request of the Contracting Officer.

(g) The Contractor agrees to insert this clause, including this paragraph (g), in every subcontract and purchase order issued in performance of this contract, unless items purchased contain none of the restricted items.

(End of clause)

252.225-7026 Reporting of overseas subcontracts.

As prescribed in 225.7203, use the following clause:

Reporting of Overseas Subcontracts (Dec. 1991)

(a) The Contractor shall submit a Subcontract Report of Foreign Purchases on DD Form 2139 for each subcontract over $25,000 and subcontract modification over $25,000, if the location of the producer of the supplies, or provider of the services, is outside the United States.

(b) Submit the report to: Office of Foreign Contracting, OUSD(A)DP(FC), Pentagon, Washington, DC 20301-3060.

(c) Copies of DD Form 2139 may be obtained from the Contracting Officer.

(d) If the Contractor maintains information on foreign subcontracts in an automated data base, it may submit the information required in paragraph (a) in a report format compatible with its automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139.

(e) The Contractor shall submit the report within ten days of the end of each calendar year quarter, current as of the last day of such quarter.

(f) The Contractor shall include a clause substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gases, utilities, petroleum products and crudes, timber (logs), and subsistence. Identify the prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.225-7027 Limitation on sales commissions and fees.

As prescribed in 225.7303(a), use the following clause:

Limitation on Sales Commissions and Fees (Dec. 1991)

Unless the sales commission and fee have been identified and payment 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) does not include any direct or indirect cost of sales commissions or fees for contractor sales representatives for 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 _____.

(b) For all other types of contracts, notwithstanding any other provision of this contract, any direct or indirect cost of sales commissions or fees for Contractor (or subcontractor) sales representatives for 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 _____ are an unallowable item of cost under this contract.

(End of clause)

252.225-7028 Exclusionary policies and practices of foreign governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (Dec. 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.226-7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.7008(a), use the following clause:

Notice of Historically Black College or University and Minority Institution Set-Aside (Dec. 1991)

(a) Definitions. Historically black colleges and universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) General. (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution both at the time of submission of its offer and at contract award.

(c) Agreements. The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

(End of clause)

252.226–7001 Historically black college or university and minority institution certification.

As prescribed in 226.7008(b), use the following provision:

Historically Black College or University and Minority Institution Certification (Dec. 1991)

(a) *Definitions.*

Historically black colleges and universities, as used in this provision, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this provision, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) *Certification.* The offeror certifies that it is—

_____ A historically black college or university.

_____ A minority institution.

(c) *Notification.* Notify the Contracting Officer before award if your status as a historically black college or university or minority institution changes.

(End of provision)

252.227–7000 Non-estoppel.

As prescribed at 227.7009–1, insert the following clause in patent releases, license agreements, and assignments:

Non-Estoppel (Oct. 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227–7001 Release of past infringement.

As prescribed at 227.7009–2(a), insert the following clause in patent releases, license agreements, and assignments:

Release of Past Infringement (Aug. 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of [description of subject matter].*

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

End of clause)

252.227–7002 Readjustment of payments.

As prescribed at 227.7009–2(b), insert the following clause in patent releases, license agreements, and assignments:

Readjustment of Payments (Oct. 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided,* however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227–7003 Termination.

As prescribed at 227.7009–2(c), insert the following clause in patent releases, license agreements, and assignments:

Termination (Aug. 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227–7004 License grant.

As prescribed at 227.7009–3(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant (Aug. 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No._____

Date _____

Application Serial No. _____

Filing Date_____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7005 License term.

As prescribed at 227.7009–3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

License Term (Aug. 1984)

Alternate I (Aug. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

Alternate II (Aug. 1984)

The license hereby granted shall terminate on the _____day of _____ 19_____; *Provided,* however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

252.227–7006 License grant—running royalty.

As prescribed at 227.7009–4(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant—Running Royalty (Aug. 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____ throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No._____

Date _____

Application Serial No. _____
Filing Date_____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License term—running royalty.

As prescribed at 227.7009-4(b), insert the following clause in patent releases, license agreements, and assignments:

License Term—Running Royalty (Aug. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227-7008 Computation of royalties.

As prescribed at 227.7009-4(c), insert the following clause in patent releases, license agreements, and assignments:

Computation of Royalties (Aug. 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of _____ percent of the net selling price of such articles or materials (amount) per (name of item) * whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

252.227-7009 Reporting and payment of royalties.

As prescribed at 227.7009-4(d), insert the following clause in patent releases, license agreements, and assignments:

Reporting and Payment of Royalties (Aug. 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided,* that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

252.227-7010 License to other Government agencies.

As prescribed at 227.7009-4(e), insert the following clause in patent releases, license agreements, and assignments:

License to Other Government Agencies (Aug. 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided,* however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

Assignment (Aug. 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No._____
Date _____
Name of Inventor _____
U.S. Application Serial No. _____
Filing Date_____
Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____(Contract No.)

Patent License and Release Contract (Aug. 1984)

THIS CONTRACT is effective as of the _____ day of _____ 19_____, between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the City of _____, in the State of _____.

Whereas, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227-7004 for a paid up license, or the clause at 252.227-7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227-7005 for a paid up license, or the clause at 252.227-7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227-7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227-7000.)

Article 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at

* Use bracketed matter as appropriate.

* The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

* If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227-7011.

252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203–1.)

Article 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203–5.)

Article 8. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 9. Gratuities.

(Insert the clause at FAR 52.203–3.)

Article 10. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By _____

Date _____

(Signature and Title of Contractor) _____

By _____

Date _____

(End of clause)

252.227–7013 Rights in technical data and computer software.

As prescribed at 227.403–70(e) and 227.403–77(b)(2)(i), insert the following clause:

Rights in Technical Data and Computer Software (Oct. 1988)

(a) *Definitions.* (1) *Commercial computer software,* as used in this clause, means 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.

(2) *Computer,* as used in this clause, means 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.

(3) *Computer data base,* as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) *Computer program,* as used in this clause, means 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.

(5) *Computer software,* as used in this clause, means computer programs and computer data bases.

(6) *Computer software documentation,* as used in this clause, means 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) *Data,* as used in this clause, means recorded information, regardless of form or method of the recording.

(8) *Detailed design data,* as used in this clause, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) *Detailed manufacturing or process data,* as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) *Developed,* as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of title 35 of the United States Code.

(11) *Developed Exclusively with Government Funds,* as used in this clause, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) *Developed Exclusively at Private Expense,* as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. They are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) *Form, fit, and function data,* as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) *Government purpose license rights (GPLR),* as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) *Limited rights,* as used in this clause, 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 asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) *Required for the Performance of a Government Contract or Subcontract,* as used in this clause, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

** When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(17) *Restricted rights,* as used in this clause, means rights that 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.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17)(i)–(iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) *Technical data,* as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) *Unlimited rights,* as used in this clause, means rights to use, duplicate, release, 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.

(20) *Unpublished,* as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) *Rights in Technical Data*—(1) *Unlimited Rights.* Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data 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 which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has executed the Standard Non-Disclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

Government Purpose License Rights Legend

Contract No. _____
Contractor: _____
_____
_____

Government purpose license rights shall be effective until _____(insert date certain); thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data. The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) of the clause at 252.227–7013 of the contract listed above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Limited Rights.* Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (b)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

Limited Rights Legend

Contract No. _____
Contractor: _____
_____
_____

Limited rights shall be effective until _____(insert date certain), thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) of the clause at 252.227–7013 of the contract listed above.

For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate. For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraph (a)(15) and (a)(14) above, insert the following statement:

"In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227–7013, the Government shall have the rights described in the license or agreement made a part of Contract No._____."

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license

agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. 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 Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license 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 the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) 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 has or may obtain without restrictions.

(D) 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.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) 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) 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 computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose 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 clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyrights.* (1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of *unlimited rights* in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of *limited rights*. With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the *person for whom the work was prepared* for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227-7013 (date).

(f) *Removal of Unjustified and Nonconforming Markings.*—(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Nonconforming Technical Data Markings.* Correction of nonconforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) *Unjustified and Nonconforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not

apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.* (1) The Contractor must satisfy its contractual obligation to the Government while ensuring that the rights afforded its subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying its obligation, the Contractor must accomplish the balancing of interests described at DFARS 227.402–70 in dealing with its subcontractors.

(2) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(3) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(4) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(5) The Contractor shall ensure that subcontractor rights are recognized and protected in the notification and listing process at paragraphs (j) and (k) below.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(j) *Notice of Limitations on Government Rights.* (1) The Offeror/Contractor shall notify the Contracting Officer of its or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds which the Offeror or Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) Such notification is not required with respect to items, components, processes or computer software if no technical data is required to be delivered or if the required technical data is delivered with unlimited rights.

(3) Such notification shall be accompanied by the following representation:

Representation of Private Development

The Offeror/Contractor/Subcontractor represents that, to the best of its knowledge and belief, the information contained in this notification is current, accurate, and complete.

Date _____

Name and Title _____

Official _____

This representation shall be dated and the signing official (identified by name and title) shall be duly authorized to bind the Contractor.

(4) Upon request by the Contracting Officer, the Offeror or Contractor shall provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's or subcontractor's assertions made in (j)(1) above.

(k) *Identification of restrictions on Government rights.* Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are identified in a list made part of this contract. This list is intended to facilitate review and acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227–7037. As a minimum, this list must—

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(l) *Postaward Negotiation—Disputes.* In the case of an item, component, or process that is developed in part with Government funds and in part at private expense, if, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of clause)

Alternate I (Oct. 1988)

As prescribed at 227.405–75, add the following paragraph to the basic clause:

(m) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate II (Oct. 1988)

As prescribed at 227.405–79(d), substitute the following paragraphs (b) and (c) for the existing paragraphs (b) and (c) in the basic clause.

(b) *Rights in Technical Data.*—(1) *Unlimited Rights.* The Government is entitled to and will receive unlimited rights in:

(i) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(ii) Manuals or instructional materials (other than detailed manufacturing or process data or commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data; and

(iv) Technical data which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(1) above. 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 are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. _____

Contractor: _____

_____

_____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS clause at 252.227–7013. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Government Purpose License Rights.* For a period of two (2) years (or such other

period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in any technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to unlimited or limited rights pursuant to subparagraph (b)(1) or (b)(2) above. The Government shall not be liable for unauthorized use or disclosure of the data by third parties. Government Purpose License Rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(i) The number of the prime contract under which the technical data is to be delivered; and

(ii) The name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. _____
Contractor: _____

For a period of two (2) years after delivery and acceptance of the last deliverable item under the above contract, this technical data shall be subject to the restrictions contained in the definition of *Limited Rights* in DFARS clause at 252.227–7013. After the two-year period, the data shall be subject to the restrictions contained in the definition of *Government Purpose License Rights* in DFARS clause at 252.227–7013. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(c) *Rights in Computer Software.*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of *restricted rights* in paragraph (a)(17) above. 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 Government shall have unlimited rights in the 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 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 this unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227–7013.

_____
(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) 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 has or may obtain without restrictions.

(D) 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.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have restricted rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any 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; and

(iii) Any other computer software required to be prepared or delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein. Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

252.227–7014 [Reserved]

252.227–7015 [Reserved]

252.227–7016 [Reserved]

252.227–7017 [Reserved]

252.227–7018 Restrictive markings on technical data.

As prescribed at 227.403–72(a), insert the following clause:

Restrictive Markings on Technical Data (Oct. 1988)

(a) The Contractor or any subcontractor that delivers technical data with other than unlimited rights shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. The Contractor or subcontractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as a minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized;

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within the Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, *Contractor* shall be changed to *Subcontractor*.

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.403–77(b)(2)(ii), insert the following provision:

Identification of Restricted Rights Computer Software (Apr. 1988)

The Offeror is required 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 it desires to negotiate restrictions, and to state the nature of the proposed restrictions.

Any restrictions on the Government's use or disclosure of computer software developed at private expense and 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. If no such computer software is identified, all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.405–76(a), insert the following clause:

Rights in Data—Special Works (Mar. 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b), and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice: ©(*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the © will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.405–77(a), insert the following clause:

Rights in Data—Existing Works (Mar. 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.405–78(b)(1)(i)(A), insert the following clause:

Government Rights (Unlimited) (Mar. 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of government.

As prescribed at 227.405–78(b)(1)(i)(B), insert the following clause:

Drawings and Other Data to Become Property of Government (Mar. 1979)

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 17 U.S.C. 201(b). 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 (3) 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)

252.227-7024 Notice and Approval of Restricted Designs.

As prescribed at 227.405-78(d), insert the following clause:

Notice and Approval of Restricted Designs (Apr. 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that 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 Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 [Reserved]

252.227-7026 Deferred Delivery of Technical Data or Computer Software.

As prescribed at 227.405-71(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (Apr. 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred Ordering of Technical Data or Computer Software.

As prescribed at 227.405-71(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (Apr. 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for Technical Data Representation.

As prescribed at 227.403-70(a)(5)(ii), insert the following provision:

Requirement for Technical Data Representation (Oct. 1988)

The Offeror shall submit with its offer a representation as to whether the Offeror 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 its offer; if so, the Offeror shall identify:

(a) One existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(b) Any limitation on the Government's right to use or disclose the data, including, when applicable, identification of the earliest date the limitation expires.

(End of provision)

252.227-7029 Identification of Technical Data.

As prescribed at 227.403-72(a), insert the following clause:

Identification of Technical Data (Apr. 1988)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical Data—Withholding of Payment.

As prescribed at 227.403-74(b), insert the following clause:

Technical Data—Withholding of Payment (Oct. 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data Requirements.

As prescribed at 227.405-70(a), insert the following clause:

Data Requirements (Oct. 1988)

The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in Technical Data and Computer Software (foreign).

As prescribed in 227.405-74, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (June 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in Shop Drawings.

As prescribed at 227.405-78(b)(1)(ii), insert the following clause:

Rights in Shop Drawings (Apr. 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation

(i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—Subcontracts.

As prescribed at 227.304–4, insert the following clause:

Patents—Subcontracts (Apr. 1984)

The Contractor will include the clause at FAR 52.227–12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 [Reserved]

252.227-7036 Certification of Technical Data Conformity.

As prescribed at 227.403–74(c), insert the following clause:

Certification of Technical Data Conformity (May 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.403–73(a) insert the following clause:

Validation of Restrictive Markings on Technical Data (Apr. 1988)

(a) *Definitions.* The terms used in this clause are defined in the clause at DFARS 252.227–7013 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2) (ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the

Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be canceled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

252.227-7038 [Reserved]

252.227-7039 Patents—reporting of subject inventions.

As prescribed at 227.303(a), insert the following clause:

Patents—Reporting of Subject Inventions (Apr. 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.228-7000 Reimbursement for war-hazard losses.

As prescribed in 228.370(a), use the following clause:

Reimbursement For War-Hazard Losses (Dec. 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228-7001 Ground and flight risk.

As prescribed in 228.370(b), use the following clause:

Ground and Flight Risk (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Aircraft,* unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Contractor's premises* means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. (i) For land based aircraft, *flight* begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) For seaplanes, *flight* begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being *in the open.* Government furnished aircraft shall be considered to be located *in the open* at all times while in the Contractor's possession, care, custody, or control.

(6) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft *in the open,* during *operation,* and in *flight.* The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action. (1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial

operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Contracting Officer;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $1,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event the damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;

(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage; or

(2) Terminate this contract with respect to the aircraft. In the event the Government requires that the aircraft be replaced or restored, the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance. If this contract is terminated with respect to the aircraft and the Government has assumed the risk of damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damage aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operation" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

252.228–7002 Aircraft flight risks.

As prescribed in 228.370(c), use the following clause:

Aircraft Flight Risk (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Aircraft,* unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, *flight* begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, *flight* begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) *Flight crew members* means the pilot, co-pilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Contracting Officer, the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for

death or bodily injury caused by aircraft during flight.

(d)(1) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the resulting repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(4) 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.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operations" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

252.228–7003 Capture and detention.

As prescribed in 228.370(d), use the following clause:

Capture and Detention (Dec. 1991)

(a) As used in this clause—

(1) *Captured person* means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only 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 the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) *United States* comprises geographically the 50 states and the District of Columbia.

(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 capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Risk Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228–7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

Bonds or Other Security (Dec. 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $_____ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of $_____; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within ____ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228–7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(e), use the following clause:

Accident reporting and investigation involving aircraft, missiles, and space launch vehicles (Dec. 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.231–7000 Supplemental cost principles.

As prescribed in 231.100–70, use the following clause:

Supplemental Cost Principles (Dec. 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.231–7001 Penalties for unallowable costs.

As prescribed in 231.7004, use the following clause:

Penalties for Unallowable Costs (Dec. 1991)

(a) *Definition.—Proposal* means—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price.

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable costs in a proposal are subject to assessment of penalties. The penalties are prescribed in 10 U.S.C. 2324, which is implemented in subpart 231.70 of the Defense FAR Supplement.

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in FAR part 31.

(d) If the Contracting Officer determines by clear and convincing evidence that a cost submitted by the Contractor in its proposal is unallowable, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in

excess of the amount to which the Contractor was entitled.

(ii) Using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for the Contractor, then the Contractor will be assessed an additional penalty in an amount equal to two times the amount of the unallowable cost.

(f) Determinations under (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 604, *et seq.*).

(g) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under paragraphs (d) or (e) of this clause.

(h) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(i) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

252.232–7000 Advance payment pool.

As prescribed in 232.412–70(a), use the following clause:

Advance Payment Pool (Dec. 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (*insert the name of the contractor*). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232–7001 Disposition of payments.

As prescribed in 232.412–70(b), use the following clause:

Disposition of Payment (Dec. 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (*insert the name of the disbursing office in the advance payment pool agreement*), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232–7002 Progress payments for foreign military sales acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (Dec. 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232–7003 Flexible progress payments.

As prescribed in 232.502–4–70(b), use the following clause:

Flexible Progress Payments (Dec. 1991)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and Defense FAR Supplement 232.502–1–71.

(1) The progress payment rate of this contract is _____ percent. This percentage applies instead of the customary uniform progress payment rate and liquidation rate of the Progress Payments clause.

(2) The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model (*name*) dated _____, using _____ percent as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract.

(b) If actual and projected cash flow data generated during contract performance reveal that the customary flexible progress payment rate will result in a Contractor investment in work in process inventory more than two percentage points higher or lower than the minimum rate of Contractor investment specified in paragraph (a)(2) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model identified in paragraph (a)(2) of this clause shall be used for any redetermination. The customary flexible progress payment rate shall not be less than the customary uniform progress payment rate that would have applied to this contract absent flexible progress payment procedures, and the progress payment rate shall not be greater than 100 percent.

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the Contractor in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a)(2) of this clause. The Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and Defense FAR Supplement 232.502–1–71(b)(4).

(End of clause)

252.233–7000 Certification of claims and requests for adjustment or relief.

As prescribed in 233.7001, use the following clause:

Certification of Claims and Requests for Adjustment or Relief (Dec. 1991)

(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) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to:

(1) 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; or

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410 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 satisfy the certification requirements of both statutes.

(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs which have already been reimbursed or which have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant criminal and civil penalties and fines.

(End of clause)

252.234-7000 Notice of cost/schedule control systems.

As prescribed by 234.005-70, use the following provision:

Cost/Schedule Control Systems (Dec. 1991)

(a) The Offeror shall submit a comprehensive plan for compliance with the cost/schedule control systems criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures. The plan shall—

(1) Describe the cost/schedule control systems (C/SCS) the Offeror intends to use in performance of the contract.

(2) Distinguish between the Offeror's existing management systems and modifications proposed to meet the criteria.

(3) Describe the management systems and their application in all major functional cost areas in terms of:

(i) The work breakdown structure,

(ii) Planning,

(iii) Budgeting,

(iv) Scheduling,

(v) Work authorization,

(vi) Cost accumulation,

(vii) Measurement and reporting of cost and schedule performance,

(viii) Variance analysis, and

(ix) Baseline control.

(4) Describe compliance with each of the criteria. (Preferably, cross-reference appropriate elements in the description of systems with the items in the checklist for the C/SCS criteria in AFSCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47, Cost/Schedule Control Systems Criteria Joint Implementation Guide.)

(5) Identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria.

(6) Describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Offeror is using C/SCS which have been accepted by the Government, or is operating C/SCS under a current Memorandum of Understanding, the Offeror may submit either instead of the comprehensive plan.

(c) The Offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The Government will evaluate the Offeror's plan for C/SCS before contract award.

(e) The prime contractor and the Government shall agree to subcontractors selected for application of the C/SCS criteria. The Contractor will contractually require the selected subcontractors to comply with the criteria. If either the prime or subcontractor requests, the Government, at its option, may conduct demonstrations and reviews of these selected subcontractors' management systems.

(End of provision)

252.234-7001 Cost/schedule control systems.

As prescribed in 234.005-70, use the following clause:

Cost/Schedule Control Systems (Dec. 1991)

(a) The Contractor shall establish, maintain, and use in the performance of this contract cost/schedule control systems (C/SCS) meeting the criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

(b) Within 90 calendar days of contract award, or a longer period if the Contracting Officer agrees, the Contractor shall—

(1) Furnish the Contracting Officer a description of the C/SCS applicable to this contract. The description shall—

(i) Be in the form and detail as indicated by the AFSCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47 Cost Schedule Control Systems Criteria Joint Implementation Guide (the Guide); or

(ii) Be in the form and detail required by the Contracting Officer.

(2) Be prepared to demonstrate the operation of the Contractor's C/SCS to the Government for compliance with the criteria of DoDI 5000.2.

(c) The Contracting Officer shall reference the description of the accepted C/SCS in the contract. The Contractor shall maintain and use the accepted C/SCS in the performance of this contract.

(d) The Contractor shall submit proposed changes to the accepted C/SCS to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within 60 days after receipt.

(e) When systems existing at time of contract award do not comply with the criteria, the Contractor shall make adjustments necessary to ensure compliance at no change in contract price or fee.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative. Access is for the purpose of reviewing the demonstration in paragraph (b) of this clause and also to permit Government surveillance to ensure continuing application of the accepted systems to this contract.

(g) The Contractor shall correct deviations from accepted systems discovered during contract performance, as directed by the Contracting Officer.

(h) The Contractor shall require that each selected subcontractor, as agreed to by the Contracting Officer, shall meet the C/SCS criteria as set forth in the Guide. All such subcontracts shall have provisions for demonstration, review, acceptance, and surveillance of systems, to be conducted by the Government, at its option, when requested by the Contractor or subcontractor.

(i) If the Contractor or subcontractor is utilizing C/SCS which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions concerning demonstration and review.

(End of clause)

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070-3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Fixed Price (Dec. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term *third persons* includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this

contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.* The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed in 235.070–3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Cost Reimbursement (Dec. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term "third persons" includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.* The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal welfare.

As prescribed in 235.071(a), use the following clause:

Animal Welfare (Dec. 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR subpart C, and § 2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§ 2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and

regulations of the Department of Agriculture (see 7 U.S.C. 2131 et. seq. and 9 CFR subchapter A, parts 1 through 4).

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

252.235–7003 Frequency authorization.

As prescribed in 235.071(b), use the following clause:

Frequency Authorization (Dec. 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I (Dec. 1991)

Substitute the following paragraph (c) for paragraph (c) of the basic clause if agency procedures authorize use of DD Form 1494, Application for Frequency Authorization:

(c) The Contractor shall use DD Form 1494, Application for Frequency Authorization, to obtain radio frequency authorization.

252.235–7004 Option to extend the term of the contract.

As prescribed in 235.015–71(i)(2), use the following clause:

Option to Extend the Term of the Contract (Dec. 1991)

If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), the Contracting Officer may—

(a) Add the additional period(s) to the contract as an option(s); and

(b) Exercise such option(s) by written notice of exercise at any time during the performance period or any extensions thereof.

(End of clause)

252.235–7005 Contractor-acquired property.

As prescribed in 235.015–71(i)(2), use the following clause:

Contractor-Acquired Property (Dec. 1991)

(a) *Definition. Property*, as used in this clause, means all nonexpendable tangible personal property (except material)—

(1) Described in FAR 45.101, including automatic data processing equipment as defined in FAR 31.001, and facilities as defined in FAR 45.301;

(2) Which is acquired with funds provided under this contract for the conduct of research;

(3) Which the Contractor has specifically identified in its proposal; and

(4) Which the Contracting Officer has authorized the Contractor to acquire.

(b) The Contracting Officer may accept the identification and description in the Contractor's proposal of property to be Contractor-acquired property as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts."

(c) Except for those items specifically identified in the contract as required by Block 27a of the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form), award of this contract constitutes the Contracting Officer's written consent to acquire property in the Contractor's proposal.

(d) The Contracting Officer will approve or disapprove subcontracts to acquire the items listed in Block 27a of the DD Form 2222 after the award of any contract resulting from this solicitation.

(End of clause)

252.235–7006 Title to contractor-acquired property.

As prescribed in 235.015–71(i)(2), use the following clause:

Title to Contractor-Acquired Property (Dec. 1991)

(a) *Definition. Property*, as used in this clause, has the meaning given in the Contractor-Acquired Property clause of this contract.

(b) Title shall vest in the Contractor without further obligation when the property—

(1) Has an acquisition cost of $1,000 or more;

(2) Was specifically identified in the Contractor's proposal; and

(3) Is property other than that property for which a determination of title is deferred. Property for which the determination of title is deferred shall be identified in Block 27b of the DD Form 2222, Research Contract (SFRC)/Modification, Short Form.

(c) Title in all property which—

(1) Has an acquisition cost of $1,000 or more; and

(2) Was not specifically identified in the Contractor's proposal; or

(3) Is property for which a determination of title is deferred, may vest—

(i) In the Government;

(ii) In the Contractor; or

(iii) In the Contractor, subject to the right of the Government to direct transfer of the title back to the Government or third parties. The Government may exercise this right at any time up to and including the twelfth month after completion or termination of the contract. The Government at any time may remove an item of property from this category, give up the right to direct transfer of the title back to the Government or third parties, and transfer title to the Contractor.

(d) Transfer of title back to the Government or third parties shall not be the basis for any claim by the Contractor. The Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) clause and its Alternate I of this contract apply to any changes in property.

(e) Property acquired with funds made available under this contract shall be considered Government property subject to the Government Property clause until title to such property vests in the Contractor without right of the Government to direct transfer of the title back to the Government or third parties.

(f) Within 45 days following the end of the calendar year or the Contractor's fiscal year, the Contractor shall furnish the Contracting Officer a list of all property with an acquisition cost of $1,000 or more which the Contractor acquired under this contract during that year and to which title has not vested in the Contractor.

(End of clause)

252.235–7007 Advance payments.

As prescribed in 235.015–71(i)(2), use the following clause:

Advance Payments (Dec. 1991)

The advance payment pool agreement between the Contractor and one or more military departments which is in effect as of the date of, and applies to, this contract shall govern advance payments made under this contract. If such an agreement is not in effect as of the date of this contract, the Allowable Cost and Payment clause of this contract shall govern payments to the Contractor.

(End of clause)

252.235–7008 Inspection and acceptance.

As prescribed in 235.015–71(i)(2), use the following clause:

Inspection and Acceptance (Dec. 1991)

The Scientific Program Officer designated in Block 11 on the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form) of this contract shall conduct inspection and acceptance of the final delivery. The Scientific Program Officer shall have at least 30 days after contractual delivery for acceptance.

(End of clause)

252.235-7009 Restriction on printing.

As prescribed in 235.015-71(i)(2), use the following clause:

Restriction on Printing (Dec. 1991)

The Contractor is authorized to reproduce reports, data, or other written materials, if required, provided the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of these quantities.

(End of clause)

252.236-7000 Modification proposals—price breakdown.

As prescribed in 236.570(a), use the following clause:

Modification Proposals—Price Breakdown (Dec. 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

252.236-7001 Contract drawings, maps, and specifications.

As prescribed in 236.570(a), use the following clause:

Contract Drawings, Maps, and Specifications (Dec. 1991)

(a) The Government—

(1) Will provide the Contractor, without charge, _____ sets (five unless otherwise specified) of large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducibles, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	and	Drawing No.

(End of clause)

252.236-7002 Obstruction of navigable waterways.

As prescribed in 236.570(b)(1), use the following clause:

Obstruction of Navigable Waterways (Dec. 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et. seq.*).

(End of clause)

252.236-7003 Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Preparatory Work (Dec. 1991)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. _____.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) A certified account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or certified copies of payrolls and freight bills; and

(3) The Contractor's certificate—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e) (1) Payments will continue to be made for item no. _____, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

252.236-7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Demobilization (Dec. 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) _____ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining _____ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

252.236-7005 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

Airfield Safety Precautions (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Landing areas* means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The *clear zone* beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(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, or the transitional surface.

(i) 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 (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) 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. It continues upward at a slope of 50:1 (1 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.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The *approach-departure clearance zone* is the ground area under the approach-departure clearance surface.

(iii) The *transitional surface* is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(*1*) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(*2*) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) General. (1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) 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;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) Landing areas. The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may

vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work 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.

(e) Safety precaution areas. The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236–7006 Cost limitation.

As prescribed in 236.570(b)(4), use the following provision:

Cost Limitation (Dec. 1991)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) By signing its offer, the Offeror certifies that each price stated on items identified as subject to a cost limitation includes an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

252.236–7007 Additive or deductive items.

As prescribed in 236.570(b)(5), use the following provision:

Additive or Deductive Items (Dec. 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236–7008 Contract prices—bidding schedules.

As prescribed in 236.570(b)(6), use the following provision:

Contract Prices—Bidding Schedules (Dec. 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

252.236–7009 Option for supervision and inspection services.

As prescribed in 236.609–70, use the following clause:

Option for Supervision and Inspection Services (Dec. 1991)

(a) The Government may—

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under Appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.237–7000 Notice of special standards of responsibility.

As prescribed in 237.203–70(d)(1), use the following provision:

Notice of Special Standards of Responsibility (Dec. 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104–1 and the following criteria, as described in Chapter 3, General Standards, of "Government Auditing Standards."

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) "Government Auditing Standards" is issued by the Comptroller General of the United States and is available for sale from the: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20401, Stock number 020–000–00243–3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237–7001 Compliance with audit standards.

As prescribed in 237.203–70(d)(2), use the following clause:

Compliance With Audit Standards (Dec. 1991)

The Contractor, in performance of all audit services under this contract, shall comply with—

(a) Government Auditing Standards set forth in "Government Auditing Standards" issued by the Comptroller General of the United States.

(b) Office of Management and Budget Circular No. A–73, Audit of Federal Operations and Programs.

(End of clause)

252.237–7002 Award to single offeror.

As prescribed in 237.7004(a), use the following provision:

Award to Single Offeror (Dec. 1991)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (Dec. 1991)

As prescribed in 237.7004(a), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

252.237-7003 Requirements.

As prescribed in 237.7004(b), use the following clause:

Requirements (Dec. 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

_____

(End of clause)

252.237-7004 Area of performance.

As prescribed in 237.7004(b), use the following clause:

Area of Performance (Dec. 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile 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.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7005 Performance and delivery.

As prescribed in 237.7004(b), use the following clause:

Performance and Delivery (Dec. 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.

As prescribed in 237.7004(b), use the following clause:

Subcontracting (Dec. 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for default.

As prescribed in 237.7004(b), use the following clause:

Termination for Default (Dec. 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237-7008 Group interment.

As prescribed in 237.7004(b), use the following clause:

Group Interment (Dec. 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.

As prescribed in 237.7004(b), use the following clause:

Permits (Dec. 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7010 Facility requirements.

As prescribed in 237.7004(b), use the following clause:

Facility Requirements (Dec. 1991)

(a) The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to get, catafalques, church trucks, and equipment for Protestant, Catholic, and Jewish services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

252.237-7011 Preparation history.

As prescribed in 237.7004(b), use the following clause:

Preparation History (Dec. 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7012 Instruction to offerors (count-of-articles).

As prescribed in 237.7102(a), use the following provision:

Instruction to Offerors (Count-of-Articles) (Dec. 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7013 Instruction to offerors (bulk weight).

As prescribed in 237.7102(b), use the following provision:

Instruction to Offerors (Bulk Weight) (Dec. 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7014 Loss or damage (count-of-articles).

As prescribed in 237.7102(c), use the following clause:

Loss or Damage (Count-of-Articles) (Dec. 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237-7015 Loss or damage (weight of articles).

As prescribed in 237.7102(d), use the following clause:

Loss or Damage (Weight of Articles) (Dec. 1991)

(a) The Contractor shall—

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237-7016 Delivery tickets.

As prescribed in 237.7102(e), use the following clause:

Delivery Tickets (Dec. 1991)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I (Dec. 1991)

As prescribed 237.7102(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

Alternate II (Dec. 1991)

As prescribed in 237.7102(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

252.237-7017 Individual Laundry.

As prescribed in 237.7102(f), use the following clause:

Individual Laundry (Dec. 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the "Estimated Quantity" column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be

accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

252.237-7018 Special definitions of government property.

As prescribed in 237.7102(g), use the following clause:

Special Definitions of Government Property (Dec. 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.239-7000 Protection against compromising emanations.

As prescribed in 239.7102-3(a), use the following clause:

Protection Against Compromising Emanations (Dec. 1991)

(a) The Contractor shall provide or use only computer equipment, as specified by the Government, that has been accredited to meet the appropriate security requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSIM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standard specified by this contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility.

(2) Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace accepted equipment or systems found to be deficient within one year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered equipment be made by the Contractor, the one year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems.

(End of clause)

252.239-7001 [Reserved]

252.239-7002 Access.

As prescribed in 239.7411(a), use the following clause:

Access (Dec. 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7003 Facilities and services to be furnished—common carriers.

As prescribed in 239.7411(a), use the following clause:

Facilities and Services To Be Furnished—Common Carriers (Dec. 1991)

(a) The Contractor shall furnish any classes of services or facilities that the Contractor offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, the Government shall order them under the Ordering of Facilities and Services clause of this agreement/contract. These nontariffed services may include the engineering, installation, alteration, or maintenance of facilities owned either by the Contractor or the Government, wherever located.

(c) Upon request of the Contracting Officer, the Contractor agrees to interconnect its facilities with any Government-owned or furnished telecommunications equipment, facilities, or transmission media. The Contractor shall use established technical criteria for ensuring continuity of service and traffic without damage to or degradation of commercial facilities.

(End of clause)

252.239-7004 Orders for facilities and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

Orders for Facilities and Services—Common Carriers (Dec. 1991)

The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(a) Commencing performance; or

(b) Written acceptance by a duly authorized representative.

(End of clause)

252.239-7005 Rates, charges, and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

Rates, Charges, and Services—Common Carriers (Dec. 1991)

(a) *Definition—Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "governmental regulatory bodies."

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

(1) All applicable tariffs, rates, charges, rules, regulations, or requirements;

(i) Lawfully established by a governmental regulatory body; and

(ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers;

(2) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(3) Rates, terms, and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of a governmental regulatory body.

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders—Common Carriers clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples

are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. 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)

252.239-7006 Tariff information.

As prescribed in 239.7411(a), use the following clause:

Tariff Information (Dec. 1991)

(a) The Contractor shall provide to the Contracting Officer—

(1) Upon request, a copy of the Contractor's current existing tariffs (including changes);

(2) Before filing any application to a Federal, State, or any other regulatory agency for new or changes to, rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government; and

(3) Upon request, a copy of all information, material, and data developed or prepared in support of or in connection with an application under paragraph (a)(2) of this clause.

(b) The Contractor shall notify the Contracting Officer of any application that anyone other than the Contractor files with a governmental regulatory body which affects or will affect the rate or conditions of services under this agreement/contract. These requirements also apply to applications pending on the effective date of this agreement/contract.

(End of clause)

252.239-7007 Cancellation or termination of orders—common carriers.

As prescribed in 239.7411(a), use the following clause:

Cancellation or Termination of Orders—Common Carriers (Dec. 1991)

(a) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services—Common Carriers clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor's installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvagable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

252.239-7008 Reuse arrangements.

As prescribed in 239.7411(a), use the following clause:

Reuse Arrangements (Dec. 1991)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders-Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.239-7009 Submission of cost or pricing data—common carriers.

As prescribed in 239.7411(a), use the following clause:

Submission of Cost or Pricing Data—Common Carriers (Dec. 1991)

The Contractor agrees to provide certified cost or pricing data, upon request by the Contracting Officer, whenever—

(a) The services are nontariffed services;

(b) A tariff, whether filed or to be filed, is for new services installed or developed primarily for Government use;

(c) A tariff, whether filed or to be filed, does not include the special rates and charges;

(d) More than one commercial source (one or more of which is a common carrier) can offer the service but price competition is not adequate;

(e) Required to support the reasonableness of special assembly rates and charges;

(f) Required to support the reasonableness of special construction and equipment charges;

(g) Required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service;

(h) Required to support proposed cancellation and termination charges (under the Cancellation or Termination Orders clause) and reuse arrangements (under the Reuse Arrangements clause); or

(i) Required to support rates contained in voluntary tariffs filed by nondominant common carriers.

(End of clause)

252.239-7010 Audit and records—common carriers.

As prescribed in 239.7411(a), use the following clause:

Audit and Records—Common Carriers (Dec. 1991)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted under the Submission of Cost or Pricing Data—Common Carriers clause of this agreement/contract, the Contracting Officer or authorized representative shall have the right to examine the Contractor's books, records, documents, the computations and projections used, and other supporting data which will permit adequate evaluation of the cost or pricing data. This right applies to cost and pricing data which were available to the Contractor as of the date of the certification and shall last—

(1) Until the expiration of three years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge; or

(2) Until the expiration of the period of contingent liability with respect to that contingent liability.

(b) The Contractor shall maintain books, records, documents, and other evidence; and accounting procedures and practices, sufficient to show the direct and indirect costs which were the basis for pricing the communication service authorization.

(c) The Contractor shall insert the substance of this clause in subcontracts which furnish the basis for charges referred to in paragraph (a) of this clause unless the Contracting Officer authorizes its omission.

(End of clause)

252.239-7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

Special Construction and Equipment Charges (Dec. 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse 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 credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239-7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

Title to Telecommunication Facilities and Equipment (Dec. 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239-7013 Obligation of the government.

As prescribed in 239.7411(c), use the following clause:

Obligation of the Government (Dec. 1991)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization under the terms of this agreement.

(End of clause)

252.239-7014 Term of agreement.

As prescribed in 239.7411(c), use the following clause:

Term of Agreement (Dec. 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

252.239-7015 Continuation of communication service authorizations.

As prescribed in 239.7411(c), use the following clause:

Continuaton of Communication Service Authorizations (Dec. 1991)

(a) All communication service authorizations (CSAs) issued by _____under Basic Agreement Number ____, dated ____, are transferred to this basic agreement. The CSAs shall continue in full force and effect as though placed under this agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause under other agreements with the Contractor may also be transferred to this agreement.

(End of clause)

252.239-7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

Telecommunications Security Equipment, Devices, Techniques, and Services (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Securing* means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) *Sensitive information* means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) *Telecommunications systems* means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit—

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

252.241-7000 Superseding contract.

As prescribed in 241.007-70(a), use the following clause:

Superseding Contract (Dec. 1991)

This contract supersedes contract No. _____, dated ____ which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:

Capital Credits

(List years and accrued credits by year and separate delivery points.)

Outstanding Connection Charge Credits

(List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

Termination Liability Charges

(List by month and year the amount of monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

252.241-7001 Government access.

As prescribed in 241.007-70(b), use the following clause:

Government Access (Dec. 1991)

Authorized representatives of the Government may have access to the Contractor's on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

252.242-7000 Postaward conference.

As prescribed in 242.570, use the following clause:

Postaward Conference (Dec. 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.242-7001 Certification of indirect costs.

As prescribed in 242.770-6, use the following clause:

Certification of Indirect Costs (Dec. 1991)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (identify proposal and date) to establish billing or final indirect cost rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense or fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature _____

Name of Corporation Official: _____

Title: _____

Date of Execution: _____

(End of clause)

252.242–7002 Submission of commercial freight bills for audit.

As prescribed in 242.1404–2–70(a), use the following clause:

Submission of Commercial Freight Bills for Audit (Dec. 1991)

When the Government reimburses the Contractor's transportation costs, the Contractor shall furnish individual freight bills (or equivalent shipment data and evidence of payments) for transportation charges in excess of $500 to the following address:

General Services Administration—BWQAA
GSA Building
18th and F Streets, NW.
Washington, DC 20405

(End of clause)

252.242–7003 Application for U.S. government shipping documentation/ instructions.

As prescribed in 242.1404–2–70(b), use the following clause:

Application for U.S. Government Shipping Documentation/Instructions (Dec. 1991)

The Contractor shall request Government bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(a) Transportation Officer, if named in the contract schedule; or

(b) Contract administration office.

(End of clause)

252.242–7004 Material management and accounting system.

As prescribed in 242.7206, use the following clause:

Material Management and Accounting System (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material which is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(b) *General.* The Contractor agrees to—

(1) Maintain a material management and accounting system (MMAS) that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (f) of this clause.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply only if the Contractor—

(1) Is a large business; and

(2) Received, in its fiscal year preceding award of this contract, Department of Defense prime contracts or subcontracts, and their modifications totaling—

(i) $50 million or more; or

(ii) $10 million or more (but less than $50 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.

(d) *Disclosure, demonstration, and maintenance requirements.* (1) The Contractor shall—

(i) Disclose its MMAS to the Administrative Contracting Officer in writing; and

(ii) If requested by the Administrative Contracting Officer, demonstrate that the MMAS conforms to the standards in paragraph (f) of this clause.

(2) An MMAS disclosure is adequate when the Contractor has provided the Administrative Contracting Officer with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in its MMAS; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the MMAS.

(3) An MMAS demonstration is adequate when the Contractor has provided the Administrative Contracting Officer—

(i) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at paragraph (f) of this clause; and

(ii) Identification of any significant deficiencies, the estimated cost impact of the deficiency, and a comprehensive corrective action plan.

(4) The Contractor shall disclose significant changes in its MMAS to the Administrative Contracting Officer within 30 days of implementation.

(5) If the contractor desires the Government to protect such information as privileged or confidential, the Contractor shall—

(i) Notify the Government representative to whom the information is submitted, i.e., the ACO, or the auditor; and

(ii) Ensure an appropriate legend is on the face of the document(s) at the time of submission.

(e) *Deficiencies.* (1) If the Contractor receives a report which identifies deficiencies in its MMAS, the Contractor agrees to respond as follows—

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.

(2) The Administrative Contracting Officer shall evaluate the Contractor's response and notify the Contractor of the—

(i) Determination concerning remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(f) *MMAS standards.* MMAS systems shall have adequate internal accounting and administrative controls to ensure system and data integrity, and comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions which comply with the Federal Acquisition Regulation and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/ economic order quantity restrictions—

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall demonstrate that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/ residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall demonstrate that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances which will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions—

(i) The Contractor shall maintain and disclose a written policy describing the transfer methodologies.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in FAR 30.411–50(b). Consistency shall be maintained across all contract and customer types, and from

accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few circumstances where this may not be appropriate, the Contractor may use a loan/pay back technique only if approved by the administrative contracting officer. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (b)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Notwithstanding FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (f)(1) through (8) of this clause. Government furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

(End of clause)

252.242–7005 Cost/schedule status report.

As prescribed in 242.1107–70, use the following clause:

Cost/Schedule Status Report (Dec. 1991)

(a) The Offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract that provides for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, the Contractor's management procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. Unless the Contracting Officer provides prior written approval, in no case shall the total allocated budget exceed the contract budget base. For cost reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Offeror/Contractor may use a cost/schedule control system that has been accepted by a DoD component as complying with DoD cost/schedule control systems criteria (C/SCSC) of a contract of the same nature (e.g., development, production, etc.). The Offeror shall submit a copy of the Memorandum of Understanding instead of the written summary required in paragraph (a) of this clause.

(d) The Contracting Officer or designated representative shall visit the Contractor's facility to review implementation of the Contractor's procedures used to satisfy the C/SSR requirements and to verify that the procedures employed provide timely and reliable data. The Contractor shall provide necessary documents and data which describe the methods of planning, control and data generation in actual operation and satisfy the requirements of paragraph (a) of this clause.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the Contracting Officer, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the Contracting Officer for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

252.243–7000 Engineering change proposals.

As prescribed in 243.205–70, use the following clause:

Engineering Change Proposals (Dec. 1991)

(a) The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit an engineering change proposal in accordance with the instructions of _____ *, in effect on the date of contract award.

(b) The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include a "not to exceed" price ** or a "not less than" price ** and delivery adjustment. If the Contracting Officer orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts ***

(c) When the price ** of the engineering change is $100,000 or more, the Contractor shall submit

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet, and

(2) At the time of agreement on price **, a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 243.205–70, add the following paragraph (d) to the basic clause:

(d) If the price ** of a Contractor initiated engineering change is _____**** or less, the change, if ordered, shall be made at no adjustment in the contract price **

252.243–7001 Pricing of contract modifications.

As prescribed in 243.205–71, use the following clause:

Pricing of Contract Modifications (Dec. 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

252.245–7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.310–70, use the following clause:

Government-Furnished Mapping, Charting, and Geodesy Property (Dec. 1991)

(a) *Definition—Mapping, charting, and geodesy (MC&G) property* means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic

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* Insert MIL–STD–480 or MIL–STD–481

** Use a term suitable for the type of contract

*** In cost reimbursement type contracts, replace this sentence with the following: "Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost."

**** Insert a percentage of the contract price or a dollar amount.

maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

252.246-7000 Material inspection and receiving report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (Dec. 1991)

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 appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.246-7001 Warranty of data.

As prescribed in 246.710 (1), use the following clause:

Warranty of Data (Dec. 1991)

(a) *Definition—Technical data* has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, 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 years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* 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) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer 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 instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 246.710(2), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, 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 the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (Dec. 1991)

As prescribed at 246.710(3), substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, 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 the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

252.247-7000 Hardship conditions.

As prescribed in 247.270-7(a), use the following clause:

Hardship Conditions (Dec. 1991)

(a) The Contractor shall promptly notify the Contracting Officer of unusual conditions associated with loading or unloading a particular cargo, which will work a hardship

on the Contractor if loaded or unloaded at the basic commodity rates.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer shall investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the extra-labor rates set forth in the schedule of rates of this contract.

(End of clause)

252.247-7001 Price adjustment.

As prescribed in 247.270-7(b), use the following clause:

Price Adjustment (Dec. 1991)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (*insert date*), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements; or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of _____ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a certification that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

252.247-7002 Revision of prices.

As prescribed in 247.270-7(c), use the following clause:

Revision of Prices (Dec. 1991)

(a) *Definition. Wage adjustment,* as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.* (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.* (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

252.247-7003 Termination.

As prescribed in 247.270-7(d), use the following clause:

Termination (Dec. 1991)

(a) Either the Contracting Officer or the Contractor may terminate this contract at any time upon 60 days (or such other number of days provided in the Schedule) written notice to the other. Termination under this clause does not affect any obligation or liability that may have accrued before the termination.

(b) Upon termination of this contract under either paragraph (a) or the Default clause of this contract, the Government shall pay the Contractor any amount due for services performed under this contract to the date of termination.

(c) In the event of partial termination, payment for services furnished under the portion of the contract not terminated shall be in accordance with the terms of this contract.

(d) Any payments under this clause shall be without prejudice to any Government claim against the Contractor. The Government has the right to offset any such claims against any such payment.

(End of clause)

252.247-7004 Indefinite quantities—fixed charges.

As prescribed in 247.270-7(e), use the following clause:

Indefinite Quantities—Fixed Charges (Dec. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

252.247-7005 Indefinite quantities—no fixed charges.

As prescribed in 247.270-7(f), use the following clause:

Indefinite Quantities—No Fixed Charges (Dec. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)

252.247-7006 Removal of contractor's employees.

As prescribed in 247.270-7(g), use the following clause:

Removal of Contractor's Employees (Dec. 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

252.247-7007 Liability and insurance.

As prescribed in 247.270-7(h), use the following clause:

Liability and Insurance (Dec. 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract.

This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247-7008 Evaluation of bids.

As prescribed in 247.271-4(a), use the following provision:

Evaluation of Bids (Dec. 1991)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as "No Charge," or the letters "N/C" or "0," must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

Alternate I (Dec. 1991)

As prescribed in 247.271-4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

252.247-7009 Award.

As prescribed in 247.271-4(b), use the following provision:

Award (Dec. 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247-7010 Scope of contract.

As prescribed in 247.271-4(d), use the following clause:

Scope of Contract (Dec. 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

252.247-7011 Period of contract.

As prescribed in 247.271-4(e), use the following clause:

Period of Contract (Dec. 1991)

(a) This contract begins January 1, 19____, and ends December 31, 19____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

252.247-7012 Ordering limitation.

As prescribed in 247.271-4(g), use the following clause:

Ordering Limitation (Dec. 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247-7013 Contract areas of performance.

As prescribed in 247.271-4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271-2(b)):

Contract Areas of Performance (Dec. 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: _____.

(End of clause)

252.247-7014 Demurrage.

As prescribed in 247.271-4(i) use the following clause:

Demurrage (Dec. 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247-7015 Requirements.

As prescribed in 216.505(d), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216-21.

Alternate I (Dec. 1991)

(f) 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. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

252.247-7016 Contractor liability for loss or damage.

As prescribed in 247.271-4(k), use the following clause:

Contractor Liability for Loss or Damage (Dec. 1991)

(a) Definitions.

As used in this clause—

Article means any shipping piece or package and its contents.

Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7017 Erroneous shipments.

As prescribed in 247.271-4(l), use the following clause:

Erroneous shipments (Dec. 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor's expense.

(End of clause)

252.247-7018 Subcontracting.

As prescribed in 247.271-4(m), use the following clause:

Subcontracting (Dec. 1991)

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)

252.247-7019 Drayage.

As prescribed in 247.271-4(n), use the following clause:

Drayage (Dec. 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government.

(End of clause)

252.247-7020 Additional services.

As prescribed in 247.271-4(o), use the following clause:

Additional Services (Dec. 1991)

The Contractor shall provide additional services not included in the schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Interstate Commerce Commission, state regulatory bodies, or the Military Traffic Management Command, in effect at time of order.

(End of clause)

252.247-7021 Returnable cylinders and other containers.

As prescribed in 247.305-70, use the following clause:

Returnable Cylinders and Other Containers (Dec. 1991)

(a) Cylinders/containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after deliver to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the cylinders/containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ (Insert dollar amount for rental) per cylinder/container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders/containers for each type, size, and capacity, and for each point of delivery named in the contract. A credit of 30 cylinder/container days will accrue to the Government for each cylinder/container, regardless of type or capacity, delivered by the Contractor. After the initial 30 day period, a debit of one cylinder/container day will accrue to the Government for each cylinder/container for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of replacement value per cylinder/container specified in (c) below.

(c) For each cylinder/container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental

paid for that cylinder/container: (Insert the cylinder/container types, sizes, capacities, and associated replacement values.)

(d) Cylinders/containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following:

If any lost cylinder/container is located within ____ (insert number of days) calendar days after payment of the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (a) of this clause, beginning at the expiration of the 30 day loan period specified in paragraph (a), and continuing to the date on which the cylinder/container was delivered to the Contractor.

(End of clause)

252.247-7022 Representation of extent of transportation by sea.

As prescribed in 247.573(a), use the following provision:

Representation of Extent of Transportation By Sea (Dec. 1991)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this clause whether transportation of supplies by sea is anticipated under the resultant contract. The term *supplies* is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) *Representation.* The Offeror represents that it—

_____Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

252.247-7023 Transportation of supplies by sea.

As prescribed in 247.573(b), use the following clause:

Transportation of Supplies by Sea (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Components* means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) *Department of Defense* (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) *Foreign flag vessel* means any vessel that is not a U.S.-flag vessel.

(4) *Ocean transportation* means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) *Subcontractor* means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) *Supplies* means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information—

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total.....			

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the small purchase limitation of section 13.000 of the Federal Acquisition Regulation.

(End of clause)

252.247-7024 Notification of transportation of supplies by sea.

As prescribed in 247.573(c), use the following clause:

Notification of Transportation of Supplies by Sea (Dec. 1991)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the

Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

252.248-7000 Preparation of value engineering change proposals.

As prescribed in 248.270, use the following clause and insert either "MIL-STD-480" or "MIL-STD-481 (Short form)" in the blank:

Preparation of Value Engineering Change Proposals (Dec. 1991)

Prepare value engineering change proposals, for submission pursuant to the value engineering clause of this contract, in the format prescribed by the version of ____ ____ in effect on the date of contract award.

(End of clause)

252.249-7000 Special termination costs.

As prescribed in 249.501-70, use the following clause:

Special Termination Costs (Dec. 1991)

(a) Definition.— *Special termination costs,* as used in this clause, means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205-6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205-42(b);

(3) Settlement of expenses, as provided in FAR 31.205-42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205-35 and FAR 31.205-46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $_____ The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.251-7000 Ordering from government supply sources.

As prescribed in 251.107, use the following clause:

Ordering From Government Supply Sources (Dec. 1991)

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement: This order is placed under written authorization from _____ dated _____.

In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay bills from Government supply sources promptly.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(End of clause)

252.251-7001 Use of interagency fleet management system (IFMS) vehicles and related services.

As prescribed in 251.205, use the following clause:

Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services (Dec. 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor's employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

252.270-7000 Recovery of nonrecurring costs and royalty fees on commercial sales.

As prescribed in 270.007, use the following clause:

Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Derivative item* means an item derived from a defense item which consists of common parts equal to, or more than, ten percent of the defense item.

(2) *Direct sale* means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a defense contractor of products, technology, material, services, or development or production techniques that originally were developed, or improved using DoD appropriations or funds.

(3) *DoD focal points* are identified in section 270.006 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(4) *Foreign military sale (FMS)* means a sale, by the DoD, or defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act.

(5) *License* means the legal right to use technical data with or without compensation and with or without restrictions.

(6) *Nonrecurring costs (NC)* include DoD costs as follows:

(i) The costs funded by a research, development, test, and evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract or DoD in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(ii) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are 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. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the Federal Acquisition Regulation or DFARS.

(7) *Non-U.S. contractor* means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(8) *Pro rata recovery of nonrecurring costs* means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

(9) *Royalty fee* means a charge that is assessed for the use of DoD technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develop the technical data and technology.

(10) *Scheduled nonrecurring recoupment charges* means charges published in a DoD directive, instruction, or manual. Royalty fee percentages are published in DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology. Unit charges on specific items of equipment are published in DoD 5105.38–M, Security Assistance Management Manual, and DoD 7290.3–M, FMS Financial Management Manual.

(11) *Special RDT&E and nonrecurring production costs* means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

(12) *Technical data* is defined in DFARS 227.471.

(13) *Technology* means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice to implement DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(b) The Contractor agrees to reimburse the U.S. Government for a fair share of the U.S. Government's investment in special RDT&E and nonrecurring production costs on domestic or foreign commercial sales of defense articles and technology subject to a recoupment charge. The fair share is determined by the DoD following procedures set forth in DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(c) Sales where the U.S. Government is the eventual purchaser are not subject to this clause.

(d) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or to enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall—

(1) Determine if the DoD has a scheduled nonrecurring recoupment charge for the article or technology being sold or transferred.

(i) Where a charge has been established, the Contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(ii) If the DoD focal point has not responded to the Contractor's request within 30 days, the recoupment charge will be four percent of the sales price.

(2) Provide the DoD focal point with commercial sales forecasts of articles and technology subject to a recoupment charge when required.

(3) Notify the DoD focal point of all commercial sales (either foreign or domestic), that are subject to a recoupment charge. The notification will identify the product or technology being sold or licensed for production, the purchaser, the quantity sold, the applicable recoupment charges, the time frame for delivery, and the identification of the export license (commercial or State) if sale is for export. The notification will be made when each agreement for sale of a defense article or technology is made.

(4) Pay the established recoupment charges to the DoD focal point within 30 days following delivery to or acceptance of the item by a purchaser (whichever comes first) or such other time as may be agreed to by the parties.

(5) Certify, on or before the 60th day following the end of each calendar year during which recoupment amounts were due, to the applicable DoD focal point that proper notification to the U.S. Government of all commercial sales subject to this clause has been accomplished. The certificate to be executed by the Contractor is as follows—

Certificate of Notification of Commercial Sales

This is to certify that, to the best of my knowledge and belief, all notices required by the clause at Defense Federal Acquisition Regulation Supplement 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, have been provided and are accurate, complete, and current as of the end of the calendar year _____*.

Firm _____

Name _____

Title _____

Date of execution ** _____

(End of certificate)

(e) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government foreign military sales, the Contractor agrees to inform its customer that any defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a foreign military sales case (DoD Offer and Acceptance, DD Form 1513), executed by the U.S. Government and the customer.

(f) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the Contractor's use of Government data, tooling, test equipment, or facilities.

(g) The Contractor shall include the substance of this clause in all subcontracts for components or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

PART 253—FORMS

Sec.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.
253.204–70 DD Form 350, Individual Contracting Action Report.
253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25.000 or Less.
253.208 Required sources of supplies and services.
253.208–1 DD Form 448, Military Interdepartmental Purchase Request.
253.208–2 DD Form 448–2, Acceptance of MIPR.
253.209 Contractor qualifications.
253.209–1 Responsible prospective contractors.
253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
253.213–70 Instructions for completion of DD Form 1155.
253.215 Contracting by negotiation.

* Insert the current calendar year.

** Insert the day, month, and year of signing, which shall be on or before the 60th day following the end of each calendar year during which recoupment amounts were due.

Sec.

Subpart 253.2—Prescription of Forms

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection 253.204–70 contains instructions for completion of parts A through F of the DD Form 350. Paragraph (g) of this subsection contains special instructions for completing a DD Form 350 for an action of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four blocks.

(1) Block A1, Type of Report. Enter one of three codes.

(i) *Code 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Cancelling.* A cancelling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) Block A2, Report No. Enter the four digit local control number (see 204.670–3(a)(4)). If Block A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) Block A3, Contracting Office Code. Enter the code assigned the contracting office by the departmental data collection point in 204.670–1(c).

(4) Block A4, Name of Contracting Office. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B identifies the transaction.

(1) Block B1, Contract Number. (i) Enter—

(A) The DoD contract number; or

(B) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(ii) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(iii) The DoD contract number is the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7001 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument numbers as part of the contract number (these go in Block B2).

(2) Block B2, Mod. Order or Other ID Number. Enter the supplemental procurement identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004–4) and modifications (including modifications of calls or orders) have a six-position modification number (see 204.7003 or 204.7004(b)).

(3) Block B3, Action Date. (i) Enter the year, month, and day of the effective date for fiscal obligation purposes. When contract actions are awarded contingent on the availability of funds, enter the date funds are obligated.

(ii) Enter each segment as a two digit number. Use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(4) Block B4, Completion Date. (i) Enter the year, month, and day of the last contract delivery date or the end of the performance period.

(ii) Enter each segment as a two digit number. Use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(5) Block B5, Contractor Identification Information. (i) Use data that relates to the contractor whose name and address appears in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work.

(B) For orders placed against a contract awarded by another agency, also use data that relates to the company that will be performing the work.

(C) For Federal supply schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent).

(D) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office, except as noted in Block B5B.

(ii) Block B5 has seven parts. Some of the parts may not apply to the action being reported.

(A) Block B5A, Establishment Code. Enter the contractor's 9-position contractor establishment code. If the contractor establishment code (CEC) is not available within the contracting activity and the apparent awardee did not supply its CEC in response to the provision at FAR 52.204–4, Contractor Establishment Code, use the procedures at 204.7202–2 to obtain one.

(B) Block B5B, CAGE Code. Enter the 5-position commercial and Government entity (CAGE) code that identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(C) Block B5C, Contractor Name and Division Name. Enter the contractor's name. Include its division name.

(D) Block B5D, Contractor Address. Enter the contractor's address. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable. Do not enter foreign postal codes.

(E) Block B5E, TIN. Enter the contractor's taxpayer identification number (see FAR subpart 4.9). Leave Block B5E blank if the contractor is—

(*1*) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(*2*) An agency or instrumentality of a foreign government; or

(*3*) An agency or instrumentality of a Federal, State, or local government.

(F) Block B5F, Parent TIN. Enter the contractor's parent company (common parent) TIN (see FAR 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Block B5E, leave Block B5F blank.

(G) Block B5G, Parent Name. If a parent company TIN is entered in Block B5F, enter in Block B5G the name of the parent company (common parent). Leave Block B5G blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) Block B6, Principal Place of Performance. (i) The place, or places, where the contract will be performed are either specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–20, Place of Performance. Use data for the

contractor's principal place of performance, which is generally the—

(A) Final assembly point for supply contracts with manufacturers.

(B) Dealer's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from stock.

(C) Subcontractor's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from a subcontractor's plant.

(D) Actual construction site for construction contracts.

(E) Planned construction site for architect-engineer contracts.

(F) Place of mining for mined supplies.

(G) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (i)(A) through (G) (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location in Block B6.

(iii) If places of performance are too varied or not known, enter the contractor's home office location.

(iv) Block B6 has three parts. Some of the parts may not apply to the action being reported.

(A) Block B6A, City or Place Code. (*1*) For places in the United States and outlying areas, enter the numeric place code, which can be found in the Federal Information Processing Standards (FIPS) Publication (PUB) 55–2, ("Guideline: Codes for named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas"). Leave Block B6A blank for places outside the United States and outlying areas.

(*2*) If the city or locality is not listed, look in FIPS PUB 55–2 for the county code of the principal place of performance. Enter that in Block B6A. Use 50000 for Washington, DC, with a State code of 11.

(*3*) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55–2 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes where the first position of the class code is X or Z.

(B) Block B6B, State or Country Code. (*1*) For places in the United States and outlying areas, enter the numeric State code, which can be found in FIPS PUB 55–2 or FIPS PUB 5–2, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(*2*) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) Block B6C, City or Place State or Country Name. Enter the name of the principal place of performance. Do not leave Block B6C blank.

(7) Block B7, Type Obligation. Enter one of two codes.

(i) *Code 1—Obligation.* Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the contracting action deobligates funds.

(8) Block B8, Total Dollars. Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Block B8 blank.

(9) Block B9, Foreign Military Sale. Enter one of the two codes. If only part of the contracting action is foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the contracting action is under a foreign military sales arrangement, or under any other arrangement where a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) Block B10, Multiyear Contract. Enter one of the two codes.

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract under FAR 17.1.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) Block B11, Total Multiyear Value. (i) Complete Block B11 if the contracting action is—

(A) A multiyear contract (B10 is coded Y); and

(B) Either a new letter contract or a new definitive contract (Block B13 is coded 1 or 3). Otherwise, leave Block B11 blank.

(ii) Enter the estimated multiyear contract value (whole dollars only).

(12) Block B12, Principal Product or Service. B12 contains five parts. Do not leave any blocks blank.

(i) Block B12A, FSC or SVC Code. Enter the 4-character federal stock class or service code that describes the contract effort. To find the code, look in section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories of codes to choose from. In some cases, use a 4-character code from a list of 4-character codes; in other cases, construct a code using the instructions in the Manual. If more than one category or code applies to the contract action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter a federal supply classification (FSC) code in Block B12A. FSC codes are all numeric. Look in section 1, part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 may also help with the correct 4-character code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in Block B12A.

(C) *Research, Development, Test and Evaluation (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code in Block B12A. Look in section 1, part A of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter "A". Do not use an RDT&E code for—

(*1*) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(*2*) Orders under Federal supply schedule contracts. Instead use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(ii) Block B12B, DOD Claimant Prog. No. Enter a code that identifies the commodity described in Block B12E. These codes are in section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the research and development is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10.

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair or modification services, enter the code that best identifies the program.

(C) Equipment rental (including rental of automated data processing equipment), enter code S10.

(D) Utility services, enter code S10.

(E) Services that cannot be identified to any listed program, enter code S10.

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) Block B12C, System or Equip Code. (A) Enter a code that describes the weapons system or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Strategic Defense Initiative (SDI), enter code CAA rather than any other code.

(C) Defense Logistics Agency activities must use the code assigned by the sponsoring service.

(iv) Block B12D, SIC Code. Enter the standard industrial classification (SIC) code for the acquisition (as opposed to the SIC of the manufacturer or dealer). Use the SIC code in effect at the time of award. These codes are in the OMB Standard Industrial Classification Manual. If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(v) Block B12E, Name Description. Enter the name or brief description of the commodity or service. If the description is classified, enter only the word "Classified." Do not, however, use "Classified" when a code name (e.g., Minuteman, Polaris, Trident, Pershing, etc.) or an identifying program number (e.g., WS–107A) can be used.

(13) Block B13, Kind of Contracting Action. Enter one of the 16 codes.

(i) *Code 1—Initial Letter Contract.* Enter code 1 when the contracting action is a new letter contract. Do not use code 1 for a letter modification to an existing contract—use code A instead.

(ii) *Code 2—Definitive Contract Superseding Letter Contract.* Enter code 2 when the contracting action is the definitization of a letter contract. Do not use code 2 for an action which is a definitization of a letter modification—use code A instead.

(iii) *Code 3—Definitive Contract.* Enter code 3 when the contracting action is the first binding document containing all the terms and conditions. Code 3 also includes—

(A) Definitive contract awards under the Small Business Administration 8(a) program;

(B) Orders from the procurement list with workshops for the blind or other severely handicapped;

(C) Notices of award;

(D) Funding actions which are initial obligations (but see code C—Funding Action); and

(E) Lease or loan agreements.

(iv) *Code 4—Order Against DoD BOA.* Enter code 4 when the contracting action is an order or definitization of an order (not a modification of an order). Examples include orders against a basic ordering agreement, or blanket purchase agreements, priced exhibit, or production list entered into by a DoD component (see code 3 for actions which are not orders or modifications of orders).

(v) *Code 5—Order Under DoD Contract.* Enter code 5 when the contracting action is—

(A) An order (not a modification or definitization of an order) against an indefinite delivery type contract;

(B) A job order, task order, or the like where firm obligations are created by issuance of the order against a contract awarded by a DoD component (not a modification or definitization of an order); or

(C) An order (not a modification of an order) placed against DoD contracts with the Small Business Administration under the 8(a) program.

(vi) *Code 6—Order/Modification Under Federal Schedule.* Do not use for GSA area contracts for utility services, use code 7 instead. Enter code 6 if the contracting action is an order, or a modification of an order, under—

(A) Federal supply schedule, e.g., GSA, VA, or OPM, contract (FAR 8.401); or

(B) GSA ADP schedule contract.

(vii) *Code 7—Order Under Another Agency's Contract.* Enter code 7 if the contracting action is an order, or a modification of an order other than those in code 6, under a contract awarded by another Federal agency or Government corporation. Include GSA area contracts for utility services (FAR 8.301) Do not use code 7 if the Federal agency or Government corporation is the contractor (i.e., is doing the work)—use code 8 instead.

(viii) *Code 8—Action With Another Federal Agency.* Enter code 8 if the contracting action is an action, or a modification of an action, placed directly with another Federal agency or Government corporation (e.g., Government Printing Office, Federal Printing Office, Federal Prison Industries (UNICOR), Tennessee Valley Authority, or the Department of Treasury, Agriculture or Energy) where the Federal agency or Government corporation is acting as the contractor (i.e., doing the work).

(ix) *Code 9—Small Purchase Procedure.* Enter code 9 if the contracting action—

(A) Is in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR 19.10); and

(B) Used small purchase procedures (see FAR part 13).

(x) *Code A—Additional Work (new agreement).* Enter code A when the contracting action is a bilateral supplemental agreement which—

(A) Adds work to an existing contract (including a letter contract); and

(B) Requires a justification and approval (J&A), except see FAR 6.302–4(c) and 6.302–5(c)(2)(ii).

(xi) *Code B—Additional Work (other).* Enter code B when the contracting action is a modification of an existing contract (including a letter contract) which is not covered by code A or by codes C through F. Code B includes actions which—

(A) Exercise an option;

(B) Initiate an incremental yearly buy under a multiyear contract; and

(C) Amend a letter or other contract to add work that does not require a J&A.

(xii) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds.

(A) This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts which are code B);

(2) Increases to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions; and

(4) Economic price adjustments.

(B) This does not include modifications that have the initial citation and obligation of funds for a contract or modification awarded in one fiscal year but not effective until a subsequent fiscal year. Code these—

(1) 3—definitive contract, if they are the initial obligation for the acquisition, or

(2) A or B—additional work, if they are the initial obligation for the modification.

(xiii) *Code D—Change Order.* Enter code D when the contracting action is a change order issued under the "Changes," "Differing Site Conditions," or other similar clauses in existing contracts.

(xiv) *Code E—Termination for Default.* Enter code E if the contracting action is a modification which

terminates all or part of the contract for default.

(xv) *Code F—Termination for Convenience.* Enter code F if the contracting action is a modification which terminates all or part of the contract for convenience.

(xvi) *Code G—Cancellation.* Enter code G if the contracting action is a modification which cancels the contract. Do not use code G to cancel a prior DD Form 350—see Block A1.

(c) *Part C of the DD Form 350.* (1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in part D).

(2) Do not complete part C if the contracting action is—

(i) A foreign military sale, i.e., Block B9 (Foreign Military Sale) is coded Y (Yes); or

(ii) An action with another Federal agency, i.e., Block B13 (Kind of Contracting Action) is coded 8 (Action With Another Federal Agency).

(3) In completing part C, the codes to be used describe either the contracting action being reported or the original contract, depending on the codes reported for "Kind of Contracting Action" in Block B13. The following chart provides overall instructions. There are some exceptions for various part C blocks. These are listed at the beginning of the instructions for the block.

If block B13 is: Code	Title	Then code part C block:
1	Initial Letter Contract.	Action being reported.
2	Definitive Contract Superseding Letter Contract.	Action being reported.
3	Definitive Contract	Action being reported.
4	Order Under DoD Agreement.	Action being reported.
5	Order Under DoD Contract.	Original contract.[1]
6	Order/Modification Under Federal Supply Schedule.	Action being reported (but see Blocks C3, C6, C7, C11, and C13).
7	Order Under Another Agency's Contract.	Original contract (information provided by other agency) (but see Blocks C4, C6, C11, C12, and C13).
8	Action With Another Federal Agency.	Leave all of Part C blank.
9	Small Purchase Procedure.	Action being reported.
A	Additional Work (new agreement).	Action being reported.
B	Additional Work (other).	Original contract (but see Blocks C6 and C7).[1]
C	Funding Action	Original contract (but see Blocks C6 and C7).[1]
D	Change Order	Original contract (but see Blocks C6 and C7).[1]
E	Termination for Default.	Original contract (but see Blocks C6 and C7).[1]
F	Termination for Convenience.	Original contract (but see Blocks C6 and C7).[1]
G	Cancellation	Original contract (but see Blocks C6 and C7).[1]

[1] If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(4) Complete part C blocks as follows—

(i) Block C1, Synopsis. Enter one of the two codes.

(A) *Code Y—Yes.* Enter code Y if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

(B) *Code N—No.* Enter code N if a synopsis was not prepared.

(ii) Block C2, Reason Not Synopsized. Enter one of the two codes if Block C1 is "N." Otherwise, leave Block C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Other than Urgency.* Enter code B if the action was not synopsized due to some other reason.

(iii) Block C3, Extent Competed. Enter one of the four codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6, enter code A in Block C3.

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal supply schedule contract (Block B13 is coded 6).

(2) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1).

(3) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set aside an acquisition for small business, or to compete section 8(a) awards (FAR 6.2).

(4) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (if only one offer was received, use code D).

(5) Contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems when only one supplier can furnish the service (FAR 6.302–1(b)(3)).

(2) Brand name commercial products for authorized resale.

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies for the blind or other severely handicapped (see FAR 8.7) or 8(a) program (see FAR 19.8).

(4) International agreements.

(5) Other contract actions where the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though part C is not completed for foreign military sales or actions with another Federal agency, the database will automatically include these actions in the category of not available for competition.

(C) *Code C—Follow-on to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, or C do not apply.

(iv) Block C4, Sea Transportation. Enter one of the three codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 7, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7023.* Enter code Y when the contractor's response to the clause at 252.247–7023, Extent of Transportation of Supplies by Sea, indicates the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7023.* Enter code N when the contractor's response to the clause at 252.247–7023 indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Clause Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at

252.247-7023 or the solicitation did not include it.

(v) Block C5, Type of Contract. (A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the 11 codes—

(1) *Code A—Fixed Price Redetermination.*

(2) *Code J—Firm Fixed Price.*

(3) *Code K—Fixed Price Economic Price Adjustment.*

(4) *Code L—Fixed Price Incentive.*

(5) *Code R—Cost Plus Award Fee.*

(6) *Code S—Cost Contract.*

(7) *Code T—Cost Sharing.*

(8) *Code U—Cost Plus Fixed Fee.*

(9) *Code V—Cost Plus Incentive Fee.*

(10) *Code Y—Time and Materials.*

(11) *Code Z—Labor Hour.*

(vi) Block C6, Number of Offerors Solicited. Leave Block C6 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If block B13 is coded:	Then:
6	Enter code 2 in Block C6.
7	Leave Block C6 blank, otherwise enter one of the two codes— (A) *Code 1—One.* Enter code 1 if only one offeror was solicited. (B) *Code 2—More than one.* Enter code 2 if more than one offeror was solicited.

(vii) Block C7, Number of Offers Received. Leave Block C7 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If block B13 is coded:	Then:
6	Enter code 2 in Block C7; otherwise, enter one of the two codes— (A) *Code 1—One.* Enter code 1 if only one offer was received. (B) *Code 2—More than one.* Enter code 2 if more than one offer was received.

(viii) Block C8, Solicitation Procedures. Leave Block C8 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). If Block B13 is coded 6, use code B for single award schedules and code F for multiple award schedules. Otherwise, enter one of the 12 codes—

(A) *Code A—Full and Open Competition—Sealed Bid.* Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(B) *Code B—Full and Open Competition—Competitive Proposal.* Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(C) *Code C—Full and Open Competition—Combination.* Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(D) *Code D—Architect-Engineer.* Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(E) *Code E—Basic Research.* Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(F) *Code F—Multiple Award Schedule.* Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(G) *Code G—Alternate Source—Reduced Cost.* Enter code G if the action resulted from use of procedures to reduce overall cost pursuant to FAR 6.202(a)(1).

(H) *Code H—Alternate Source—Mobilization.* Enter code H if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

(I) *Code J—Alternate Source—Eng/R&D Capability.* Enter code J if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

(J) *Code K—Set Aside.* Enter code K if the action resulted from any:

(1) Set-aside for small business concerns (FAR 6.203 including small business innovation research (SBIR) actions and awards to blind or other severely handicapped organizations which were participating in a set-aside for small business concerns (see FAR 19.501(k)).

(2) Set-aside for small disadvantaged business concerns (206.203).

(3) Total or partial set-asides (including portions of broad agency announcements (BAAs)) for historically black colleges and universities of minority institutions (see 206.203 and 235.016).

(4) Competition among section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(K) *Code M—Otherwise Authorized by Statute.* Enter code M if using contracting procedures that are expressly authorized by statute and not addressed in FAR part 6.302-5 (see FAR 6.001(b)). Do not use code M for statutes addressed in FAR 6.302-5 (instead use code N in this Block and code 5A in Block C9).

(L) *Code N—Other Than Full and Open Competition.* Enter code N if the action resulted from use of other than full and open competition pursuant to FAR 6.3. This includes awards to qualified nonprofit agencies for the blind or other severely handicapped (NIB/NISH or other workshops) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (FAR 6.302-5(b).

(ix) Block C9, Authority for Other Than Full and Open Competition. (A) Leave Block C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the 15 codes if Block C8 is coded "N." Otherwise, leave Block C9 blank. (1) *Code 1A—Unique Source.* Enter code 1A if the action was justified pursuant to FAR 6.302-1(b)(1).

(2) *Code 1B—Follow-on Contract.* Enter code 1B if the action was justified pursuant to FAR 6.302-1(a)(2)(ii).

(3) *Code 1C—Unsolicited Research Prop.* Enter code 1C if the action was justified pursuant to FAR 6.302-1(a)(2)(i).

(4) *Code 1D—Patent/Data Rights.* Enter code 1D if action was justified pursuant to FAR 6.302-1(b)(2).

(5) *Code 1E—Utilities.* Enter code 1E if action was justified pursuant to FAR 6.302-1(b)(3).

(6) *Code 1F—Standardization.* Enter code 1F if action was justified pursuant to FAR 6.302–1(b)(4).

(7) *Code 1G—Only One Source—Other.* Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) *Code 2A—Urgency.* Enter code 2A if action was justified pursuant to FAR 6.302–2.

(9) *Code 3A—Mobilization.* Enter code 3A if action was justified pursuant to FAR 6.302–3(a)(2)(i).

(10) *Code 3B—Essential R&D Capability.* Enter code 3B if action was justified pursuant to FAR 6.302–3(a)(2)(ii)).

(11) *Code 4A—International Agreement.* Enter code 4A if action was justified pursuant to FAR 6.302–4.

(12) *Code 5A—Authorized by Statute.* Enter code 5A if action was justified pursuant to FAR 6.302–5(a)(2)(i).

(13) *Code 5B—Authorized Resale.* Enter code 5B if action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(14) *Code 6A—National Security.* Enter code 6A if action was justified pursuant to FAR 6.302–6.

(15) *Code 7A—Public Interest.* Enter code 7A if action was taken pursuant to FAR 6.302–7.

(x) Block C10, Subject to Labor Standards Statutes. Enter one of the five codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6, leave Block C10 blank.

(A) *Code A—Walsh-Healy Act, Manufacturer.* Enter code A when the contracting action is subject to the provisions of FAR 22.6 and the offeror represents that it is a manufacturer.

(B) *Code B—Walsh-Healy Act, Regular Dealer.* Enter code B when the contracting action is subject to the provisions of FAR 22.6, and the offeror represents that it is a regular dealer.

(C) *Code C—Service Contract Act.* Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(D) *Code D—Davis-Bacon Act.* Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(E) *Code Z—Not Subject to Above.* Enter code Z when the contracting action is not subject to any of the statutory requirements in paragraphs (A) through (D).

(xi) Block C11, Certified Cost or Pricing Data. Enter one of the three codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6 or 7, leave Block C11 blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when certified cost or pricing data were obtained for the contracting action (see FAR 15.804–2).

(B) *Code N—No—Not Obtained.* Enter code N when certified cost or pricing data were not obtained because data were not required (see FAR 15.804–2) or an exemption was granted (see FAR 15.804–3(a)–(g)).

(C) *Code W—Not Obtained—Waived.* Enter code W when certified cost or pricing data were not obtained because the requirement was waived (see FAR 15.804–3(i) and DFARS 215.804–3(i)).

(xii) Block C12, Contract Financing. Enter one of the five codes identifying whether or not progress payments (PP) or advance payments (AP) were used. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 7, enter the code for the action being reported.

(A) *Code A—FAR Clause 52.232–16.* Enter code A if the contracting action contains the clause at FAR 52.232–16, Progress Payments.

(B) *Code B—DFARS Clause 252.232–7003.* Enter code B if the contracting action contains the clause at 252.232–7003, Flexible Progress Payments.

(C) *Code C—Percentage of Completion PP.* Enter code C if the contracting action provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(D) *Code D—Unusual PP or AP.* Enter code D if the action provides unusual progress payments or advance payments (see FAR 32.4 and 32.501–2).

(E) *Code Z—None of the Above.* Enter code Z if codes A through D do not apply.

(xiii) Block C13, Foreign Trade Data. (A) The term "United States" (U.S.), as used in Block C13 excludes the Trust Territory of Palau (see 204.670–1 for definition of United States and outlying areas).

(B) As an exception to the chart in paragraph (c)(3) of this subsection:

If block B13 is coded:	Then:
6	Enter the code for the action being reported but leave Block C13C blank.
7	Enter the code for the original contract, but leave Block C13C blank.

(C) Block C13A, Number of Offerors. Enter the number of offers of foreign end products as defined in FAR 25 or services performed by foreign concerns. If zero, enter 0; if 9 or greater than 9, enter 9.

(D) Block C13B, Buy American Act Percent Difference. (1) If the contracting action is with a firm offering a domestic end product, and award to the firm resulted from use of the evaluation factor under the Buy American Act (225.105–70), enter the percent difference between the award price and the lowest price for a foreign end product. Compute the percent as follows:

The award price (AP) minus the lowest price for a foreign end product (LPFEP) divided by the lowest price for a foreign end product (LPFEP) times 100 equals the Buy American Act percent difference (BAAPD); or expressed mathematically:

$$\frac{(AP-LPFEP)}{LPFEP}\times 100=BAAPD$$

(2) Enter the percentage as a two position whole number (e.g., for 5%, enter 05; for 11%, enter 11).

(3) Enter two zeros (00) if the evaluation factor was not used.

(E) Block C13C, Place of Manufacture. Complete Block C13C only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Block C13C blank.

(1) *Code A—U.S.* Enter code A if the contracting action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) *Code B—Foreign.* Enter code B if the contracting action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the United States by a foreign concern.

(F) Block C13D, Country of Origin Code. (1) Complete Block C13D only if Block C13C is coded A or B. Otherwise, leave Block C13D blank.

(2) Enter the code from FIPS PUB 10–3 (Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions) that identifies the country where the foreign product is coming from or the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value.

(d) *Part D of the DD Form 350.* (1) Part D gathers data on the various socioeconomic programs that apply to defense acquisitions.

(2) Do NOT complete Part D if the contracting action is a:

(i) Foreign military sale, i.e., Block B9 (Foreign Military Sale) is coded Y (Yes);

(ii) Order/modification under a Federal supply schedule, i.e., Item B13 (Kind of Contracting Action) is coded 6 (Order/Modification Under Federal Supply Schedule); or

(iii) Action with another Federal agency, i.e., Item B13 (Kind of Contracting Action) is coded 8 (Action With Another Federal Agency).

(3) Determine the status of the concern (e.g., size and ownership), by referring to FAR/DFARS part 19.

(4) In completing part D, the codes to be used describe either the contracting action being reported or the original contract depending on the codes reported in B13 (Kind of Contracting Action). The following chart provides overall instructions. There are some exceptions for various part D Blocks. The exceptions are listed at the beginning of the instructions for the individual blocks.

If block B13 is:		Then use the block D code for the:
Code	Title	
1	Initial Letter Contract.	Action being reported.
2	Definitive Contract Superseding Letter Contract.	Action being reported.
3	Definitive Contract	Action being reported.
4	Order Under DoD Agreement.	Action being reported.
5	Order Under DoD Contract.	Original contract.[1]
6	Order/Modification Under Federal Supply Schedule.	Leave all of Part D blank.
7	Order Under Another Agency's Contract.	Original contract (obtain from other agency, but see Blocks D2, D3, D4, D7, and D9).[1]
8	Action With Another Federal Agency.	Leave all of Part D blank.
9	Small Purchase Procedure.	Action being reported.
A	Additional Work (new agreement).	Action being reported.
B	Additional Work (other).	Original contract (but see Block D9).[1]
C	Funding Action	Original contract (but see Block D9).[1]
D	Change Order	Original contract (but see Block D9).[1]
E	Termination for Default.	Original contract (but see Block D9).[1]
F	Termination for Convenience.	Original contract (but see Block D9).[1]
G	Cancellation	Original contract (but see Block D9).[1]

[1] If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(5) Complete part D blocks as follows—

(i) Block D1, Type of Business. Enter one of the ten codes.

(A) *Code A—Small Disadvantaged Business Performing in U.S.* Enter code A if the contractor is an SDB concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(B) *Code B—Other Small Business Performing in U.S.* Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(C) *Code C—Large Business Performing in U.S.* Enter code C if the contractor is a domestic large business concern, and the place of performance is within the United States and outlying areas.

(D) *Code D—Workshop for the Blind or Other Severely Handicapped.* Enter code D if the contractor is a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and outlying areas.

(E) *Code F—Hospital.* Enter code F if the contractor is a hospital, and the place of performance is within the United States and outlying areas.

(F) *Code L—Foreign Concern/Entity.* Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

(G) *Code M—Domestic Firm Performing Outside U.S.* Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(H) *Code N—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI).* Enter code H if the contractor is an HBCU/MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(I) *Code P—Other Educational.* Enter code P if the contractor is an educational institution which does not qualify as an HBCU/MI, and the place of performance is within the United States and outlying areas.

(J) *Code Z—Other Nonprofit.* Enter code Z if the contractor is a nonprofit institution (defined in FAR 31.701) which does not meet any of the criteria in codes A through I and the place of performance is in the United States and outlying areas.

(ii) Block D2, Reason Not Awarded to Small Disadvantaged Business (SDB). Enter one of the five codes when Block D1 is coded B or C. Otherwise leave D2 blank. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter code Z in Block D2.

(A) *Code A—No Known SDB Source.* Enter code A when applicable.

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source but it was not solicited.

(C) *Code C—SDB Solicited No Offer.* Enter code C when an SDB was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited Offer Not Low.* Enter code D when an SDB offer was not the low offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason.

(iii) Block D3, Reason Not Awarded to Small Business (SB). Enter one of the five codes when Block D1 is coded C. Otherwise leave D3 blank. (The term "Small Business" includes small disadvantaged businesses.) As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter code Z in Block D3.

(A) *Code A—No Known SB Source.* Enter code A when applicable.

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source but it was not solicited.

(C) *SB Solicited No Offer.* Enter code C when a small business concern was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited Offer Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason.

(iv) Block D4, Preference Program. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter the code describing the action being reported for Block D4C, and leave Block D4E blank.

(A) Block D4A, Type of SB Set-Aside. Enter one of the six available codes.

(1) Code A—None. Enter code A if there was no small business set-aside (FAR 19.502). Note that set-asides for historically black colleges and

universities and minority institutions (HBCUs/MIs) are not small business set-asides. Use code A for HBCU/MI set-asides and complete Block D4C.

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (FAR 19.502–2) or the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (219.502–3).

(4) Code D—Reserved.

(5) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses (219.502–2–70).

(6) Code Y—Small Emerging Business Set-Aside. Enter code Y if the action is an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and 204.670–9).

(7) Code Z—Small Business-Small Purchase Set-Aside. Enter code Z if the action is reserved exclusively for small business concerns pursuant to FAR 13.105 and is in a designated industry group under the Small Business Competitiveness Demonstration Program (204.670–9).

(B) Block D4B—Type of SDB Set-Aside/SDB Preference. Enter one of the five codes, even if Block D4A is coded E.

(1) Code A—None. Enter code A if no SDB preference was given or award was not to an SDB.

(2) Code B—Section 8(a). Enter code B if the contract was awarded to the Small Business Administration (SBA) under section 8(a) of the Small Business Act (FAR 19.8).

(3) Code C—Total SDB Set-Aside. Enter code C if the action was an SDB set-aside (219.502–2–70) and award was to an SDB.

(4) Code D—SDB Evaluation Preference—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of an evaluation preference (219.70).

(5) Code E—SDB Preferential Consideration—Partial SB Set-Aside. Enter code E if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB (219.502–3).

(C) Block D4C—HBCU/MI Set-Aside. Enter one of the three codes.

(1) Code A—None. Enter code A if the action was not set-aside for HBCUs or MIs.

(2) Code B—HBCU or MI—Total Set-Aside. Enter code B if the action was a total set-aside for HBCUs and MIs (226.7003).

(3) Code C—HBCU or MI—Partial Set-Aside. Enter code C if the action was a partial set-aside for HBCUs or MIs under a broad agency announcement (235.016).

(D) Block D4D—Other Preference Program. Enter either code A or B.

(1) Code A—None. Enter code A if no other preference program applied.

(2) Code B—Directed to Workshops. Enter code B for an action with a workshop for the blind or a workshop for the other severely handicapped or an item on the Procurement List which was awarded under FAR 8.7.

(E) Block D4E, Premium Percent. *(1)* Complete Block D4E if Block D4B is coded C, D, or E, or Block D4C is coded B or C.

(2) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(3) Otherwise leave blank.

(v) Block D5—Ethnic Group. (A) Complete Block D5 if the action is with an SDB. Otherwise leave it blank.

(B) Enter the code from the following list which corresponds to the ethnic group marked by the contractor in the solicitation provision at 252.219–7000 (Small Disadvantaged Business Concern Representation (DoD Contracts)).

(1) Code A—Asian-Indian American.

(2) Code B—Asian-Pacific American.

(3) Code C—Black American.

(4) Code D—Hispanic American.

(5) Code E—Native American.

(6) Code F—Other SDB certified/determined by SBA.

(7) Code Z—No representation.

(vi) Block D6, Women-Owned Small Business. Enter one of the three codes.

(A) *Code Y—Yes.* Enter code Y if the response to FAR 52.219–3 (Women-Owned Small Business Representation) indicates that it is a woman-owned small business.

(B) *Code N—No.* Enter code N if the contractor's response to FAR 52.219–3 indicates that it is not a woman-owned small business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.219–3.

(vii) Block D7—Small Business Innovation Research (SBIR) Program. Enter one of the three codes. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, leave Block D7 blank.

(A) *Code A—Not an SBIR Phase I–II.* Enter code A if the action is not in support of a Phase I or II SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(viii) Block D8, Subcontracting Plan–SB, SDB, or HBCU/MI. Enter one of the four codes.

(A) *Code A—Plan Not Included.* No Subcontracting Possibilities. Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (because the action did not meet the dollar thresholds in FAR 19.702(b)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (FAR 19.708(c), 219.708(c)).

(ix) Block D9, Demonstration Test Program. Enter one of the two codes. As exceptions to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 5, B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B13 is coded 7, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (FAR 19.10 and 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) Block D10, Size of Small Business. (A) Complete Block D10 only when Block D9 is coded "Y" and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of fourteen codes of the size of the business as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(xi) Block D11, Emerging Small Business. (A) Complete this block only if Block D9 is coded "Y" and the contracting action is in one of the four

designated industry groups, not one of the targeted industry categories. Otherwise, leave Block D11 blank.

(B) Enter one of the two codes. *(1) Code Y—Yes.* Enter code Y if the contractor represents in the provision at FAR 52.219–7019, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) Block E1, Contracted Advisory and Assistance Services. Enter one of the two codes.

(i) *Code Y—Yes.* Enter code Y if the action includes any contracted advisory and assistance services (CAAS) as defined in FAR 37.2.

(ii) *Code N—No.* Enter code N if code Y does not apply.

(2) Block E2, Set-Aside Value. (i) Complete Block E2 only if the contracting action is with a public or private organization for the blind or other severely handicapped and was awarded as a result of the organization's participation in a total or partial small business set-aside (FAR 19.501(k)). Otherwise, leave Block E2 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the set-aside portion of the award. Use whole dollars.

(3) Block E3, Next Low Offer. (i) Complete Block E3 only if Block E2 is completed. Otherwise, leave Block E3 blank.

(ii) Enter the difference between the award price to the organization for the blind or other severely handicapped and the offered price from the small business firm that would have been the low offeror if organizations for the blind or other severely handicapped had not participated in the acquisition. Enter the amount in whole dollars.

(4) Blocks E4 Through E8, Reserved. Leave these blocks blank unless agency regulations specify otherwise.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) Block F1, Name of Contracting Officer or Representative. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) Block F2, Signature. The person identified in Block F1 must sign.

(3) Block F3, Telephone Number. Enter the telephone number (with area code) for the individual in Block F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) Block F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted. Use two digits for each segment; use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(g) *Special Instructions for DD Forms 350 on Actions of $25,000 or Less Under the Small Business Competitiveness Demonstration Program.* (1) Policy on when a DD Form 350 is required on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program is in 204.670–9.

(2) In general, complete these DD Forms 350 using the "regular" instructions in paragraphs (a) through (f) of this subsection. However, there are special instructions for certain blocks. The following matrix tells which apply.

DD 350 block	Regular instructions	Leave blank	Special instructions
PART A	X		
B1	X		
B2	X		
B3	X		
B4		X	
B5A	X		
B5B		X	
B5C	X		
B5D	X		
B5E		X	
B5F		X	
B5G		X	
B6	X		
B6A	X		
B6B	X		
B6C	X		
B7	X		
B8	X		
B9	X		
B10		X	
B11		X	
B12A	X		
B12B		X	
B12C		X	
B12D	X		
B12E	X		
B13	X		Use Code 9 if small purchase procedures were used.
C1	X		
C2	X		
C3	X		
C4		X	
C5	X		
C6		X	
C7	X		
C8	X		Leave blank if small purchase procedures were used.
C9	X		Leave blank if small purchase procedures were used.
C10	X		
C11		X	
C12		X	
C13A	X		
C13B	X		
C13C	X		
C13D	X		
D1	X		
D2		X	
D3		X	
D4A	X		If small purchase procedures were used, use only codes Y or Z.
D4B	X		
D4C	X		
D4D	X		
D4E		X	
D5		X	
D6	X		
D7		X	
D8		X	
D9	X		
D10	X		
D11	X		
E1		X	
E2		X	
E3		X	
E4–8	X		
PART F	X		

253.204–71 DD Form 1057, Monthly contracting summary of actions $25,000 or less.

(a) *Scope of subsection.* Policy on use of a DD Form 1057 is in 204.670. This subsection 253.204–71 contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except—

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action)—

(A) Meals and lodging.

(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command shall use departmental procedures to report vouchers it processes on Naval shore establishment contracts for electricity and gas.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (−) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(b) *Definitions.* For purposes of this subsection—

Delivery Orders—GSA Federal Supply Schedules means only orders, and modifications of such orders, under Federal supply schedules awarded by GSA.

Delivery Orders—Other Federal Supply Schedules means only orders, and modifications of such orders, under Federal supply schedules awarded by an agency other than GSA, e.g., awarded by VA or OPM.

Delivery Orders—All Others means orders, and modifications of such orders, under basic ordering agreements (BOAs) or indefinite delivery contracts.

Other Contracting Actions means all actions that do not meet the definitions in this paragraph (b) of a delivery order.

Small Purchase Procedures is defined in FAR part 13. It includes purchase orders and orders under blanket purchase agreements (BPAs) and modifications to small purchase actions.

(c) *Section A, General Information.* (1) Block, A1, Report for Month Ending. Enter the last day of the month in which the report is submitted. Enter it as year, month, and day, using a two digit number for each segment and 01 through 12 for January through December. For example, for the month ending April 30, 1999, enter 990430.

(2) Block A2, Contracting Office. Enter sufficient detail to establish the identity of the contracting office submitting the report in Blocks 2 a and b.

(3) Block A3, Reporting Office Code. Enter the code assigned to the contracting office by the departmental data collection point in 204.670–8.

(d) *Section B, Contracting Actions.* (1) Block B1, Tariff or Regulated Acquisitions. Enter the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with tariff or regulated industries (industries with sole source and service rates which are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) Block B2, Foreign/Interagency. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, e.g., base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go in Block B5).

(C) With another Federal agency or Government corporation, e.g., Federal Prison Industries.

(ii) Enter the subtotals in Blocks B2 a and b for the number and dollar value of contracting actions, including modifications that will also be reported in Block B8 for—

(A) Block B2a, FMS/International Agreements. Enter subtotals for paragraphs (d)(2)(i) (A) and (B) of this subsection.

(B) Block B2b, Action with Another Federal Agency. Enter subtotal for paragraph (d)(2)(i)(C) of this subsection.

(3) Block B3, Small Business. (i) Enter the total number and total dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a small business concern; and

(B) Place of performance is in the United States and outlying areas (see 204.670–1).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B3a, Small Purchase Procedures.

(B) Block B3b, Delivery Orders—GSA FSS.

(C) Block B3c, Delivery Orders—Other FSS.

(D) Block B3d, Deliver Orders—Other.

(E) Block B3e, Other Contracting Actions.

(4) Block B4, Large Business. (i) Enter the total number and dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B4a, Small Purchase Procedures.

(B) Block B4b, Delivery Orders—GSA FSS.

(C) Block B4c, Delivery Orders—Other FSS.

(D) Block B4d, Delivery Orders—Other.

(E) Block B4e, Other Contracting Actions.

(5) Block B5, Domestic or Foreign Entities Performing Outside the United States. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) where the place of performance is outside the United States and outlying areas (see 204.670–1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of actions (including modifications that will also be reported in Block B8) for—

(A) Block B5a, Small Purchase Procedures.

(B) Block B5b, Delivery Orders—GSA FSS.

(C) Block B5c, Delivery Orders—Other FSS.

(D) Block B5d, Delivery Orders—Other.

(E) Block B5e, Other Contracting Actions.

(6) Block B6, Educational, Nonprofit & Other. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with—

(A) Educational institutions;

(B) Not-for-profit and nonprofit institutions (defined in FAR 31.107);

(C) Organizations for the blind and other severely handicapped; and

(D) Any other entities not listed in Blocks B1 through B5.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in B) for—

(A) Block B6a, Small Purchase Procedures.

(B) Block B6b, Delivery Orders—GSA FSS.

(C) Block B6c, Delivery Orders—Other FSS.

(D) Block B6d, Delivery Orders—Other.

(E) Block B6e, Other Contracting Actions. Use this B6e to report actions with organizations for the blind and other severely handicapped.

(7) Block B7, Total Contracting Actions. (i) Add Blocks B1 through B6 and enter the totals in Block B7.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Block B7a, Small Purchase Procedures, sum of sub-blocks 3a + 4a + 5a + 6a.

(B) Block B7b, Delivery Orders—GSA FSS, sum of sub-blocks 3b + 4b + 5b + 6b.

(C) Block B7c, Delivery Orders—Other FSS, sum of sub-blocks 3c + 4c+ 5c + 6c.

(D) Block B7d, Delivery Orders—Other, sum of sub-blocks 3d + 4d + 5d + 6d.

(E) Block B7e, Other Contracting Actions, sum of sub-blocks 3e + 4e + 5e + 6e.

(8) Block B8, Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and dollar value of contracting actions

which are modification actions. This includes modifications to delivery orders or other contracting actions which also may be counted in other blocks in section B.

(e) *Section C, Extent Competed.* (1) Block C1, Competed.

(i) Enter the total number and dollar value of contracting actions which were competed.

(A) Include in Block C1—

(*1*) Actions not subject to Competition in Contract Act (CICA) (see FAR 6.001) where at least two quotations or offers were received;

(*2*) Small business-small purchase set-asides over the competition and price reasonableness threshold in FAR 13.106(a);

(*3*) Actions where competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1);

(*4*) Actions where full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside an acquisition for small business (FAR subpart 6.2);

(*5*) Actions where statutory authorities for other than full and open competition (FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (B) (2) and (3).

(*6*) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);

(*7*) Delivery orders/modifications under a federal supply schedule; and

(*8*) Section 8(a) awards competed under FAR 6.204.

(B) Do not include—

(*1*) Actions that meet the criteria for section C, Block C2;

(*2*) Actions awarded under the authority of FAR 6.302–5(b) (2) or (4), authorized or required by statute (report these in Section C, Block C2);

(*3*) Actions reported in section B, Blocks B1 and B2, including actions with the Federal Prison Industries. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C1a, Small Business Concerns.

(B) Block C1b, Large Business Concerns.

(C) Block C1c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas.

(D) Block C1d, Educational, Nonprofit and Other.

(2) Block C2, Not Available for Competition. (i) Enter the total number and dollar value of contracting actions which were not available for competition.

(A) Include in Block C2—

(*1*) Actions for brand name commercial products for authorized resale;

(*2*) Actions authorized or required by statute to be awarded to a specific source or through another agency in accordance with FAR 6.302–5(b) (2) or (4); e.g., actions with qualified nonprofit agencies for the blind or other severely handicapped and noncompetitive 8(a) actions;

(*3*) Actions (including modifications) below ten percent of the small purchase threshold at FAR 13.000 made pursuant to FAR 13.106(a);

(*4*) Other contract actions where the Director of Defense Procurement has determined that there is no opportunity for competition.

(B) Do not include any actions reported in section B, Blocks B1 or B2 (e.g., actions with regulated monopolies, actions under foreign military sales or international agreements, and actions with another Federal agency or Government corporation). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C2a, Small Business Concerns.

(B) Block C2b, Large Business Concerns.

(C) Block C2c, Domestic or Foreign Entities Performing Outside the United States.

(D) Block C2d, Educational, Nonprofit and Other.

(3) Block C3, Not Competed. (i) Enter the total number and dollar value of contracting actions which were not competed, i.e., any actions not reported in Blocks B1 or B2. Do not include actions reported in section B, Blocks B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of actions for—

(A) Block C3a, Small Business Concerns.

(B) Block C3b, Large Business Concerns.

(C) Block C3c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas.

(D) Block C3d, Educational, Nonprofit and Other.

(f) *Section D, Research, Development, Test, and Evaluation Actions.* Do not include actions for supplies or services in support of RDT&E work that do not require the contractor to perform RDT&E.

(1) Block D1, Small Business. Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) Block D2, Large Business. Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) Block D3, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas. Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States or outlying areas (see 204.670–1).

(4) Block D4, Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter the total number and dollar value of RDT&E actions with HBCUs or MIs.

(5) Block D5, Other Entities. Enter the total number and dollar value of RDT&E actions that were not reported in Blocks D1 through D4.

(g) *Section E, Selected Socioeconomic Statistics.* (1) Block E1, Small Business (SB) Set-Aside. (i) Enter the total number and dollar value of contracting actions which were small business set-aside actions, including awards to SDBs reported in Blocks E2, E2c, and E2d.

(ii) If the action is an emerging small business set aside (FAR 19.1002), use the most appropriate sub-block.

(iii) Enter the subtotals for the number and total dollar value of actions for—

(A) Block E1a, SB—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105.

(B) Block E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(2) Block E2, Small Disadvantaged Business (SDB) Actions. (i) Enter the total number and dollar value of actions which were small disadvantaged business actions.

(ii) Enter the subtotals for the number and dollar value for—

(A) Block E2a, through SBA—section 8(a). Enter actions with the Small Business Administration pursuant to section 8(a) of the Small Business Act (FAR 19.8).

(B) Block E2b, SDB Set-Aside/SDB Preference. Enter actions resulting from—

(*1*) A set-aside for small disadvantaged business (SDB) (219.502–2–70);

(*2*) Application of an SDB evaluation preference (219.70); or

(*3*) SDB preferential consideration (219.502–3).

(C) Block E2c, SB—Small Purchase Set-Aside. Enter actions under FAR 13.105 where award is to an SDB, but a preference was not applied.

(D) Block E2d, SB Set-Aside. Enter actions under FAR 19.502 where award is to an SDB, but a preference was not applied nor was preferential consideration given.

(E) Block E2e, Other. Enter awards to SDB concerns where award is to an SDB not reported in Blocks E2a through E2d.

(3) Block E3, Woman-Owned Small Business. Enter total number and dollar value of contracting actions with women-owned small businesses.

(4) Block E4, HBCU/MI. Enter the total number and dollar value of contracting actions with HBCU/MIs pursuant to 226.70.

(5) Block E5, Sheltered Workshop. Enter the total number and dollar value of contracting actions with a workshop for the blind or other severely handicapped for supplies or services from the procurement list pursuant to FAR subpart 8.7.

(h) *Section F, Small Purchase Procedures—Dollar Value Ranges.* Enter in each of the dollar ranges the total number and dollar value of contracting actions which used small purchase procedures (FAR part 13). The total of section F is normally the sum of Blocks B3a, B4a, B5a, and B6a.

(i) *Section G, Remarks and Authentication.* (1) Block G1, Remarks. Enter any remarks applicable to this report.

(2) Block G2, Contracting Officer.

(i) Block G2a, Typed Name. Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Block G2b, Signature. The person identified in Block G2a must sign.

(iii) Block G2c, Telephone Number. Enter the telephone number (with area code) of the person identified in Block G2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) Block G3, Date Report Submitted. Enter the date (YYMMDD) that the DD Form 1057 is submitted. Use two digits for each segment; use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

253.208 Required sources of supplies and services.

253.208-1 DD Form 448, Military Interdepartmental Purchase Request.

(a) Use the DD Form 448 as prescribed in subpart 208.70.

(b) Prepare MIPR information in uniform contract format when possible. Overprint of fixed repetitive information is authorized.

(c) Instructions for completion of DD Form 448. (1) BLOCK 5—MIPR Number. Number the MIPR by using—

(i) The requiring department identification code as prescribed in DoD 4000.25-6-M, Department of Defense Activity Address Directory (DoDAAD);

(ii) The last digit of the fiscal year; and

(iii) The number of the particular MIPR (numbered consecutively by the requiring activity).

(2) Block 6—Amend No. Assign a suffix number. Assign amendments of the same MIPR consecutive suffix numbers.

(3) Block 9. (i) Conduct interdepartmental screening of items in accordance with FAR 8.001. Requisition items which are available from stocks of other departments as follows:

(A) Obtain items within the scope of MILSTRIP (see DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP)) by use of DD Form 1348 (Single Line Item Requisition System Document (Manual), DoD))/1348M (Single Line Item Requisition System Document, DoD (Mechanical)).

(B) Obtain items not covered by MILSTRIP using DD Form 1149, Requisition and Invoice/Shipping Document.

(C) If, after receipt of a MIPR, it is determined the requested items are available from stock, the acquiring department shall use the MIPR to obtain the item.

(ii) Normally restrict a MIPR to one major end item, including its required spare parts, ground support equipment, and similar related items. For other than major end items, limit MIPRs to items within a single Federal supply class when possible.

(4) Block 10. (i) *Delivery Schedules.* (A) The requiring department must clearly state the required time of delivery or performance in each MIPR, taking into consideration the normal administrative lead time of the particular commodity. Delivery and performance schedules on MIPRs must be realistic (see FAR 12.1). If the acquiring department cannot accept the delivery schedule in the MIPR, the acquiring department will note that on DD Form 448-2, Acceptance of MIPR. Changes in the requested delivery schedule must be made by MIPR amendment.

(B) When a short delivery schedule is mandatory, the requiring department shall mark the MIPR "URGENT" in bold letters and provide justification for the marking.

(ii) Requiring activities must provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(iii) The requiring activity will furnish estimated weight, cube, and dimensions for each line item or a statement explaining why these data are not available.

(iv) The requiring activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

(v) Prepare attachments to MIPRs in sufficient numbers so that each copy of a MIPR submitted to the acquiring department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions must include the clear text identification and DoDAAD code if assigned.

(5) Block 12—Transportation Allotment. Enter allotment data for transportation of supplies at Government expense if appropriate.

(6) Block 13—Mail Invoices to. Use this block to identify the name and address of the office to receive invoices and make payment. (i) Complete the block only if—

(A) The resulting contract is not to be paid by the Defense Contract Management Command or the Defense Finance Center; and

(B) The office to receive invoices and make payment is known at the time of preparation of the MIPR.

(ii) If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office.

(iii) If payment is to be made by an office other than the office to which the invoice is to be mailed, include the name, address, and DoDAAD code of the payment office as an attachment to the MIPR.

(iv) If multiple offices are to receive invoices and make payment, include the names and addresses of those offices as an attachment to the MIPR. Also include the DoDAAD code of each payment office.

(v) Whenever the payment office is included in an attachment, include a reference to the attachment in this block.

(vi) If the names and addresses of invoicing and payment offices are provided the acquiring department after submission of the MIPR, the requiring department also must provide the DoDAAD code for each payment office.

(7) Block 14. Enter allotment data for the acquisition of supplies. Enter each citation in Item 14 in the appropriate space as follows—

(i) *Accounting Classification Reference Number (ACRN).* If the

ACRN procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, enter the ACRN for each fund citation. (The acquiring department, when preparing the coassigned to a fund citation in the MIPR.)

(ii) *Appropriation.* Enter the ten positions as follows:

(A) First and second—Treasury Department number identifying the department or agency to which the appropriation applies or has been transferred.

(B) Third and fourth—Treasury Department number identifying the department or agency from which an appropriation has been transferred; leave blank if no transfer is involved.

(C) Fifth and sixth—Identify the appropriation fiscal year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability, and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank, and the sixth position shall be the last digit of the fiscal year. For no-year (continuing) appropriations, the fifth position shall be blank, and the sixth position shall be "X."

(D) Seventh through tenth—Treasury Department appropriation serial number.

(iii) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(iv) *Supplemental Accounting Classification Data.* Not to exceed 36 characters. Enter in accordance with departmental or agency regulations.

(v) *Accounting Station.* Enter the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(vi) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(vii) *Additional Citations.* If space is required for additional fund citations, include as an attachment and reference the attachment on the form.

(d) When preparing a MIPR amendment, always fill out the basic information in Blocks 1 through 8. Fill out only those other blocks which vary from the data shown on the basic MIPR or a prior amendment. Insert "n/c" in items where there is no change.

(e) Change of a disbursing office cited on a DoD funded MIPR does not require a MIPR amendment when the resultant contract is assigned for administration to the Defense Contract Management Command. The administrative contracting office may issue an administrative change order, copies of which will be provided to the contracting officer for transmittal to the requiring activity.

253.208-2 DD Form 448-2, acceptance of MIPR.

(a) Use the DD Form 448-2 as prescribed in subpart 208.70.

(b) Instructions for completion of DD Form 448-2. (Complete only the applicable blocks.) (1) Block 6. Check the specific terms under which the MIPR is being accepted.

(2) Block 7. If any one of the MIPR line items is not accepted, check Block 7 and record the affected MIPR line item number and reason in Block 13.

(3) Blocks 8 and 9. Use Blocks 8 and 9 only—

(i) When Block 6c acceptance is indicated (indicate the MIPR line item numbers that will be provided under each method of financing in Blocks 8a and 9a, respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (list the affected MIPR line item numbers together with the adjusted quantities or estimated costs in the columns provided under Blocks 8 and 9, as appropriate).

(4) Block 10. Whenever a MIPR is accepted in part or in total under Category II funding, forecast the estimated date of contract award.

(5) Block 11. Enter the total amount of funds required to fund the MIPR items, as accepted.

(6) Block 12. (i) Complete this block only in those cases where the amount recorded in Block 11 is not in agreement with the amount recorded in Block 5. This will serve either—

(A) As a request to the requiring department to issue a MIPR amendment to provide the additional funds; or

(B) Authority for the requiring department to withdraw the available excess funds.

(ii) When funds of two or more appropriations are involved, provide proper breakdown information in Block 13.

(7) Block 13. Use this block to record—

(i) Justification, by MIPR line item, for any additional funds required;

(ii) Explanation for rejection of MIPR whether in part or in total;

(iii) Appropriation and subhead data cited on the MIPR; and

(iv) Other pertinent data.

(c) Complete a DD Form 448-2 for all MIPR amendments involving an adjustment of funds or delivery schedule, or if requested by the requiring department.

(d) Unless otherwise agreed, provide the requiring department an original and three copies of each DD Form 448-2.

253.209 Contractor qualifications.

253.209-1 Responsible prospective contractors.

(a) *SF 1403, Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean—

(A) *Technical Capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production Capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality Assurance Capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial Capability.* A determination that the prospective contractor has or can get adequate financial resources to obtain needed facilities, equipment, materials, etc.

(E) *Accounting System.* An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, a contracting officer will request an accounting system review when soliciting contracts with progress payments or cost or incentive type contracts.

(ii) The factors in section III, Block 20, generally mean—

(A) *Government Property Control.* An assessment of the prospective contractor's capability to manage and control Government property.

(B) *Transportation.* An assessment of the prospective contractor's capability to follow the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

(C) *Packaging.* An assessment of the prospective contractor's ability to meet all contractual packaging requirements

including preservation, unit pack, packing, marking, and unitizing for shipment.

(D) *Security Clearance.* A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to the Defense Investigative Service (DIS)).

(E) *Plant Safety.* An assessment of the prospective contractor's ability to meet the safety requirements in the solicitation.

(F) *Environmental/Energy Consideration.* An evaluation of the prospective contractor's ability to meet specific environmental and energy requirements in the solicitation.

(G) *Flight Operations and Flight Safety.* An evaluation of the prospective contractor's ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(H) *Other.* If the contracting officer wants an assessment of other than major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation.* DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347. DoD uses Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.505–2(b) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.

253.213–70 Instructions for Completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned outside the purchasing office; or

(2) The contractor is located in the continental United States or Canada.

(b) The entity codes (address codes) referenced in this subsection are codes published in—

(1) *DoD Activity Address Directory (DODAAD), DoD 4000.25–6–M.*

(2) *Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–8–M.*

(3) *Commercial and Government Entity (CAGE) Codes Handbook H4/H8.*

(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) When the DD Form 1155 includes FMS requirements, clearly mark FMS requirement on its face. Specify within the order each FMS case identifier code by line or subline item number.

(e) Instructions for DD Form 1155 entries. (Instructions apply to both purchase orders and delivery orders, except Block 2, which applies only to delivery orders, and Block 12, which applies only to purchase orders.)

Block

1 Contract/Purch Order No.—

Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in subpart 204.70.

2 Delivery Order No.—

Enter PII number for delivery orders, when applicable, as prescribed in subpart 204.70.

3 Date of Order—

Enter the two position numeric year, three position alpha month, and two position numeric day.

4 Requisition/Purch Request No.—

Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, "see schedule."

5 Priority—

Enter the appropriate Program Identification Code as identified in Schedule I to the Defense Priorities and Allocations System Regulation.

6 Issued by—

Enter the name and address of the issuing office. In the code block, enter the DODAAD code for the issuing office. Directly below the address, enter: Buyer/Symbol: followed by the buyer's name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer's phone number and extension.

7 Administered by—

Enter the name and address of the contract administration activity. On purchase orders retained by purchasing offices for administration, mark this block, "see block 6." Enter in the code block the DODAAD code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.

8 Delivery FOB—

Check the applicable box.

9 Contractor—

(i) Enter the full business name and address of the contractor. Enter in the first code block, the CAGE code of the contractor.

(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8–1/H8–2 code for a non-Government entity or DODAAD code for a Government entity. (Use DODAAD codes only to indicate "performed at" locations for orders specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with "see schedule."

10 Deliver to FOB Point by (Date)—

If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block "see schedule."

11 Mark if Business—

Check all applicable blocks.

12 Discount Terms—

Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 3.25%—10 days; 0.50%—20 days.

13 Mail Invoices to—

Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Blocks 6, 7, 14, or 15, insert in Block 13, "see schedule."

14 Ship to—

If a single ship-to point applies to the entire order, enter the name and address of that point in this block. In the code block, enter the DODAAD code or for FMS shipments, enter the MAPAD code. Enter multiple ship-to points in the schedule and mark this block. "See Schedule."

15 Payment Will be Made by—

Enter the name and address of the activity making payment. Enter in the code block, the DODAAD code of the paying activity.

16 Type of Order—

Check the appropriate box. If a purchase order:

(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based.

(ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 Accounting and Appropriation Data/Local Use—

Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7108.

Block

18 Item No.—

Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 Schedule of Supplies/Services—

The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to DCMC or the military departments for administration and is encouraged for all orders.

(1) *National Stock Number (NSN)*—

Total item quantity for the line or subline item number followed by the appropriate national stock number or the word "none" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).

(2) *Item Identification*—

Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) *Quantity Variance*—

Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.

(4) *Inspection/Acceptance*—

Enter the point at which inspection/acceptance will take place.

(5) *Preservation and Packaging*—

Enter the preservation requirements for the item described. These requirements may be expressed in terms of MIL–STD–2073–1, DoD Material Procedures for Development and Application of Packaging Requirements, and MIL–STD–2073–2, Packaging Requirements, codes. They may also be expressed by reference to applicable specifications.

(6) *Packing*—

When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements.

(7) *Unitization*—

When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds.

(8) *Ship To*—

Enter the DODAAD or MILSCAP H8–1/H8–2 (cage) as appropriate for the entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) *Delivery Date*—

When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) *Mark For*—

Enter the DODAAD or MILSCAP H8–1/H8–2 (cage) as appropriate for the entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 Quantity Ordered/Accepted—

Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 Unit—

Enter the unit of measure applicable to the line item.

22 Unit Price—

Enter the unit price applicable to the line item.

23 Amount—

Enter the extended dollar amount (quantity x unit price) for each line item.

24 Contracting/Ordering Officer—

Enter the contracting/ordering officer's signature.

25 Total Amount—

Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.

253.215 Contracting by negotiation.

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

(a) Use the DD Form 1547 as prescribed in 215.970.

(b) *General instructions.* (1) Report amounts as they relate to the price of the contract action without regard to funding status (e.g., amounts obligated).

(2) Express all dollar values to the nearest whole value (e.g., $200,008.55 = $200,009).

(3) Express all percentages to the nearest hundredth or thousandth as appropriate (e.g., interest rate—8.25% or 8.257%).

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.975), do not complete Blocks 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(5) Report an option amount for additional quantities as a separate contract action when exercised.

(6) Even though fixed-price type contract actions are negotiated on the basis of total price, prepare the negotiation summary portion of the DD Form 1547 showing the contracting officer's best estimates of cost and profit.

(7) Ensure compliance with 215.871–5.

(8) For indefinite delivery-type contracts, prepare a consolidated DD Form 1547 for annual requirements expected to exceed $500,000.

(9) Prepare a consolidated DD Form 1547, if possible, when multiple profit rates apply to a single negotiation.

(c) *Specific instructions for completion of DD Form 1547.* (1) Block 1—Report No. Enter the four-digit local control number followed by a dash and the last two digits of the fiscal year (e.g., 0004–90 for 4th action in fiscal year 1990). Each field contracting office participating in profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. Always start with 0001 at the beginning of each fiscal year and always use four digits. This number will identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions.

(2) Block 2—Basic Procurement Instrument Identification No. Enter the identifying contract number assigned per 204.70, (Block B1 of the DD 350).

(3) Block 3—SPIIN. Enter the supplemental procurement instrument identification number for supplemental agreements or other modifications, assigned per 204.70, (Block B2 of the DD 350).

(4) Block 4—Date of Action. (i) Year. Enter the last two digits of the year the action was negotiated (e.g., 90 for 1990).

(ii) Month. Enter the two digit number for the month the action was negotiated (e.g., 09 for September).

(5) Block 5—Contracting Office Code. Enter the code assigned the contracting office per DoD Procurement Coding Manual, Volume III, (Block A3 of the DD 350).

(6) Block 6—Name of Contractor. Enter the contractor's name (including division name), (Block B5C of the DD 350).

(7) Block 7—DUNS Number. Enter the contractor establishment code number, (Block B5A of the DD 350).

(8) Block 8—Federal Supply Code. Enter the code used in Block B12A of the DD 350.

(9) Block 9—DOD Claimant Program. Enter the code used in Block B12B of the DD 350.

(10) Block 10—Contract Type Code. Enter the appropriate code—

Description	Code
FPR (all types)	A
FPI (all types)	L
FFP	J
FP(E)	K
CPFF	U

Description	Code
CPIF (all types)	V

(11) Block 11—Type Effort. Enter the appropriate code—

Description	Code
Manufacturing	1
Research and Development	2
Services	3

(12) Block 12—Use Code. Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.971)	2
Alternate performance risk, no facilities employed (215.971-2(c)(2))	1
Alternate facilities capital employed (215.971-4(c)(2))	3
Alternate structured approach (215.973)	4
Modified weighted guidelines approach (215.972)	5

(13) Blocks 13 through 20—Cost Category Objective. Enter the prenegotiation objectives. Include contractor independent research and development/bid and proposal in the general and administrative expenses in Block 19.

(14) Blocks 21 through 29—Weighted Guidelines Profit Factors. Enter the amounts determined in 215.971 or 215.972. This section is not required to be completed when using an alternate structured approach (215.973).

(15) Block 30—Total Profit Objective. Enter the total of Blocks 24, 25, 26, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.973).

(16) Blocks 31 through 35—Negotiation Summary. Complete as indicated on the form. For fixed-price type contracts negotiated on a total price basis, enter the contracting officer's best estimates of cost and profit. When using an alternate structured approach, see 215.973(b)(2) for offsets.

(17) Blocks 36 through 39—Contracting Officer Approval. The contracting officer shall sign the form. Include a complete (with area code) commercial telephone number to facilitate any follow-up actions.

(18) Blocks 96 through 99—Optional Use. Complete in accordance with department/agency procedures, if any.

Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers, and titles.

253.303–250 Material Inspection and Receiving Report.
253.303–250c Material Inspection and Receiving Report-Continuation Sheet.
253.303–250–1 Tanker/Barge Material Inspection and Receiving Report.
253.303–346 Raw (Basic Processed) and Semi-Fabricated Stock Form.
253.303–347 Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
253.303–350 Individual Contracting Action Report.
253.303–375 Production Progress Report.
253.303–375c Production Progress Report (Continuation).
253.303–375–2 Delay in Delivery.
253.303–416 Purchase Request for Coal, Coke or Briquettes.
253.303–428 Communication Service Authorization.
253.303–448 Military Interdepartmental Purchase Request.
253.303–448–2 Acceptance of MIPR.
253.303–879 Statement of Compliance.
253.303–882 Report of Inventions and Subcontracts.
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SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 270—RECOVERY OF NONRECURRING COSTS AND ROYALTY FEES ON COMMERCIAL SALES

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

270.000 Scope.

(a) This part sets forth policy and procedures established in DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, for the recovery of nonrecurring costs and royalty fees on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with foreign military sale (FMS) customer funds.

(b) The policy applies to material, equipment, licenses, derivative items, computer software, and technical data.

(c) The objective of recovery is to ensure that a non-U.S. Government customer pays a fair share of the nonrecurring investment costs incurred by the DoD or a foreign government.

270.001 Definitions.

Definitions of terms used in this part are in the clause at 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales.

270.002 Policy.

(a) DoD policy is to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and/or when technology is transferred to a foreign government, international organization, foreign commercial firm, or domestic organization (hereafter referred to collectively as "customers") for coproduction, assembly or licensed production for the same or derivative items. This fair share is recovered through the assessment of nonrecurring recoupment charges or royalty fees established by the DoD.

(b) In selected cases, DoD policy is 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 an FMS case where subsequent non-U.S. Government customers purchase the same specialized feature(s). The U.S. Government normally will not collect this recoupment on behalf of a foreign government beyond eight years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

270.003 Applicability.

(a) These policies apply to those products and technologies that were developed with DoD appropriations or funds, and in special cases foreign customer funds, on which a nonrecurring recoupment charge or royalty fee has been or will be established.

(b) In the absence of an established recoupment amount, full recovery of the nonrecurring cost charge/royalty fee is required. It is incumbent upon the contractor to notify the U.S. Government of all pending commercial sales that may be subject to a recoupment charge so that the appropriate charge may be established and identified to the contractor.

(c) Revised charges shall be effective as of the date of revision and shall not be retroactively applied to past sales or to sales consummated by a written contract between the parties before the effective date of the revised charge.

(d) The policies do not apply when the sale is to a U.S. Government organization or when a contract is awarded by DoD under the FMS Program. When a sale is made under authority of the FMS Program, charges prescribed by DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, shall be assessed by the DoD official responsible for the presentation of the DD Form 1513. Such charges shall not be included in the contract price.

270.004 Determining recoupment charges.

(a) The recoupment charge is based on information recorded in DoD accounting records or DoD budget justification documents and DoD estimates of quantities to be produced. The military department may consult with the contractor to obtain contractor marketing assessments. The charge will be established by the DoD in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(b) If an issue concerning the amount cannot be resolved, the military department will, within 90 days, request guidance from the Director, Defense Security Assistance Agency. The contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(c) When a contractor negotiates the sale, coproduction or licensed production, or transfer of technology, of a DoD developed item or a derivative of a DoD developed item, the contractor will request the appropriate charge from the DoD focal point in 270.006.

270.005 Waivers (including reductions).

(a) Waiver or reduction of the charges prescribed may be approved for a commercial sale based on the same criteria for waivers granted under FMS or if the domestic sale is in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the U.S. Government.

(b) A waiver shall not be approved for a sale once consummated, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS Program.

(c) Requests for waivers associated with foreign sales should originate with the foreign government and shall be submitted to the Director of the Defense Security Assistance Agency. The request shall contain information regarding the extent of standardization and a statement of facts regarding the program, benefits expected and other justification, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government. Waivers will be evaluated on a case-by-case basis only, and blanket waivers will not be considered. Any waiver approved for a direct commercial sale to a foreign government requires a certification by the contractor that reductions have been passed on to the customer. The Director of the Defense Security Assistance Agency is the only waiver approval authority.

(d) Requests for waivers associated with domestic sales may originate with a DoD component, or a defense contractor (vice president or higher) and shall be submitted to the Under Secretary of Defense for Acquisition. The request shall contain information regarding the dollar value of the waiver, benefit to be derived by the DoD, the names of foreign and domestic competitors, impact on the U.S. Government balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests are discouraged, but may be granted in extraordinary circumstances.

270.006 Department of Defense (DoD) focal points.

DoD focal points maintain a central data base on established charges. The DoD focal points are as follows—

(a) *Army:* U.S. Army Security Affairs Command, ATTN: AMSAC–RP, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

(b) *Navy:* Commanding Officer, Navy International Logistics Control Office, 700 Robbins Avenue (Code 10), Philadelphia, PA 19111–5095.

(c) *Air Force:* Chief, Security Assistance Division, Deputy Comptroller Cost and Economics, Department of the Air Force, Washington, DC 20330–5018.

270.007 Contract clause.

To ensure the recovery of an appropriate share of DoD investment in nonrecurring costs, use the clause at 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, in all research, development, test, and evaluation, and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale or transfer of products or related technology, that meet the criteria of 270.003.

Appendix A—Armed Services Board of Contract Appeals

Sec.
Part 1—Charter
Part 2—Rules

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Armed Services Board of Contract Appeals

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditous handling of appeals. He shall be reponsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that section.

7. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective April 21, 1980.

Approved:

W. Graham Claytor, Jr.
Deputy Secretary of Defense
Clifford L. Alexander, Jr.
Secretary of the Army
E. Hidalgo
Secretary of the Navy
Hans M. Mark
Secretary of the Air Force

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

Preface

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 Pub. L. 95–563, 41 U.S.C. 601–613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board's address is Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, VA 22041, telephone (202) 756–8500 (receptionist), 756–8502 (recorder).

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File*— (a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. *Motions.* (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an

appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. *Pleadings*—(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of docments, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereater constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The Small Claims (Expedited) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these

rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The Accelerated Procedure.* (a) In cases proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period of filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions*—(a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. *Service of Papers Other Than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature, Examination of Witnesses*—(a) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the

circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas*—(a) *General*—Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*—(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*—(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Post-Hearing Briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitition of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

28. *Decisions.* (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. *Motion for Reconsideration.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissals and Defaults: Remands

30. *Suspensions; Dismissal Without Prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal or Default for Failure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. *Time, Computation and Extensions.* (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Parte Communications

34. *Ex parte Communications.* No member of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. *Effective Date.* These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) William J. Perry (30 JUN 1980),
Under Secretary of Defense for Research and Engineering.
(signed) Percy A. Pierre,
Assistant Secretary of the Army (Research, Development and Acquisition).
(signed) J.A. Doyle,
Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics).
(signed) Eugene H. Kopf,
(Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).

Appendix B—Coordinated Acquisition Assignments

Part 1—Army Assignments

Part 2—Navy Assignments

Part 3—Air Force Assignments

Part 4—Defense Logistics Agency Assignments

Part 5—Defense Nuclear Agency Assignments

Part 6—General Services Administration Assignments

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—Army Assignments

Federal supply class code	Commodity
	Electronic Equipment. Each department is assigned acquisition responsibility for those items which the department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1005 P [1]	Guns, through 30mm. This partial assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.
1010 P [1]	Guns, over 30mm up to 75mm. This partial assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns and aircraft gun mounts.
1015 P [1]	Guns, 75mm through 125mm. This partial assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns.
1020 P [1]	Guns over 125mm through 150mm.
1025 P [1]	Guns over 150mm through 200mm.
1030 P [1]	Guns over 200mm through 300mm.
1035 P [1]	Guns over 300mm. These partial assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type guns.
1040	Chemical Weapons and Equipment.
1055 P [1]	Launchers, Rocket and Pyrotechnic. This partial assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and airborne type, with the exception of 2.75 inch rocket launchers which are included in this partial FSC assignment to the Department of the Army.
1090 P	Assemblies Interchangeable Between Weapons in Two or More Classes. This partial assignment applies to the following items:

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

	National stock number nomenclature. 1090-563-7232 Staff Section, Class. 1090-699-0633 Staff Section. 1090-796-8760 Power Supply. 1090-885-8451 Wrench Corrector. 1090-986-9707 Reticle Assembly.
1095 P [1]	Miscellaneous Weapons.

Federal supply class code	Commodity
	This partial assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type; line throwing guns (which are under DoD Coordinated Acquisition assignment to the Department of the Navy); and aircraft type miscellaneous weapons.
1210 P [1]	Fire Control Directors.
1220 P [1]	Fire Control Computing Sights and Devices.
1230 P [1]	Fire Control Systems, Complete.
1240 P [1]	Optical Sighting and Ranging Equipment.
1250 P [1]	Fire Control Stabilizing Mechanisms.
1260 P [1]	Fire Control Designating and Indicating Equipment.
1265 P [1]	Fire Control Transmitting and Receiving Equipment, Except Airborne.
1285 P [1]	Fire Control Radar Equipment, Except Airborne.
1290 P [1]	Miscellaneous Fire Control Equipment.
	The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type and aircraft type.
1305 P [1]	Ammunition, through 30mm.
	This partial assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.
1310 P [1]	Ammunition, over 30mm up to 75mm.
	This partial assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and to 40mm ammunition (which is under DoD Coordinated Acquisition assignment to the Navy). The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1315 P [1]	Ammunition, 75mm through 125mm.
	This partial assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1320 P [1]	Ammunition, over 125mm.
	This partial assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1325 P	Bombs.
	This partial assignment applies to bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy owned capacity.
1330	Grenades.
1340 P	Rockets and Rocket Ammunition.
	This partial assignment applies to:
	66mm Rocket, HEAT, M72.
	2.75" Rocket FFAR, Service and Practice.
	Heads MK5 and Mods (HEAT).
	HE, M151.
	HE, XM229 (17 lb Warhead)
	HE, XM157 (Spotting Red).
	HE, XM158 (Spotting Yellow).
	MK61 Practice (5 lb Slug).
	XM230 Practice (10 lb).
	Motors MK4 and Mods (High Performance Aircraft).
	MK40 and Mods (Low Performance Aircraft).
	3.5 inch Rocket Heat, M35.
	Practice, M36.
	Smoke, WP, M30.
	4.5 inch Motor, Drill, M24.
	HE, M32.
	Practice, M33.
	Incendiary and toxicological rockets, as listed in Army Supply Bulletins. It does not apply to Navy assigned rockets as shown in the list of assignments to the Navy. However, the Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1345	Land Mines.
1365	Military Chemical Agents.
1370 P	Pyrotechnics.
	This partial assignment does not apply to shipboard and aircraft pyrotechnics.
1375 P	Demolition Materials.
	This partial assignment applies to Blasting Agents and supplies such as:
	Bangalore torpedo.
	Blocks, demolition.
	Caps, blasting, electric and nonelectric.
	Charge, cratering.
	Charge, shaped and demolition.
	Chests, demolition platoon and squad.
	Cord detonating.
	Demolition equipment sets, with ancillary items.
	Detonators, all types.
	Dynamite.
	Firing devices.
	Fuze, safety.
	Kit, demolition.
	Lighter, fuse.
	Machine, blasting.
	Primer, percussion cap.
	It does not apply to Navy underwater demolition requirements.
1376 P	Bulk Explosives.
	This partial assignment applies to solid propellants and explosives such as:
	Ammonium Picrate (Explosive D) JAN-A-166A.
	Trinitrotoluene (TNT) MIL-T-248A.
	Tetryl JAN-T-339.
	Pantaerythrite Tetranitrate (PETN) JAN-P-387.
	RDX.
	Composition B.
	Composition B-3.
	Pentolite, 50.
	Composition C-3.
	Composition A-3.
	Composition A-4.
	Nitroguanidine (Picrate).
	It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components.
	This partial assignment is reserved pending Services agreement as to items to be included in the assignment.
1380	Military Biological Agents.
1390 P [1]	Fuzes and Primers.
	This partial assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to Naval ordnance type, which is under DoD Coordinated Acquisition assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives.
2220	Rail Cars.
2240	Locomotive and Rail Car Accessories and Components.
2250	Track Materials, Railroad.
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to tactical vehicles; trucks over 10,000 pounds gross vehicle weight (GVW); and the following types of vehicles:
	Bus, convertible to ambulance.
	Truck, 4×4, convertible to ambulance.
	Truck 4×4 dump, 9,000 GVW, with cut-down cab.
	These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Acquisition to the General Services Administration.
2330 P	Trailers.

Federal supply class code	Commodity
	This partial assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semi-trailers which are not under DoD Coordinated Acquisition assignment, and airport crash rescue trailer units which are under DoD Coordinated Acquisition assignment to the Department of the Air Force.
2340 P	Motorcycles, Motor Scooters, and Bicycles.
	This partial assignment does not apply to bicycles and tricycles.
2350	Tanks and Self-propelled Weapons.
2430	Tractors, Track Laying, High-Speed.
2510 P [2]	Vehicular Cab, Body, and Frame Structural Components.
2520 P [2]	Vehicular Power Transmission Components.
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.
2540 P [2]	Vehicular Furniture and Accessories.
2590 P [2]	Miscellaneous Vehicular Components.
2610	Tires and Tubes, Pneumatic, except Aircraft.
2630	Tires, solid and cushion.
2640	Tire Rebuilding and Tire and Tube Repair Materials.
2805 P [2]	Gasoline Reciprocating Engines, except Aircraft and Components.
2910 P [2]	Engine Fuel System Components, Nonaircraft.
2920 P [2]	Engine Electrical System
2930 P [2]	Engine Cooling System Components, Nonaircraft.
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.
4230 P	Decontaminating and Impregnating Equipment.
	This partial assignment applies only to items peculiar to chemical warfare.
4240 P	Safety and Rescue Equipment.
	This partial assignment applies only to military respiratory protective equipment for chemical warfare.
5805 P	Telephone and Telegraph Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5815 P	Teletype and Facsimile Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5820 P	Radio and Television Communication Equipment, except Airborne.
	This partial assignment applies to nontactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.
5830 P	Intercommunication and Public Address Systems; except Airborne.
	This partial assignment applies only to military (wire) equipment, field type.
6135 P	Batteries, Primary.
	This partial assignment applies to MIL type, dry cell batteries, only.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments.
	This partial assignment applies only to instruments for testing military (wire) equipment, field type.
6645 P	Time Measuring Instruments.
	This partial assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor: Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments and end items in FSC 6660 which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus.
	This partial assignment applies only to items peculiar to chemical warfare.
6695 P	Combination and Miscellaneous Instruments.
	This partial assignment applies to jewel bearings only.
6820 P	Dyes.
	This partial assignment applies only to items peculiar to chemical warfare.
6910 P	Training Aids.
	This partial assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives, and chemical and biological warfare.
6920 P	Armament Training Devices.
	This partial assignment applies to armament training devices as listed in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.
6940 P	Communication Training Devices.
	This partial assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.
8130 P	Reels and Spools.
	This partial assignment applies only to reels and spools for military (wire) equipment, field type.
8140 P	Ammunition Boxes, Packages, and Special Containers.
	This partial assignment applies only to boxes, packages, and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in Department of Army Catalog SC 8140 IL and SC 8140 ML.

[1] For contracting purposes, Naval ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance acquired from the Army).

[2] These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC 2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these FSCs are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

Part 2—Navy Assignments

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of Government funds).
1095 P	Miscellaneous Weapons.
	This partial assignment applies to line throwing guns only.
1310 P	Ammunition, over 30mm up to 75mm.
	This partial assignment applies only to reels and spools for military.
1325 P	Bombs.
	This partial assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. The Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy-owned capacity.
1340 P	Rockets and Rocket Ammunition.
	This partial assignment applies to:
	Fuze, Rocket, V.T., MK93-0.
	2.25 inch Rocket SCAR, Practice.
	Heads MK3 and Mods.
	Motors MK15 and Mods.
	MK16 and Mods.
	5 inch Rocket HVAR, service and practice.
	Heads MK2 and Mods (common) MK6 and Mods (GP).
	MK4 and Mods (smoke) MK25 and Mods (ATAR).
	Motors MK10 and Mods.
	5 inch Rocket FFAR service and practice.
	Heads MK24 and Mods (General Purposes).

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

Federal supply class code	Commodity
	MK32 and Mods (Shaped Charged). MK26 and Mods (Illum). Motor MK16 and Mods. The Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1390 P	Fuzes and Primers. This partial assignment applies to fuzes and primers for Navy assigned ammunition.
1550 P	Drones. This partial assignment applies only to Drone, Model BQM34E.
1905 P	Combat Ships and Landing Vessels. This partial assignment applies to landing vessels only.
1910 P	Transport Vessels, Passenger and Troop. This partial assignment applies to ferryboats only.
1920	Fishing Vessels.
1925	Special Service Vessels.
1930	Barges and Lighters, Cargo.
1935 P	Barges and Lighters, Special Purpose. This partial assignment does not apply to derricks, pile drivers, rock cutters, concrete mixing plants, mechanical bank grader barges, other bank revetment barges, and barge power plants.
1940	Small Craft.
1945 P	Pontoons and Floating Docks. This partial assignment applies only to Naval Facilities Engineering Command type pontoons.
1950	Floating Drydocks.
1990 P	Miscellaneous Vessels. This partial assignment applies to commercial sailing vessels only.
2010	Ship and Boat Propulsion Components.
2020	Rigging and Rigging Gear.
2030	Deck Machinery.
2040	Marine Hardware and Hull Items.
2060	Commercial Fishing Equipment.
2090	Miscellaneous Ship and Marine Equipment.
2820 P	Steam Engines, Reciprocating and Components. This partial assignment applies to marine main propulsion steam engines only.
2825 P	Steam Turbines and Components. This partial assignment applies to marine steam turbines only.
4210 P	Fire Fighting Equipment. This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.
4410 P	Industrial Boilers. This partial assignment applies only to boilers for use aboard those ships assigned to the Navy for coordinated acquisition.
4420 P	Heat Exchangers and Steam Condensers. This partial assignment applies only to heat exchangers for use aboard those ships assigned to the Navy for coordinated acquisition.
4925 P	Ammunition Maintenance and Repair Shop Specialized Equipment. This partial assignment applies to sets, kits, and outfits of tools and equipment for explosive ordnance as defined in military service regulations and documents.
5821 P	Radio and Television Communication Equipment, Airborne. This partial assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no Government funds were provided for development purposes.) HF-101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, ARC-94, 102, 105, 110, 112, 119, 120; MRC-95, 108; VC-102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.
6125 P	Converters, Electrical, Rotating. This partial assignment applies only to motor-generated sets for use aboard ships assigned to the Navy for coordinated acquisition.
6320 P	Shipboard Alarm and Signal System. This partial assignment applies only to alarm systems, fire alarm systems, indicating systems, telegraph systems (signal and signaling) (less electronic type) for use aboard ships assigned to the Navy for coordinated acquisition.
6605 P	Navigational Instruments. This partial assignment applies only to lifeboat and raft compasses, aircraft sextants, hand leads (soundings), lead reels, sounding machines and pelorus stands for use aboard ships assigned to the Navy for coordinated acquisition.
6645 P	Time Measuring Instruments. This partial assignment applies to the following instruments, cases, and spare parts therefor: Chronometers including gimbal, padded and make break circuit. Clocks, alarm, boat, deck, direct reading, electrical, floor, interval timer, marine, mechanical, master control, master program, master regulating, mechanical message center, nurses, program, shelf, stop, wall, watchman's. Counters, time period. Meters, engine running time, hour recording, and electrical time totalizing. Timers; bombing, engine hours, sequential, stop, and program. Program control instrument. Cases; chronometer, including gimbal and padded, chronometer carrying; makebreak circuit chronometer. Cans, chronometer shipping and storage. Clock keys; clock movements, clock motors.
6650 P	Optical Instruments. This partial assignment applies only to stands, telescope, for use aboard ships assigned to the Navy for coordinated acquisition.
6660 P	Meteorological Instruments and Apparatus. Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus. This partial assignment applies only to hazard determining safety devices, for use aboard ships assigned to the Navy for coordinated acquisition.
8140 P	Ammunition Boxes, Packages, and Special Containers. This partial assignment applies only to boxes, packages, and containers for 40mm ammunition.

Part 3—Air Force Assignments

Federal supply class code	Commodity
	Electronic Equipment. Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1550 P	Drones. This partial assignment applies only to the following model drones: Model 147. Model 154. BQM 34A. MQM 34D.
2320 P	Trucks and Truck Tractors. This partial assignment applies only to airport crash rescue vehicles.
2330 P	Trailers. This partial assignment applies only to airport crash rescue trailer units.
4210 P	Fire Fighting Equipment. This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus. Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. The developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6710 P [1]	Cameras, Motion Picture. This partial assignment does not apply to submarine periscope and underwater cameras.
6720 P [1]	Cameras, Still Picture.

Federal supply class code	Commodity
	This partial assignment does not apply to submarine periscope and underwater cameras.
6730 P [1]	Photographic Projection Equipment. This partial assignment does not apply to 35mm theater projectors.
6740 [1]	Photographic Developing and Finishing Equipment.
6760 [1]	Photographic Equipment and Accessories.
6780 [1]	Photographic Sets, Kits, and Outfits.
8820 P	Live Animals Not Raised for Food. This partial assignment applies only to the following types of working dogs: Scout. Sentry. Patrol. Mine/tunnel. Tracker. Detector-narcotic/contraband. Sledge. Bloodhound. Water dog. Patrol/detector.

[1] This partial FSC assignment does not apply to photographic equipment controlled by the Congressional Joint Committee on Printing and Micro-Film Equipment and Supplies.

Part 4—Defense Logistics Agency Assignments

Federal supply class code	Commodity	DLA center [6]
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low-Speed.	DCSC
2420	Tractor, Wheeled	DCSC
2510 P [2]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [2]	Vehicular Power Transmission Components.	DCSC
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.	DCSC
2540 P [2]	Vehicular Furniture and Accessories.	DCSC
2590 P [2]	Miscellaneous Vehicular Components.	DCSC
2805 P [2]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [2]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [2]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [2]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction, Unmounted.	DISC
3120	Bearings, Plain Unmounted.	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P [6]	Saws and Filing Machines.	DGSC
3408 P [6]	Machining Centers and Way-Type Machines.	DGSC
3410 P [6]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [6]	Boring Machines	DGSC
3412 P [6]	Broaching Machines	DGSC
3413 P [6]	Drilling and Tapping Machines.	DGSC
3414 P [6]	Gear Cutting and Finishing Machines.	DGSC
3415 P [6]	Grinding Machines	DGSC
3416 P [6]	Lathes	DGSC
3417 P [6]	Milling Machines	DGSC
3418 P [6]	Planers and Shapers	DGSC
3419 P [6]	Miscellaneous Machine Tools.	DGSC
3422 P [6]	Rolling Mills and Drawing Machines.	DGSC
3424 P [6]	Metal Heat Treating Equipment.	DGSC
3426 P [6]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P [6]	Electric Resistance Welding Equipment.	DGSC
3433 P [6]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [6]	Welding Positioners and Manipulators.	DGSC
3438 P [6]	Miscellaneous Welding Equipment.	DGSC
3439 P [6]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [6]	Bending and Forming Machines.	DGSC
3442 P [6]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [6]	Mechanical Presses, Power Driven.	DGSC
3444 P [6]	Manual Presses	DGSC
3445 P [6]	Punching and Shearing Machines.	DGSC
3446 P [6]	Forging Machinery and Hammers.	DGSC
3447 P [6]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P [6]	Riveting Machines	DGSC
3449 P [6]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P [6]	Machine Tools, Portable	DGSC
3455 P [6]	Cutting Tools for Machine Tools.	DGSC
3456 P [6]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [6]	Machine Tool Accessories.	DGSC
3461 P [6]	Accessories for Secondary Metal Working Machinery.	DGSC
3465 P [6]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [6]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment.	DGSC
3530	Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [6]	Industrial Marking Machines.	DGSC
3620 P [6]	Rubber and Plastics Working Machinery.	DGSC
3635 P [6]	Crystal and Glass Industries Machinery.	DGSC
3650 P [6]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P [6]	Industrial Size Reduction Machinery.	DGSC
3680 P [6]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [6]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [6]	Industrial Assembly Machines.	DGSC
3694 P [6]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment.	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels.	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC

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

Federal supply class code	Commodity	DLA center [6]
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable, and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment.	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment.	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating, and Sanitation Equipment.	DCSC
4610	Water Purification Equipment.	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible.	DCSC
4730	Fittings and Specialities; Hose, Pipe, and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys, and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs.	DISC
5365	Rings, Shims, and Spacers.	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating.	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates.	DCSC
5680 P	Miscellaneous Construction Materials. This partial assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DLA managed items in GSA assigned classes.).	DCSC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones, and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies; Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment.	DGSC
6115 P [9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers; Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical.	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals; and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials.	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment and Supplies.	DPSC
6525 [4]	X-Ray Equipment and Supplies; Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying, and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC

Federal supply class code	Commodity	DLA center [6]
6810 [7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases; Compressed and Liquified.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850 [7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking, and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits, and Outfits; Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter.	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics	
	FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings.	
	FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose.	
	FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear, Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infant's Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [8]	Meat, Poultry, and Fish	DPSC
8910 [8]	Dairy Foods and Eggs	DPSC
8915 [8]	Fruits and Vegetables	DPSC
8920 [8]	Bakery and Cereal Products.	DPSC
8925 [8]	Sugar, Confectionery, and Nuts.	DPSC
8930 [8]	Jams, Jellies, and Preserves.	DPSC
8935 [8]	Soups and Bouillons	DPSC
8940 [8]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945 [8]	Food Oils and Fats	DPSC
8950 [8]	Condiments and Related Products.	DPSC
8955 [8]	Coffee, Tea, and Cocoa	DPSC
8960 [8]	Beverages, Nonalcoholic	DPSC
8970 [8]	Composite Food Packages.	DPSC
8975 [8]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases; Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials.	DGSC
9330	Plastic Fabricated Materials.	DGSC
9340	Glass Fabricated Materials.	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers; Vegetable, Animal, and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430 P	Miscellaneous Crude Animal Products, Inedible. This partial assignment applies only to crude hides.	DPSC
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip, Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil, Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire, Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic. This partial assignment applies only to crude petroleum and crude shale oil.	DFSC
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes:

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each military department, and to those items in DLA assigned federal supply classes, which may be assigned to GSA for supply management. In addition, see subpart 208.70 which describes conditions under which a military service may purchase (contract for) military service supply managed items in DLA assigned federal supply classes. See notes 2 and 3 for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940, and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated acquisition to the Department of the Army. In addition, the assignment in FSC 2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated acquisition to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a military department. The contracting responsibility for such equipment is assigned to the department which developed or sponsored its development.

[4] DLA has contracting responsibility for all the items in the classes of FS Group 65. In addition, DLA has contracting responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-group 65 classes where the military medical services have the sole or prime interest in such items. The specific item coverage of these Non-group 65 items is published in the DoD section of the Federal Supply Catalog for medical material C3–1 through C3–12, inclusive.

[5] This assignment includes health and comfort items listed in AR 700–23. It also includes resale items for commissary stores (including brand name items).

[6] DLA centers are identified as follows—DCSC—Defense Construction Supply Center; DESC—Defense Electronics Supply Center; DFSC—Defense Fuel Supply Center; DGSC—Defense General Supply Center; DISC—Defense Industrial Supply Center; DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for contracting for only petroleum base items in FSC 6810 and 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data lists of each respective service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MEPGS). The contracting direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power, by DoDD 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL–STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700–101, AFR 400–50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating an acquisition.

Part 5—Defense Nuclear Agency Assignments

Federal supply class code	Commodity
1105	Nuclear Bombs.
1110	Nuclear Projectiles.
1115	Nuclear Warheads and Warhead Sections.
1125	Nuclear Demolition Charges.

Federal supply class code	Commodity
1127	Nuclear Rockets.
1130	Conversion Kits, Nuclear Ordnance.
1135	Fuzing and Firing Devices, Nuclear Ordnance.
1140	Nuclear Components.
1145	High Explosive Charges, Propellants, and Detonators; Nuclear Ordnance.
1190	Specialized Test and Handling Equipment, Nuclear Ordnance.
1195	Miscellaneous Nuclear Ordnance. In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

Part 6—General Services Administration Assignments

Federal supply class code	Commodity
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors. These two partial assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Acquisition to the Department of the Army— Bus, convertible to ambulance. Truck, 4x4, convertible to ambulance. Truck, 4x4, dump, 9,000 pounds GVW, with cut-down cab. (See Army Coordinated Acquisition assignments in FSC 2310 and 2320)
3540	Wrapping and Packaging Machinery.
3550	Vending and Coin Operated Machines.
3590	Miscellaneous Service and Trade Equipment.
3750	Gardening Implements and Tools.
5110	Hand Tools, Edged, Nonpowered.
5120	Hand Tools, Nonedged, Nonpowered.
5130	Hand Tools, Power Driven.
5133	Drill Bits, Counterbores, and Countersinks; Hand and Machine.
5136	Taps, Dies, and Collects; Hand and Machine.
5140	Tool and Hardware Boxes.
5180	Sets, Kits, and Outfits of Hand Tools.
5210	Measuring Tools, Craftmen's.
5345	Disks and Stones, Abrasive.
5350	Abrasive Materials.
5610	Mineral Construction Materials, Bulk.
5620	Building Glass, Tile, Brick, and Block.
5630	Pipe and Conduit, Nonmetallic.
5640	Wallboard, Building Paper, and Thermal Insulation Materials.
5650	Roofing and Siding Materials.
5670	Architectural and Related Metal Products.
5680 P[1]	Miscellaneous Construction Materials.
7105	Household Furniture.
7110	Office Furniture.
7125	Cabinets, Lockers, Bins, and Shelving.
7195	Miscellaneous Furniture and Fixtures.
7220	Floor Coverings.
7230	Draperies, Awnings, and Shades.
7240	Household and Commercial Utility Containers.
7290	Miscellaneous Household and Commercial Furnishings and Appliances.
7330	Kitchen Hand Tools and Utensils.
7340	Cutlery and Flatware.
7350	Tableware.
7410	Punched Card System Machines.
7420	Accounting and Calculating Machines.
7430	Typewriters and Office-type Composing Machines. This assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450	Office-type Sound Recording and Reproducing Machines.
7460	Visible Record Equipment.
7490	Miscellaneous Office Machines. This assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510	Office Supplies. This assignment does not apply to office supplies, including special inks, when DoD requirements of such items are acquired through Government Printing Office channels.
7520	Office Devices and Accessories. This assignment does not apply to office devices and accessories when DoD requirements of such items are acquired through Government Printing Office channels.
7530	Stationery and Record Forms. This assignment does not apply to stationery and record forms when DoD requirements of such items are acquired through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710	Musical Instruments.
7720	Musical Instrument Parts and Accessories.
7730	Phonographs, Radios, and Television Sets; Home Type.
7740	Phonograph Records.
7810	Athletic and Sporting Equipment.
7820	Games, Toys, and Wheeled Goods.
7830	Recreational and Gymnastic Equipment.
7910	Floor Polishers and Vacuum Cleaning Equipment.
7920	Brooms, Brushes, Mops, and Sponges.
7930	Cleaning and Polishing Compounds and Preparations.
8010	Paints, Dopes, Varnishes, and Related Products.
8020	Paint and Artists Brushes.
8030	Preservative and Sealing Compounds.
8040	Adhesives.
8105	Bags and Sacks.
8115	Boxes, Cartons and Crates.
8135	Packaging and Packing Bulk Materials.
8510	Perfumes, Toilet Preparations and Powders.
8520	Toilet Soap, Shaving Preparations and Dentifrices.
8530	Personal Toiletry Articles.
8540	Toiletry Paper Products.
8710	Forage and Feed.
8720	Fertilizers.
8730	Seeds and Nursery Stock.
9310	Paper and Paperboard.
9905	Signs, Advertising Displays, and Identification Plates.
9910	Jewelry.
9915	Collector's Items.
9920	Smokers' Articles and Matches.

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

FOOTNOTES: These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, see subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes.

[1] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Appendix C—Contractor Purchasing System Reviews

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

C–100 Scope.

This appendix provides guidance and procedures for evaluating contractor purchasing systems (see FAR Subpart 44.3 and DFARS Subpart 244.3) and preparing the review reports. It applies to follow-up and special reviews as well as comprehensive contractor purchasing system reviews (CPSRs).

C–101 Planning a purchasing system review.

C–101.1 Team captain.

Departments/agencies shall appoint a team captain for each comprehensive contractor purchasing system review (CPSR), follow-up review, or special review. The team captain normally shall be a senior purchasing system analyst (PSA) who has wide experience in the conduct of CPSRs and who is not assigned at the contractor's plant. The team captain—

(a) Determines the scope and depth of the review;

(b) Plans and schedules the review;

(c) Sets up the review team;

(d) Manages the team effort, including assigning work to members;

(e) Is the team's primary interface with the contractor;

(f) Is responsible for preparation of the report;

(g) Sits on the CPSR Board of Review (if established) as a non-voting member; and

(h) Prepares the summary report and signs the complete report.

C–101.2 Review team.

(a) The team captain decides the size and composition of the team. The size of the team may vary with the size of the contractor and the scope of the review. The team should be large enough to permit an adequate review in a reasonable time.

(b) For contractors with major defense systems, the review team should include specialists in production, quality assurance, engineering, and acquisition management functions.

(c) The contract audit office shall appoint an auditor to participate as a team member.

(d) The team captain shall notify affected contracting offices of planned reviews and invite input or participation on the review team.

C–101.3 Notification to contractor.

The team captain will prepare a letter for the administrative contracting officer's (ACO) signature that notifies the contractor of the proposed review and requests preliminary data for planning purposes.

C–101.4 Obtaining preliminary data.

The team captain normally uses the following data in planning the scope of the CPSR review. Preplanning data for other reviews should be tailored to the circumstances. If any of these data are not already available from Government sources, the team captain will ask the ACO to request them from the contractor. Pre-review planning normally starts 4 to 8 weeks prior to the scheduled in-plant review starting date.

(a) *Organization charts.* (1) For the plant being reviewed, show management structure down to at least the department-head level.

(2) For the purchasing department, show structure down to at least the first level of supervision, and show, either in the chart itself or in an accompanying table, the number and job classification (or assignment) of personnel reporting to each first-level and higher supervisor.

(b) *Purchasing.* (1) Policy statements.

(2) Procedures.

(3) Forms.

(c) Data on sales and subcontracts similar to that at C–202.1.

(d) Weekly or monthly management reports, such as shortage reports, workload and work backlog reports, scrap and salvage reports, and repetitive reports to company management and the Government.

(e) List of affiliates and autonomous or semi-autonomous departments and divisions.

(f) Pertinent reports on the contractor's purchasing system.

C–102 In-plant review.

The review team shall have an entrance conference with the contractor. Part 2 of this appendix contains detailed guidance on conducting the analytical part of the CPSR. Also use relevant portions of Part 2 for performing follow-up or special reviews. The in-plant review normally takes between 10 to 20 days.

C–103 Report preparation.

C–103.1 Report content.

(a) A complete CPSR report consists of Part I, Summary Report, and Part II, CPSR Supporting and Statistical Data. The report format is at Part 3 of this appendix. Part 1 is self-explanatory. Part 2 of this appendix contains detailed guidance on obtaining and analyzing information to be included in Part II.

(b) At locations having a resident PSA, the review team may prepare only Part I, Summary Report, in lieu of a complete report.

(c) For follow-up or special reviews, review teams need only complete Part I. However, they should use the procedures in Part 2 of this appendix for analyzing the areas under review.

(d) The report is an action document which the contracting officer uses to support the decision concerning the effectiveness of a contractor's purchasing system. Consequently, focus on significant areas for corrective action. Do not include material which is not needed to support findings and recommendations. Whether a specific operation is satisfactory or unsatisfactory, state the pertinent facts and circumstances.

Include only those details and statistics necessary to support findings and recommendations.

Part 2—Analytical Procedures

C–200 Scope.

This part explains the analytical procedures to be used in conducting a CPSR and documenting the analysis in the report. Organization of this part parallels Part II (Supporting and Statistical Data) of the report format in Part 3 of this appendix.

C–201 Conducting the review (Section IIA)

C–201.1 Purpose of the review (IIA1).

State the reason for conducting the review. List the in-plant review period.

C–201.2 Review team members and review methods (IIA2).

List the members and their title and organizations. State the review methods used, i.e., examination of the contractor's written policies and procedures on purchasing/subcontracting, evaluation of actual operating practices and methods through review of subcontract purchase order

files, and interviews with contractor and Government personnel.

C-201.3 Summary of purchases examined (IIA3).

(a) Explain the method used to select the sample. Also list the sample period, universe, and what was examined as follows:

SUMMARY OF PURCHASES EXAMINED

[Period Sampled (in months or specific dates)]

Universe	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of Purchase Orders (POs)				
Value ($000)				
Sample Selected: Number of POs				
Value ($000)				
Percentage (Sample to Universe Dollars)				
Special Categories Included in Sample				

Description of category	No. of purchase orders	Total value
Major Subcontracts		
Blanket Orders		
Intra-Company		
Engineering Service		
Consultant Contracts or Agreements		
Total		

(b) *Selecting the Universe.* Use the most current period of at least six months. Do not use a period older than one year.

(c) *Selecting the sample.* (1) The team captain—

(i) Selects the sample;

(ii) Can use a sampling method based on judgment, in lieu of random sampling techniques, as long as it produces results representative of all subcontracts; and

(iii) Ensures that the sampling procedure is compatible with the contractor's existing systems and is used consistently in all CPSRs on a given contractor.

(2) The sample should include orders below the small purchase limitation in proportion to their representation in the universe.

(3) The initial sample of intermediate ($25,000 to $100,000) and high dollar ($100,000 and over) subcontracts should ordinarily add up to a combined total of at least 150 subcontracts. The team captain can later vary the number depending on the extent of deficiencies observed as the review progresses. If there are less than 150 intermediate and high dollar subcontracts, review all issued in the last 12 months.

(4) Review all high dollar subcontracts for compliance with Public Law 87-653, Truth In Negotiations Act.

(d) *Analyzing the sample.*

(1) Analyze the sample and record the result on the analysis spread sheet, Attachment 1 to the CPSR report (see Part 3 of this appendix).

(2) Explain indicated problem areas or unusual trends.

C-202 Company history and purchasing organization (IIB).

C-202.1 Background data and scope of purchasing organization (IIB1).

Briefly summarize the history of the corporation and division or plant and include the following statistical information:

BACKGROUND DATA

Personnel	Prior year (date)	Current (date)
Total Division		
Material Department		
Purchasing Department		

Sales data	Prior year ($)	Current year ($)
Prime Contracts:		
Army		
Navy		
Air Force		
NASA		
DLA		
Other		
Total Government (Prime)		
Total Commercial (Prime)		
Total Prime Sales		
Subcontracts		
Government		
Commercial		
Total Subcontract Sales		
Total Prime and Subcontract Sales		

Government sales	Prior year ($)	Current year ($)	Estimate for next year ($)
Prime			
Firm Fixed-Price: Competitive			
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			
Subcontract			
Firm Fixed-Price: Competitive			
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			

Government sales	Prior year ($)	Current year ($)	Estimate for next year ($)
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			

Contractor purchases	Prior year		Current year	
	No.	Dollars	No.	Dollars
$0-$25,000				
$25,000-$100,000				
$100,000 and Over				
Total				
Percent of Sales				

Principal Government Contracts and Subcontracts Held

Contract number	Type	Description	Face value	ULO

C-202.2 Management's attitude toward purchasing (IIB2).

Explain the extent to which management officials are—

(a) Aware of the policies and practices of their purchasing organization;

(b) Familiar with their key subcontractors, including the basis for awards and the effectiveness of purchases; and

(c) Responsive to operating problems in the purchasing area.

C-202.3 Purchasing organization (IIB3).

Determine whether the organizational placement of the department allows it to operate at maximum effectiveness. Unclear lines of responsibility or placement of the purchasing function under another management function generally impairs the purchasing department's capability to make objective decisions.

C-202.4 Interdepartmental relations (IIB5).

Describe the functional relationships of purchasing to other departments. Pay particular attention to the relationship between engineering and purchasing. Comment on any relationships which are not harmonious, or which do not evidence a free, fast, and accurate flow of information.

C-202.5 Internal purchasing organization (IIB6).

Determine if the organization can efficiently accomplish its function. Describe the various buying sections, identifying commodity assignments, numbers of personnel, and division of responsibility (e.g., price/cost analysis, market research, expediting). Explain whether a contractor with major subsystems has, or should have, a separate systems purchasing group to provide

the specialized purchasing administration efforts needed for these products.

C-202.6 Purchasing personnel (IIB7).

Determine the adequacy of the contractor's standards for the qualification, training, experience, and performance of its purchasing staff.

C-202.7 Conflict of interest gifts and gratuities (IIB8).

Determine whether the contractor—

(a) Policies on conflict of interest/gifts and gratuities are consistent with DoD policy (including the Anti-Kickback Act).

(b) Is complying with its policies.

C-203 Purchasing policies and procedures (IIC).

C-203.1 Evaluation of written policies and procedures (IIC1).

(a) Evaluate the—

(1) Scope and effectiveness of the contractor's purchasing policies and procedures; and

(2) Methods for formulating, issuing, updating, and changing them.

(b) Determine whether the contractor's policies and procedures are—

(1) In writing;

(2) Adequate in terms of acceptable purchasing practice;

(3) Consistent with DoD policy and contractual provisions; and

(4) Known and followed.

(c) As a minimum, the contractor should have policies and procedures covering the following areas—

(1) *Management of purchasing.* (i) Who has the authority to make commitments and to question quality and quantity of material requisitioned or received.

(ii) Assuring that purchasing personnel are complying with applicable public laws and implementing government regulations (e.g., Truth in Negotiations).

(iii) Control and restriction of reciprocity (e.g., trade agreements, side agreements, etc.).

(iv) Purchasing file requirements.

(v) Controlling the use of nonstandard parts and components by subcontracts.

(vi) A make-or-buy program, including cost considerations as well as assessments of subcontract and in-house engineering, manufacturing, and quality assurance capabilities.

(vii) Federal information processing resources.

(2) *Development of purchase requirements.* (i) Timely preparation and appropriate review, approval, and transmission of an accurate and complete technical data package and purchase requisitions.

(ii) Reviewing requisitions to consolidate all requirements (Government and commercial) for the same or similar items—reviewing requirements against available stocks and surpluses.

(iii) Inventory control.

(iv) Transportation and packaging.

(v) Preparation, processing, and issuance of purchase orders.

(vi) Assuring that purchasing documents include appropriate source inspection requirements (prime contractor and Government).

(vii) Assuring flow down to purchase orders and subcontracts of applicable prime contract terms and conditions.

(3) *Selecting sources.* (i) Developing and soliciting potential subcontractors.

(ii) Obtaining competition.

(iii) Controlling intra-company transactions with affiliates, subsidiaries, or parent company.

(iv) Requiring written justification of sole source purchasing.

(v) Assuring that the subcontractor's quality system complies with the prime contractor's quality assurance program requirements and product testing.

(vi) Preaward survey of prospective suppliers.

(vii) Complying with the small business and small and disadvantaged business subcontracting program contract clauses.

(viii) A vendor rating system and vendor case histories.

(ix) Fully justifying purchases from suspended or debarred firms.

(4) *Pricing.* (i) Cost or price analysis.

(ii) Timely furnishing of current supplier quotes and negotiated price data for use in proposal preparation.

(iii) Establishing and documenting negotiation objectives and their difference with the negotiated price.

(iv) Requiring written justification of second or subsequent best and final offers and split awards.

(v) Obtaining prompt payment discounts from subcontractors.

(vi) Effectively processing a high volume of low dollar value orders and calls against blanket orders and open-end subcontracts.

(vii) Spare parts pricing.

(viii) Selecting the proper contract type.

(ix) Controlling cost reimbursement, time and material, and labor-hour subcontracts.

(x) Consultant contracts or agreements.

(5) *Subcontract award and administration.* (i) ACO advance notification and consent.

(ii) Timely definitization of undefinitized actions (e.g., letter contracts) and changes.

(iii) Subcontractor reporting requirements for postaward management.

(iv) Maintaining visibility of subcontracts in the areas of cost, schedule, and performance.

(v) Monitoring progress payments to subcontractors.

(vi) Requiring subcontractors to identify and record nonconformance, determine cause of defects, implement timely corrective action, and provide appropriate notification.

(vii) Verifying subcontractors' control of calibration, measuring, and test equipment.

(viii) Controlling subcontractor acquisition of special tooling and test equipments.

(ix) Use of Government property.

(x) Receiving, inspecting, accepting, and returning material.

(xi) Adequate review and processing of terminations.

(xii) Subcontract closeout.

C-203.2 Analysis of purchasing forms (IIC2).

Determine whether the contractor's forms (including automated formats) effectively support the purchasing operation.

C-204 Subcontract clauses (IID).

The team captain should have the team's legal specialist perform the clause review. This part of the review can be done after the in-plant review, if necessary.

C-204-1 Analysis of purchase order clauses (IID1).

Ensure that the contractor—

(a) Uses standard clauses for like situations;

(b) Has a system that provides for special or nonstandard clauses when conditions warrant;

(c) Flows down required prime contract clauses and requirements; and

(d) Uses clauses appropriate to the action.

C-204-2 Restrictive clauses (IID2).

(a) Restrictive clauses limit subcontractor use of prime contractor furnished materials or data. Example—

"All special tooling, drawings, data, designs, engineering instructions, specifications, or other information supplied by or in behalf of the buyer, or prepared by seller, shall be and remain the property of buyer, and seller shall not use or disclose any special tooling, drawings, data, design, engineering instructions, specification, or other information, except in the performance of orders for buyer and upon buyer's request, such special tooling, drawings, data, design, engineering instructions, specifications, or other information, and all copies thereof shall be returned to buyer."

(b) The Government does not permit use of these clauses in cases where the materials or data furnished by the prime contractor to the subcontractor came from the Government and the Government has title, a vested interest, or data rights. This is to prevent what otherwise could happen—prime contractor could restrict competition by preventing subcontractors from using the (Government) furnished material or data in direct sales to the Government.

(c) The review team shall ensure that the contractor does not use "restrictive" clauses which limit subcontractor use of Government furnished data or material in direct dealings with the Government. If there are any, the team should recommend that the ACO withhold system approval until the clauses are modified.

C-204.3 Special clauses (IID3).

Contractors frequently use the same purchase order forms for both commercial and Government subcontracts. This is fine, but the review team should ensure that the terms and conditions are consistent with Government policies. Pay special attention to the following provisions—

(a) *Pricing and payments.* Ensure that provisions do not allow—

(1) Establishment of prices "after the fact" or on an "advise price" basis;

(2) Unilateral adjustment by the prime contractor; or

(3) Escalation inconsistent with the prime contract provision.

(b) *Patent rights.* Ensure that the subcontract clause is consistent with the prime contract. Particularly ensure that the

prime does not require greater rights from the subcontractor than the Government requires from the prime.

(c) *Disputes.* Do not approve any subcontract clause which allows subcontractors a right of direct appeal to the contracting officer and the Board of Contract Appeals. Ensure that flow down clauses are appropriately modified to reflect this. Clauses which provide that the prime contractor will prosecute an appeal on behalf of the subcontractor or in the name of the prime are fine.

(d) *Warranty.* Standard commercial type warranty requirements are acceptable, provided they are consistent with any prime contract requirements.

(e) *Equal opportunity.* Make sure the contractor flows down the applicable provisions of the clause at FAR 52.222–26, Equal Opportunity, to every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor (41 CFR, chapter 60).

(f) *Subcontractor cost or pricing data.* Make sure the appropriate clauses are flowed down. Check for the following—

(1) FAR 52.214–26, Audit—Sealed Bidding;

(2) FAR 52.214–28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding;

(3) FAR 52.215–2, Audit—Negotiation;

(4) FAR 52.215–24, Subcontractor Cost or Pricing Data; and

(5) FAR 52.215–25, Subcontractor Cost or Pricing Data—Modifications.

(g) *Termination for convenience of the Government.* Subcontracts should include a termination for convenience clause since the prime contract requires the contractor, on receipt of a notice of termination, to terminate subcontracts if they relate to the terminated part of the prime contract (see FAR subpart 49).

(h) *Government property.* Subcontracts should include a clause that—

(1) Holds subcontractors responsible for loss or damage to Government property in their possession and control under the subcontracts;

(2) Unless otherwise authorized by specific approval of the contracting officer, requires the subcontractor to return the property in the same condition as when received, except for reasonable wear and tear and use in accordance with the contract; and

(3) Requires any other controls over Government property required by the prime contract or FAR Part 45.

(i) *Limitation of payment provision of certain subcontracts.* (1) Certain prime contract clauses require contractors to—

(i) Insert a limitation of payment provision in each price redeterminable or incentive subcontract; or

(ii) Insert in each cost-reimbursement subcontract a requirement for these subcontractors to include a limitation of payment provision in each price-redeterminable or incentive subcontract under their subcontract.

(2) The prime contract clauses that require the above are—

(i) FAR 52.216–5, Price Redetermination—Prospective;

(ii) FAR 52.216–6, Price Redetermination—Retroactive;

(iii) FAR 52.216–16, Incentive Price Revision—Firm Target;

(iv) FAR 52.216–17, Incentive Price Revision—Successive Targets; and

(v) FAR 52.244–2, Subcontracts (Cost-Reimbursement and Letter Contracts).

C–204.4 Side agreements (IID5).

Ask the contractor if there are any side agreements that negate clauses used in the standard formats.

C–204.5 ACO consent (IID5).

(a) Ensure that the contractor—

(1) Requests ACO consent or submits advance notification when required; and

(2) Submits consent packages with information necessary to perform the review.

(b) Include the following statistical data in the report.

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
No. of POs Reviewed:				
Advance Notification				
No. Required				
Dollar Value				
No. Obtained				
Dollar Value				
No. Inadequate				
Dollar Value				
Prior Written Consent:				
No. Required				
Dollar Value				
No. Obtained				
Dollar Value				
No. Documentation-Inadequate				
Dollar Value				

(c) The following table summarizes advance notification and consent requirements.

ADVANCE NOTIFICATION, WRITTEN JUSTIFICATION, AND CONSENT TO SUBCONTRACT SUMMARY

Type of subcontract	Type of prime contract (and subcontract clause)				
	Fixed price	Cost reimbursement & letter contracts		Time & material	Facilities
		Supply	R&D		
Fixed Price	52.244–1		52.244–2	52.244–3	52.244–2
1. All except those below			A J C		
2. Experimental, Development, or Research Work		A J C*	A C*		
3. Over $25,000 or 5% of contract	A* J* C* +	A J C*	A C*		
4. Over $100,000	A* J* C* +	A J	A J		
5. Family of subs over $100,000		A J C	A J C		
6. Industrial facilities				A J C	
7. For other than raw material or commercial stock					
Cost-Reimbursement, Time and Material, and Labor Hour:					
1. All except those below		A C*	A C*		
2. Experimental, development, or research work			A C		
3. Over $25,000 (including fee) or 5% of contract	A* J* C*	A J + + C**	A J + + C*		
4. Over $100,000		A J C*			
5. Family of subs over $100,000		A J			
6. Industrial facilities		A J C	A J C		A J C

ADVANCE NOTIFICATION, WRITTEN JUSTIFICATION, AND CONSENT TO SUBCONTRACT SUMMARY—Continued

Type of subcontract	Type of prime contract (and subcontract clause)				
	Fixed price	Cost reimbursement & letter contracts		Time & material	Facilities
		Supply	R&D		
7. Special test equipment over $10,000		A J C	A J C		
8. Subs other than raw material or commercial stock				A J C	

* Waived when purchasing system approved.
+ Normally this does not apply unless there is an unpriced modification.
++ $10,000 (including fee) for cost-reimbursement, time-and-materials, or labor-hour subcontracts
Code: A = Advance notification; J = Written justification; C = ACO consent.

C-204.6 Cost accounting standards, Public Law 91-379 (IID6).

(a) Examine the prime contract to determine if the subcontract is subject to cost accounting standards (CAS) (see the clauses at FAR 52.230-3, Cost Accounting Standards, 52.230-4, Administration of Cost Accounting Standards, 52.230-5, Disclosure and Consistency of Cost Accounting Practices). If the subcontract is subject, determine if the contractor is complying with CAS when awarding such subcontracts. The contractor complies by—

(1) Obtaining a subcontractor disclosure statement or a certificate that a disclosure statement is not required; and

(2) Flowing down the applicable clauses to covered subcontractors.

(3) Notifying the ACO of subcontracts subject to the CAS clause or the Disclosure and Consistency of Cost Accounting Practices clause.

(b) Consistent noncompliance with CAS when awarding subcontracts is cause for recommending that system approval be withheld. Isolated instances of noncompliance are not sufficient cause.

(c) Include the following statistical data in the report—

	No. POs	Total $ value
Over $100,000		
Cost Accounting Standards Applicable.		
Disclosure Statement or Certificate Obtained.		
Percent of Obtained to Applicable.		

C-205 Management of purchasing (IIE).

C-205.1 Documentation of purchasing files (IIE1).

Determine whether file documentation is sufficient, but not excessive, to provide a complete and accurate history of the transactions and consistent with the contractor policies. Documents included in the files would be those necessary to evidence compliance with Government requirements and the contractor's policies and procedures. In reviewing automated purchasing system files, only review printed material when absolutely necessary.

C-205.2 Reports and controls (IIE2).

Review the system of reports and controls to determine if management is receiving and evaluating pertinent information for effective control and management of the department.

C-205.3 Standardization program (IIE3).

A standardization program is an organized effort to establish, to the extent practical, fixed standards of quality, size, and description for material in order to minimize the number of different parts purchased or manufactured, and to make certain that all materials and parts purchased are standard military or commercial items. Evaluate the contractor's program.

C-205.4 Value engineering program (IIE4).

Ensure that the contractor—

(a) Flows down the value engineering clause (FAR 52.248-1, Value Engineering, 52.248-2, Value Engineering—Architect-Engineer, or 52.248-3, Value Engineering—Construction) when it is in the prime contract; and

(b) Has an adequate system for handling, review, evaluation, and pricing subcontract value engineering change proposals before submitting them to the ACO.

C-205.5 Make or buy program.

(a) Evaluate the contractor's procedures for making make or buy decisions. Ensure that procedures are followed and decisions are documented. Evaluate any deviations from established practice.

(b) For contracts with specific make or buy programs, determine compliance comparing the contractual provisions with the orders placed by purchasing. Review any changes for compliance with the contractual program.

C-205.6 Material estimating—budget control (IIE6).

(a) Analyze the estimating system review (see 215.811-70) to determine its impact, if any, on the purchasing system. Determine the adequacy of the contractor's method for establishing and issuing material budgets. Comment on whether the contractor has, or should have, a separate budget for developing alternate sources of supply.

(b) The review team must determine what department within the contractor's organization has the responsibility for compiling the cost estimate for material, purchased parts, and subcontracted items to be used in establishing new business proposals and engineering change proposals, and how the estimates are developed.

(1) The complete cycle—the estimate, the budgeted amount, and control to ensure staying within the budgeted amount—must be understood and evaluated.

(2) A representative number of high dollar value orders should be selected for comparison of prices paid and estimates received by the Government.

(3) A variation between the actual price paid and the estimate to the Government does not in itself indicate poor material estimating or a lack of compliance with Pub. L. 87-653; however, the reasons for the variations should be determined.

(4) Review the report for, or determine if, the variations are provided to the Government for use in decrement factors.

C-205.7 Value analysis program.

(a) Value analysis is used to determine if the material to be purchased is the optimum for its intended use.

(b) Questions such as the following should be asked—

(1) Would a less expensive item do the job or could redesign of the product result in a lower cost?

(2) Have life cycle costs been considered?

C-206 Development of purchase requirements (IIF).

C-206.1 Advance purchasing planning (IIF1).

Determine whether the contractor has an effective advance planning system, i.e., one that leads to competitive purchasing to the maximum extent possible. Some areas to look at are—

(a) Procedures for purchasing department input in design and purchase specifications;

(b) Procedures for obtaining information on all available sources, e.g., market research;

(c) Policies for reviewing noncompetitive items for conversion to competition; and

(d) Procedures for forecasting future acquisitions (i.e., second source development).

C-206.2 Identification of the purchase requirement (IIF2).

Determine whether the contractor's procedures for identifying items to purchase identify all that are needed and do not identify those not needed.

C-206.3 Establishment of schedules—purchase lead time (IIF3).

Determine whether the contractor's scheduling system allows sufficient purchasing lead time. Review how lead times are established, and how they are checked for realism. Material shortages, work stoppages, or a substantial volume of purchasing requiring premium pay are reliable indicators of inadequate lead times. State in the report, what portion of the subcontract samples reflect adequate purchasing lead time. Include the following statistical information in the report—

	$100,000 and Over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Number of Requisitions Reviewed				
Lead Time Provided:*				
0-15 days				
16-30 days				
31-90 days				
Over 90 days				

*Lead Time Provided: Date receipt of requisition versus vendor promised date.

C-206.4 Inventory control (IIF4).

(a) Evaluate the effectiveness of the contractor's inventory control system in purchasing common items and in controlling physical inventories. Review the contractor's policies and procedures for—

(1) Deciding which material should be purchased and maintained in stock; and

(2) Controlling stocked inventory.

(b) Ensure that the inventory control policies and procedures—

(1) Only keep in stock what is regularly needed. In evaluating this, look at—

(i) The turnover rate;

(ii) How often an inventory is taken;

(iii) Whether the inventory has large amounts of excess materials; and

(iv) Whether and how obsolete and excess quantities of material are disposed of.

(2) Keep the stocks at level sufficient to meet demands. In evaluating this, look at—

(i) The system for deciding when to reorder.

(A) If the contractor utilizes a minimum/maximum inventory control system for common items, how are reorder points established? Does the contractor consider economic order quantities? Are there any procedures for reevaluating the soundness of reorder points on a systematic basis? How does the contractor assure that items which reach minimum levels are reordered in a timely manner?

(B) If the contractor does not use such a system, how is the decision made?

(ii) The normal elapsed time between issuance of the stock item and update of stock control records.

C-206.5 Material control methods (IIF5).

Evaluate the contractor's material control system as it relates to the purchasing function. A material control system includes determining the need, packing and packaging, scheduling deliveries, expediting, transportation, receiving, and controlling material. Determine the effectiveness of the contractor's procedures for combining requirements and for screening them against quantities on hand and surplus inventories.

C-206.6 Expediting and follow-up of purchase orders (IIF6).

(a) Evaluate the contractor's system for assuring delivery of materials prior to the date needed in production. Look at—

(1) How often and how much the contractor pays premiums to ensure timely delivery (how efficient the contractor is);

(2) Expediting policies, procedures, and responsibilities;

(3) Reports kept and used to identify scheduled material deliveries, late and due material, critical and urgent material, and any changes; and

(4) Management controls, e.g., tickler files.

(b) Also include in the report the statistics developed from the sampled subcontracts on reasons for late deliveries, as follows:

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Number of POs Delinquent*				
Number of POs Delinquent in excess of 15 days				

*Actual delivery date versus required delivery date.

Deliveries in excess of 15 calendar days are not satisfactory. Investigate and explain all instances where vendors are continually delinquent in their deliveries.

C-206.7 Receiving (IIF7).

Evaluate the receiving function as it relates to purchasing. Review—

(a) Receiving policies, procedures, and relationships with other departments;

(b) Methods used to identify incoming material and to notify purchasing and other affected departments about receipt;

(c) Suitability of arrangements of separating material in the receiving area (e.g., inspected or not, accepted or rejected) and for storing classified material; and

(d) How long it takes to get the material to storage or other disposition (returned, etc.).

C-206.8 Transportation (IIF8).

(a) Evaluate the transportation function as it relates to purchasing. In particular, ensure that the contractor has and follows effective procedures for—

(1) Controlling premium transportation;

(2) Selecting proper freight classification;

(3) Developing full load shipments;

(4) Recovering excess transportation charges when vendors fail to follow shipping instructions; and

(5) Complying with contractual requirements for duty-free entry (see subpart 225.8) and cargo preference (see subpart 247.5).

(b) Also ensure that transportation and shipping instructions in subcontracts and purchase orders are clear.

C-206.9 Packaging (IIF9).

Ensure that packaging specifications given to vendors are clear and in accordance with contract requirements.

C-207 Selecting sources (IIG).

C-207.1 Competition (IIG1).

(a) Determining whether the contractor uses competition to the maximum extent practical as required by the clause at FAR 52.244-5, Competition in Subcontracting, (which is in most negotiated contracts). In making this determination, evaluate the contractor's—

(1) Source selection policies and procedures, which—

(i) Shall be in written form; and

(ii) Should include both commercial practices and the Government requirements that modify them.

(2) Attitudes toward and actual practice in placing subcontracts on a competitive basis. Regular reports provided to top management on competitive buying may be evidence of the contractor's commitment.

(3) Methods for compiling lists of potential sources. Review the—

(i) Existence and usefulness of the historical records on parts and vendors; and

(ii) The extent of market survey efforts.

(4) Policies and procedures for determining whether source lists contain an optimum number of qualified sources for maximum practical competition.

(b) In evaluating sampled subcontracts, identify whether there was maximum competition in soliciting sources (but see FAR 13.106). There is no magic number of sources that must be solicited—it is a judgment call. A subcontract may be competitive even when only one source submits an offer, if offers are solicited from at least two responsible sources who normally contend for subcontracts for the same or similar items. Note, however, that this does not constitute "adequate price competition" (see C–208.3) and thus does not exempt submission of subcontractor cost or pricing data when required.

(c) Note that contractors are not precluded from limiting competition to small disadvantaged business concerns or historically black colleges and universities.

(d) Include the following statistical data in the report.

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
POs Awarded on Competitive Basis				
Quotations Solicited				
Quotations Received				
Responsive Quotations Received				
Depth of Competition (POs Reviewed/Responsive Quotes Received).				
Awarded to Lowest Evaluated Offer				
Awarded to Other Than Low Offer				
Total Awarded Competitively				
Percent of Competitive Orders Reviewed				

C-207.2 Intra-company transactions (IIG2).

Ensure that the contractor has written policies on intra-company transactions, including a policy on—

(a) Competition of affiliates and divisions with outside subcontractors. Ensure that any policies giving "preference" to affiliate or divisions are not resulting in unacceptable practices, e.g., obtaining final offers only from affiliates when the affiliate offers are higher in price than those received from outside subcontractors.

(b) Whether cost or normal selling prices are used when items or services are obtained from affiliates or division. Ensure that the contractor's policies are consistent with FAR 31.205–26. Also ensure that the contractor has measures to prevent pyramided profits on work performed within the company.

C-207.3 Single-source and sole-source purchasing (IIG3).

(a) Determine whether the contractor has an effective and continuing program to review single and sole-source items for competition or second sourcing. The program should include—

(1) Technical participation;

(2) Competition advocate, if any, participation;

(3) Identification and elimination of inhibitors to competition, e.g., specifications that are not definitive; restrictive tolerances; production limitations;

(4) Written documentation of reviews;

(5) Goals for improving competitive dollars and percentages; and

(6) Analysis of results.

(b) Contractor policies should view each single or sole-source purchase as an exception.

Policies should require—

(1) Justification for the single or sole-source by the management of the department which has the requirements; and

(2) Cost and price analysis when required.

(c) In evaluating sampled subcontracts, evaluate whether the contractor has an adequate justification for single and sole-source buys. Single source is a purchase where competition is available but which is awarded without it because of limiting circumstances. Sole source is a purchase that can only be placed with one vendor. Verify the contractor's reasons with the buyer, supervisor, or other personnel who provided the justification.

(d) Include the following statistical data in the report:

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Customer Directed[1]				
Engineering Directed[2]				
Proprietary Items				
Only Supplier Qualified				
Economically Justified[3]				
Other Justifiable Reasons				
No Justification Given				
Total				

[1] For example, when an end item contains an item on a qualified products list (QPL), the item on the QPL must be purchased from a source on the QPL (see FAR 9.2).

[2] Caution: When the contractor's engineering department marks sources on drawings, it does not necessarily mean that the source is directed. It may only mean the vendor has an acceptable product.

[3] Economic justification may include life cycle cost impact, configuration control impact, tooling cost, qualification test, delivery, etc.

C-207.4 Small business and small disadvantaged business utilization performance (IIG4).

Determine whether the contractor is complying with the clause at FAR 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (in most contracts over $10,000), which requires contractors to give these concerns the maximum practical opportunity to participate in subcontracts. The team captain shall ask the team's small and disadvantaged business utilization specialist to do this part of the review. Include the following statistical data in the report:

	Prior year	Current year
Total Purchasing and Subcontracting.		
Small Business		
Small Disadvantaged Business.		

C-207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) *Responsibility.* Before awarding a subcontract, the prime contractor should determine the subcontractor responsible using the same standards of responsibility the Government uses (see FAR 9.104–4). The team should pay particular attention to the contractor's use of the list of parties excluded from procurement programs (see FAR 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see FAR 9.405–2).

(b) *Vendor performance rating.* State in the report whether the contractor has or should have a vendor rating system. If the contractor has a system, determine its efficiency by reviewing—

(1) What aspects of performance it rates (a detailed system may evaluate several aspects—price, quality, delivery, and service);

(2) Who evaluates vendor performance (a good system draws together evaluations by all knowledgeable contractor personnel);

(3) Whether the information is kept current (a good system is); and

(4) How it is used in selecting sources.

C-208 Pricing and negotiation (IIH).

C-208.1 Statistical information (IIH1).

Include the following information in the report:

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Cost or Pricing Data:				
Applicable				
Obtained				
Certificate of Current Cost or Pricing Data:				
Applicable				
Obtained				
Cost Analysis:				
Applicable				
Accomplished				
Done Effectively				
Contractor Audit Assistance:				
Applicable				
Used Effectively				
Government Pricing Assistance:				
Requested				
Received				
Price Analysis:				
Applicable				
Accomplished				
Done Effectively				

C-208.2 Pub. L. 87–653, Truth in Negotiations (IIH2).

(a) The requirements of Public Law 87–653 are spelled out in FAR 15.804–2. Make sure the buyers fully understand the policy and procedures for obtaining certified cost or pricing data.

(b) Do not recommend approval of the contractor's purchasing system if the contractor's procedures do not result in compliance with Public Law 87–653, i.e., the procedures do not result in receipt of cost or pricing data, execution of the certificate, and incorporation of the appropriate clauses in the subcontract. One or two isolated cases of noncompliances are not ordinarily grounds for system disapproval, unless these were the only two purchases subject to the law.

C-208.3 Adequate price competition (IIH2).

(a) Adequate price competition may be the most common reason used for not getting cost or pricing data. FAR 15.804–3(b) describes when price competition exists and how to determine whether its adequate.

(b) The review team shall carefully review the contractor's documentation for adequate price competition to validate its validity. If the documentation does not support the determination of adequate price competition and the buy is otherwise subject to Public Law 87–653, then the review team will consider the contractor in noncompliance for that action.

C-208.4 Price analysis and cost analysis (IIH4).

(a) Determine whether the contractor is performing some form of price analysis on every subcontract (but see FAR 13.106) and evaluate whether the analysis is adequate for the facts and circumstances of the purchase. Contractors frequently use the existence of competition as a reason for limiting the extent of price analysis performed. The Armed Services Pricing Manual (ASPM), Volume 1, Contract Pricing, and Volume 2, Price Analysis, has additional guidance on applying pricing policies to pricing situations.

(b) Determine whether the contractor is (see FAR 15.806)—

(1) Performing required cost analysis on subcontractor cost or pricing data;

(2) Performing an adequate analysis; and

(3) Supplying the results of analyses to the Government in time to negotiate the prime contract price.

(c) The prime contractor is responsible for using its own resources to perform cost analysis and pricing reviews on its subcontractors. However, in limited circumstances (see FAR 15.806–3), the Government may perform the review.

C-208.5 Negotiations (IIH5).

(a) Evaluate whether the contractor's evaluation and negotiation decisions and methods are based on the principles the Government uses (see FAR subpart 15.6 and 15.807).

(b) Ensure that the buyer knows that he or she is responsible for the subcontract price, even when supported by other specialists. Ensure that the buyer determines the subcontract price fair and reasonable, and documents the basis for the determination.

C-208.6 Cash discounts and terms (IIH6).

Determine whether the contractor seeks and takes advantage of discounts. State in the report any instances of lost discounts and the reason.

C-208.7 Handling low dollar orders (IIH7).

Determine whether the contractor has or should have procedures to keep the number of low dollar orders from becoming excessive and to streamline handling of low dollar orders.

C-208.8 Selection of contract types (IIH8).

(a) Evaluate the types of subcontracts to determine if the contractor is using appropriate types of contracts. The contractor should be following the same principles in selection of subcontract type as the Government follows in selecting the prime contract type (see FAR part 16 and ASPM No. 1). Explain any extensive use of inappropriate contract types.

(b) Carefully review the contractor's use of undefinitized actions (e.g., letter contracts) and determine the frequency of use, conditions under which used, and the timeliness of definitization. Their use should be consistent with the conditions for Government use (see subpart 217.74). They should contain a definitization schedule which meets the limitations of 217.7404–3

C-209 Subcontract award and administration (II-I).

C-209.1 Solicitation, receipt, and evaluation of proposals (II-11).

(a) Review the file and check to make sure there's documentation showing that—

(1) Purchasing and engineering review jointly agree to the technical specifications and statement of work; and

(2) Prime contract clauses are reviewed and make or buy aspects considered.

(b) Review the request for proposal and determination if—

(1) It is definitive; and

(2) It contains the appropriate clauses and provisions.

(c) Review the contractor's evaluation methods to determine—

(1) If purchasing and engineering review proposals received to ensure they meet requirements;

(2) How preaward surveys are used; and

(3) If the evaluation method ensures impartiality.

C-209.2 Awarding the subcontract or purchase order (II-12). Determine if the contractor's procedures ensure that the final subcontract package—

(a) Contains all the necessary instructions, requirements, and clauses; and

(b) Has been reviewed and approved by all the necessary functions.

C-209.3 Subcontract administration (II-13).

(a) Evaluate the contractor's system for managing subcontracts to ensure that the Government's interests are protected. Determine whether—

(1) A subcontract surveillance program has been properly instituted, e.g.—

(i) The subcontract administrator and project engineering personnel work closely together in the resolution of design, production, reliability, and delivery problems;

(ii) The subcontract administrator monitors and correlates cost and progress of the subcontracts; and

(iii) There is an awareness of the subcontractor's problem together with effective action to resolve any problems.

(2) The contractor promptly notifies the contracting officer of potential subcontract problems which may impact the delivery, quality, or price of the prime contract.

(b) For sampled subcontracts—

(1) Review the type and frequency of reports required and if action is taken when required;

(2) Explain any overruns or delinquencies.

(3) Review actions relating to the award of lower tier subcontracts when the subcontract requires advance notice and consent.

(4) Ensure that the flow down clauses are being properly accomplished.

C-209.4 Changes to subcontracts (II-14).

For sampled subcontracts, evaluate contractor—

(a) Compliance with advance notification, consent, and Public Law 87-653, Truth in Negotiations.

(b) Control over change orders and negotiations. Analyze the reasons for any unusually large number of change orders.

C-209.5 Terminated subcontracts (II-15).

Check with the cognizant termination contracting officer (TCO) to determine if the TCO has experienced any problems with the contractor in terminating subcontracts.

C-209.6 Closing out subcontracts (II-16).

Review the contractor's policies, procedures, and practices. Ensure that files are not closed until all appropriate actions have been taken and necessary closeout actions are timely.

C-210 Appendices, exhibits, case histories (IIJ).

Use this section to attach and explain any special materials, to mention any special accomplishments, or to report cost savings/avoidances as a result of CPSR recommendations.

Part 3—Report Formats

C-300 Scope.

This part provides report formats for contractor purchasing system reviews (CPSRs), follow-up reviews, and special reviews.

C-301 Cover Page and Part I.

Use the following format for the Cover Page and Part I for CPSRs, follow-up reviews, and special reviews:

(a) *Cover page of report.*

CONTRACTOR PURCHASING SYSTEM REVIEW (TYPE OF REVIEW)

CONTRACTOR'S COMPLETE NAME AND ADDRESS

Corporation Name:
Division Name:
Group/Plant Name:
Subdivision Name:
Street Address:
City, State, and Zip Code:

ORGANIZATION CONDUCTING THE REVIEW

Name:
Address:
Name/Title of Team Captain:
Period of In-Plant Review:
Period Covered for this Review:
Date of Review Board (if required):
Copy Number:
Report Date:

Signature of Team Captain

UNLESS PERMISSION IS RECEIVED FROM THE ACO, THIS REPORT SHALL ONLY BE DISTRIBUTED IN ACCORDANCE WITH FAR 44.307.

RELEASE OF THIS REPORT IS GOVERNED UNDER THE FREEDOM OF INFORMATION ACT, 5 U.S.C. 552. NOTIFY HEADQUARTERS, _____ IF THIS REPORT IS RELEASED.

THE SUPPORTING WORKPAPERS APPLICABLE TO THIS REPORT ARE RETAINED IN THE FILES OF

(b) *Part I.*

Use the following format for Part I:

PART I

Summary Report

Section
1. Contractor's complete name and address
2. Statement on previous status of purchasing system, comments on adequacy of implementation of previous recommendations, and identification of repeat recommendations
3. Comments on contractor's effectiveness in major purchasing areas including:
   a. Extent of competition
   b. Control of sole-source and single-source purchasing
   c. Small business and small disadvantaged business programs
   d. Price and cost analysis methods
   e. Subcontract administration
   f. Make or buy program
   g. Justification for use of suspended/debarred subcontractors
   h. Other areas
4. Recommendations:
   a. Recommendations made to the contractor
   b. Contractor's reply to the recommendations
   c. Evaluation of contractor's reply
5. Attach copy of ACO letter to contractor

C-302 Part II.

Use the following format for Part II for CPSRs:

PART II

Supporting and Statistical Data

Section
A Conducting the Review
   1. Purpose of Review
   2. Review Team Members and Review Methods
   3. Summary of Purchases Examined
B Company History and Purchasing Organization
   1. Background Data and Scope of Purchasing Operation
   2. Management Attitude Toward Purchasing
   3. Purchasing Organization
   4. Interdepartmental Relations
   5. Internal Purchasing Organization
   6. Purchasing Personnel
   7. Conflict of Interest
C Purchasing Policies and Procedures
   1. Evaluation of Written Policies and Procedures
   2. Analysis of Purchasing Forms
D Subcontract Clauses
   1. Analysis of Purchase Order Clauses
   2. Restrictive Clauses
   3. Special Clauses
   4. Side Agreements
   5. ACO Consent, Advance Notification, and Written Justification
   6. Cost Accounting Standards
E Management of Purchasing
   1. Documentation of Purchasing Files
   2. Reports and Controls
   3. Standardization Program
   4. Value Analysis Program
   5. Make or Buy Program
   6. Material Estimating—Budget Control
F Development of Purchase Requirements
   1. Advance Purchasing Planning

2. Identification of the Purchase Requirement
3. Establishment of Schedule—Purchasing Lead Time
4. Inventory Control
5. Material Control Methods
6. Expediting and Follow-up of Purchase Orders
7. Receiving
8. Transportation
9. Packaging

G Selecting Sources
1. Competition
2. Intra-Company Transactions
3. Single-Source and Sole-Source Purchasing
4. Small Business and Small Disadvantaged Business Programs
5. Subcontractor Responsibility and Vendor Performance Rating System

H Pricing
1. Statistical Information
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C-303 Attachments.

Departments and agencies may develop formats for arraying data or contact the Defense Logistics Agency, Directorate of Contract Management, Financial Services Division (ATTN: DLA-AF), Cameron Station, Alexandria, VA 22304-6100, for information on a computerized purchase order and subcontract analysis form.

Appendix D—Component Breakout

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D-100 Scope.
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D-102 Policy.
D-103 Responsibility.
D-104 Procedures.
D-105 Records.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

D-100 Scope.

(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This appendix does not apply to—

(1) The initial decisions on Government-furnished equipment/contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

D-101 Definition.

"Component," as used in this appendix, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

D-102 Policy.

DoD policy is to breakout components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, breakout that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

D-103 Responsibility.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D-102(a) and (b);

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D-104 Procedures.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the

program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D-105 Records.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision.

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(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

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(1) The initial decisions on Government-furnished equipment/contractor-furnished equipment that are made at the inception of an acquisition program; or

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(1) Substantial net cost savings probably will be achieved; and

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(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

D-103 Responsibility.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D-102(a) and (b);

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D-104 Procedures.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D-105 Records.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision.

Appendix E—DOD Spare Parts Breakout Program

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

E–100 Scope.

This appendix established the DoD Spare Parts Breakout Program and provides uniform policies and procedures for management and conduct of the program within and between the departments and agencies.

E–101 Applicability.

(a) This appendix applies to—

(1) Any centrally managed replenishment or provisioned part (hereinafter referred to as "part") for military systems and equipment; and

(2) All DoD personnel involved with design control, acquisition, and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business specialists and technical advisors.

(b) This appendix does not apply to—

(1) Component breakout (see Appendix D);

(2) Foreign military sale peculiar items;

(3) Insurance items (e.g., one-time buy);

(4) Obsolete items;

(5) Phase out items (e.g., life of type buy);

(6) Items with annual buy values below the thresholds developed by DoD components or field activities;

(7) Parts being acquired under other specifically defined initial support programs; or

(8) Parts acquired through local purchase.

E–102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. The ability to competitively buy spares must be considered early in a weapon system acquisition. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment.

(b) The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgement in—

(1) Determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers; and

(2) Overcoming or removing constraints to breakout identified through the screening process (technical review) described in E–302.

(c) This Appendix sets forth procedures to screen and code parts in order to provide contracting officers summary information regarding technical data and sources of supply to meet the Government's minimum requirements. This information assists the contracting officer in selecting the method of contracting, identifying sources of supply, and making other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operations performed after manufacture of parts possessing safety or other critical characteristics, and the availability of technical data.

(d) The result of the screening process (technical review is indicated by an acquisition method code (AMC) and an acquisition method suffix code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see E–202 and E–203(b)(1)).

E–103 Definitions.

E–103.1 Acquisition method code (AMC).

A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

E–103.2 Acquisition method code conference.

A conference which is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

E–103.3 Acquisition method suffix code (AMSC).

A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing, and technical information.

E–103.4 Actual manufacturer.

An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

E–103.5 Altered item drawing.

See current version of DoD STD–100, paragraphs 201.4.4 and 703.

E–103.6 Annual buy quantity.

The forecast quantity of a part required for the next 12 months.

E–103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

E–103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The

government retains legal title to such material even though the borrowing organization has possession during the stated period.

E-103.9 Breakout.

The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are—

(a) The competitive acquisition of a part previously purchased noncompetitively; and

(b) The direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

E-103.10 Competition.

A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement.

E-103.11 Contractor technical information code (CTIC).

A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

E-103.12 Design control activity.

A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD STD–100.

E-103.13 Direct purchase.

The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

E-103.14 Engineering drawings.

See current versions of DoD STD–100 and DoDD 1000.

E-103.15 Extended dollar value.

The contract unit price of a part multiplied by the quantity purchased.

E-103.16 Full and open competition.

A contract action where all responsible sources are permitted to compete.

E-103.17 Full screening.

A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) or can be competed.

E-103.18 Immediate (live) buy.

A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

E-103.19 Life cycle buy value.

The total dollar value of all acquisitions that are estimated to occur over a part's remaining life cycle.

E-103.20 Limited competition.

A competitive contract action where the provisions of full and open competition do not exist.

E-103.21 Limited screening.

A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see E–301.3).

E-103.22 Manufacture.

The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

E-103.23 Prime contractor.

A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

E-103.24 Provisioning.

The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

E-103.25 Qualification.

Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file—

(a) Stating the need for qualification and why it must be done prior to award;

(b) Estimating likely cost of qualification; and

(c) Specifying all qualification requirements.

E-103.26 Replenishment part.

A part, repairable or consumable, purchased after provisioning of that part, for: replacement; replenishment of stock; or use in the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this appendix, except when distinction is necessary, the term "part" includes subassemblies, components, and subsystems as defined by the current version of MIL–STD–280.

E-103.27 Reverse engineering.

A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of a technical data package suitable for manufacture of an item by new sources.

E-103.28 Selected item drawing.

See current version of DoD–STD–100, paragraph 201.4.5.

E-103.29 Source.

Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

E-103.30 Source approval.

The Government review that must be completed before contract award.

E-103.31 Source control drawing.

See the current version of DoD–STD–100, paragraph 201.4.3.

E-103.32 Technical data.

Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition.

E-104 General policies.

(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally, an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, there is no minimum DoD threshold for breakout screening actions. DoD components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see E–203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned

(see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent acquisition is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided in Part 4 of this appendix. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified, e.g., Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) Departments and agencies shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

E-105 Responsibilities.

(a) The Assistant Secretary of Defense (Production and Logistics) has authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) Departments and agencies shall perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility shall—

(1) Implement a breakout program consistent with the requirements of this appendix.

(2) Assist in the identification and acquisition of necessary data rights and technical data, and the review of restrictive legends on technical data, during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost effectiveness of screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of this appendix. The program manager shall report only to the Commander, or deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued so long as it is cost effective, or until no further breakout improvements can be made.

(5) Invite the activity's small business specialist and the resident small business administration's procurement center representative (PCR), if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Ensure timely engineering and technical support to other breakout activities regardless of location.

(i) In the case of parts where contracting or inventory management responsibility has been transferred, support shall include—

(A) Assignment of an AMC/AMSC prior to the transfer;

(B) Assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC; and

(C) Full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

(ii) In all cases, support shall include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see E-105(d)(6)).

(7) Ensure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for—

(1) Initiating the breakout process during the early phases of development and continue the process during the life of the part;

(2) Considering the need for contractor technical information codes (CTICs) and, when needed, initiating a contract data requirement;

(3) Identifying, selecting, and screening in accordance with Part 3 of this appendix;

(4) Assigning an AMC/AMSC, using all available data, including CTICs;

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy shall be promptly completed for future buys; and

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a permanent file for each part. As a minimum, the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall—

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.; and

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

Part 2—Breakout Coding

E-200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

E-201 Coding.

Three types of codes are used in the breakout program.

E-201.1 Acquisition method codes.

The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) *AMC 0.* The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) *AMC 1.* Suitable for competitive acquisition for the second or subsequent time.

(c) *AMC 2.* Suitable for competitive acquisition for the first time.

(d) *AMC 3.* Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) *AMC 4.* Acquire, for the first time, directly from the actual manufacturer.

(f) *AMC 5.* Acquire directly from a sole source contractor which is not the actual manufacturer.

E-201.2 Acquisition method suffix codes.

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through (z) of this subsection and summarized in Exhibit I.

(a) *AMSC A.* The Government's right to use data in its possession is questionable. This

code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. This code is assigned only at the conclusion of limited screening, and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) *AMSC B.* This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD–STD–100. Suitable technical data, Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD–STD–100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) *AMSC C.* This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) *AMSC D.* The data needed to acquire this part competitively is not physically available, it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMSC 3, 4, or 5 are valid.

(e) *AMSC E.* (Reserved).

(f) *AMSC F.* (Reserved).

(g) *AMSC G.* The Government has rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidates for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) *AMSC H.* The Government physically does not have in its possession sufficient, accurate, or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. This code is only assigned at the conclusion of limited screening, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) *AMSC I.* (Not authorized.)

(j) *AMSC J.* (Reserved.)

(k) *AMSC K.* This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL–STD–2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4, or 5 are valid. If at least two sources have such castings or they can be provided to other sources AMCs 1 or 2 or valid.

(l) *AMSC L.* The annual buy value of this part falls below the screening threshold established by DoD components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) *AMSC M.* Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) *AMSC N.* Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs are 3, 4, or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) *AMSC O.* The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC 0 is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) *AMSC P.* The rights to use the data needed to purchase this part from additional source(s) are not owned by the Government and cannot be purchased, developed, or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) *AMSC Q.* The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocurement technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. All AMSC Q items are required to be reviewed within the timeframes cited in E–203(b). If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) *AMSC R.* The Government does not own the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) *AMSC S.* Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) *AMSC T.* Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award (see FAR Part 9 and DFARS Part 209). AMCs 1 or 2 are valid.

(u) *AMSC U.* The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) *AMSC V.* This part has been designated a high reliability part under a formal reliability program. Probability of failure

would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) *AMSC W.* (Reserved.)

(x) *AMSC X.* (Not authorized.)

(y) *AMSC Y.* The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) *AMSC Z.* This part is a commercial/nondevelopmental/off-the-shelf item. Commercial item descriptions, commercial vendor catalog or price lists or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

E-201.3 Contractor technical information codes.

The following two digit alpha codes shall be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL-STD-789 and shall be considered during the initial assignment of an AMC/AMSC. For spare parts breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this appendix. Each CTIC submitted by a contractor must be accompanied by supporting documentation which justifies the proposed code. These codes and supporting documentation, transmitted by DD Form 1418, Contractor Technical Information Record, and DD Form 1418-1, Technical Data Identification Checklist, are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are—

(a) *CTIC CB.* Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) *CTIC CC.* Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) *CTIC CG.* There are no technical restrictions to competition.

(d) *CTIC CK.* Produced from class 1 castings (see the current version of MIL-STD-2175) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) *CTIC CM.* Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) *CTIC CN.* Requires special test and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) *CTIC CP.* The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) *CTIC CV.* A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) *CTIC CY.* The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

E-202 Assignment of codes.

The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be acquired. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost to breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be acquired, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs, it is DoD policy that—

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD component assigned technical responsibility.

(b) When two or more AMSCs apply, the most technically restrictive code will be assigned.

(c) Restricted combinations of AMC/AMSCs are reflected in the AMSC definitions. The Defense Logistics Service Center will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal catalog program (see E-204.2).

(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition under AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment of an AMC/AMSC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

E-203 Improving part status.

(a) *General.* An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSCP). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tomorrow's

technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) *Code suspense dates.* Every part whose breakout status can be improved shall be suspensed for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z. The period between suspenses is a period for which an assigned AMC/AMSC is considered active, and routine rescreening of parts with "valid" codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (E–304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (E–303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by the breakout activity. Items with a 1G or 2G code do not require a suspense date.

E–204 Communication of codes.

E–204.1 Communication media.

Use the Federal catalog program formats, set forth in DoD Manual 4100.39–M, Defense Integrated Data System (DIDS) Procedural Manual, communication media and operating instructions as augmented by this appendix to disseminate AMCs and AMSCs.

E–204.2 Responsibilities.

(a) The Defense Logistics Service Center (DLSC) shall—

(1) Receive and disseminate AMCs and AMSCs for each national stock number (NSN) to all appropriate Government activities in consonance with scheduled Federal catalog program computer cycles;

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence;

(3) Perpetuate the codes in all subsequent Federal catalog program transactions; e.g., entry of new NSNs and Federal supply code (FSC) changes; and

(4) Reject invalid code combinations submitted for entry into the Federal catalog program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs shall—

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLSC under existing Federal catalog program procedures; and

(2) Notify DLSC by normal Federal catalog program maintenance procedures when a change in coding is made.

Part 3—Identification, selection, and screening of parts

E–300 General.

This part sets forth procedures for the identification, selection, and screening of parts.

E–301 Identification and selection procedures.

E–301.1 Parts entering the inventory.

The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are—

(a) The unit price;

(b) The projected quantity to be purchased over the part's life cycle; and

(c) The potential for screening to result in a part being successfully broken out, e.g., item stability, cost, and completeness of technical data, etc.

E–301.2 Annual buy forecasts.

Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see E–203(b)), need only be subjected to the necessary steps of the full screening procedure (see E–303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 0O shall be selected for full screening.

E–301.3 Immediate buy requirements.

An immediate buy requirement will be identified by the user or the item manager in consonance with department/agency regulations. When an immediate buy requirement meeting the screening criteria (see E–104(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see E–303 and E–304).

E–301.4 Suspect AMC/AMSC.

Whenever an AMC/AMSC is suspected of being inaccurate by anyone, including the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being acquired, and those suspected of being more restrictive than necessary for the next buy.

E–302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation's objectives. These procedures should be tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that—

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered, and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see E–105(d)(6)); and

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision making process extends only to providing technical information. This technical information is provided by supporting documentation (DD Forms 1418, Contractor Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL–STD–789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or AMSC without additional review.

(f) During the screening process, it may be appropriate to communicate with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conferences with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute

additional value or whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort (see E-105(d)(6)).

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges, and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

E-303 Full screening procedures.

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases—

(1) Data collection;
(2) Data evaluation;
(3) Data completion;
(4) Technical evaluation;
(5) Economic evaluation; and
(6) Supply feedback.

(b) The six phases describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, the phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

E-303.1 Data collection phase (step 1).

(a) Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including—

(1) Normal identification required for cataloging and standardization review;
(2) All known sources;
(3) Historical contracting information, including the more recent awards, date of awards, and unit price(s) for the quantities prescribed;
(4) Identification of the actual manufacturer(s), the latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer);
(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity;
(6) The expected life in the military supply system;
(7) Record of any prior review for breakout, with results or findings; and
(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (steps 2-14).

E-303.2 Data evaluation phase (steps 2-14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages—

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are—(1) *Step 2.* Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government rights to data. If the answer is negative, proceed to step 3; if positive, proceed to step 6.

(2) *Step 3.* Are the contractor's limitations of the Government's rights to data established by the available data package?

(i) The questions in step 2 and 3 are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see step 20). Data rights that cannot be substantiated shall be challenged (see DFARS Part 227, validation procedures).

(ii) In the case of clear contractor ownership of rights, proceed with steps 4 and 5.

(3) *Step 4.* Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) *Step 5.* Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) *Steps 6 and 7.* Is the present technical data package adequate for competitive acquisition of a reliable part?

(6) *Steps 8 and 9.* Specify omissions. The question in steps 6 and 7 requires a critical engineering evaluation and should deal first with the physical completeness of the data—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality, and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(7) *Steps 10 and 11.* Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to step 12; if positive, proceed to step 13 or 14.

(8) *Step 12.* If the answer to the question in steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(9) *Steps 13 and 14.* Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to

determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

E-303.3 Data completion phase (steps 15-21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of the following four steps—

(1) *Step 15.* The data package is complete and adequate and the Government has sufficient rights for acquisition purposes. Such parts require no further data analysis. Proceed to step 22.

(2) *Step 16.* The Government has rights to existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to step 19.

(3) *Step 17.* The data package is complete, but suitable Government rights to the data have not been established. Proceed to step 20.

(4) *Step 18.* Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to step 20.

(c) *Step 19.* Obtain or develop the necessary data for a suitable data package. Reverse engineering to develop acquisition data may be used if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) *Step 20.* Establish the Government's and contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied—

(1) Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR Subpart 27.3/DFARS Subpart 227.3).

(2) If the technical data bears legends which limit the Government's right to use the data for breakout and it is determined that reasonable grounds exist to question the current validity of the restrictive markings, the contracting officer will be notified to initiate the validation procedures at DFARS Subpart 227.4.

(3) Where drawings and data are unmarked and, therefore, free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS Subpart 227.4).

(4) The decision process in situations described in paragraphs (d) (1), (2), and (3) of this subsection requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If the validation procedures in paragraph (d)(2) of this subsection establish the Government's right to use the data for breakout, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) *Step 21.* If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. Use the procedure in DFARS Subpart 227.4.

E-303.4 Technical evaluation phase (steps 22-37).

(a) *Introduction.* (1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination. The application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (steps 6–14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons—

(i) *Parts produced from class 1 castings and similar type forgings.* The process of developing and providing the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be acquired from other sources which use castings or forgings from approved (controlled) source(s).

(ii) *Parts produced from master or coordinated tooling, e.g., numerically controlled tapes.* Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to minimum/maximum limits and must be replaceable without additional tailoring or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) *Parts requiring special test and/or inspection facilities to determine and maintain ultra-precision quality for the function or system integrity.* Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) *Design procedures (steps 22–31).* (1) *Step 22.* Will a design change occur during anticipated lead time? If affirmative, proceed to step 23; if negative, proceed to step 24.

(2) *Step 23.* Specify the design change and assign an appropriate code.

(3) *Step 24.* Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(4) *Step 25.* Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (step 24) does not preclude another source from being successful. If the answer to step 24 or 25 is affirmative, proceed simultaneously to steps 27 and 38. If the answer to step 25 is negative, proceed to step 26.

(5) *Step 26.* If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(6) *Step 27.* Does the part require prior qualification or other approval testing? If the answer is positive, proceed to step 28; if negative, proceed to step 32.

(8) *Step 28.* Specify the requirement.

(9) *Step 29.* Estimate the time required to qualify a new source.

(10) *Step 30.* Is there currently a qualified source?

(11) *Step 31.* Who is responsible for qualifications of the subcontractor, present prime contractor, the Government, or an independent testing agency?

(i) If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the departments, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

(ii) Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) *Quality assurance procedures (steps 32–33).* Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may—

(1) Develop the same quality control and inspection capability in the manufacturer's plant;

(2) Assume the responsibility for quality; or

(3) Undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) *Step 32.* Who is now responsible for quality control and inspection of the part?

(5) *Step 33.* Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

(i) A new source shall be considered if—

(A) Any essential responsibility (e.g., burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government;

(B) The prime contractor will provide the needed quality assurance services;

(C) The Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) The new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

(ii) If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) *Tooling procedures (steps 34–37).* (1) *Step 34.* Is tooling or other special equipment required?

(2) *Step 35.* Specify the type of tooling.

(3) *Step 36.* Estimate additional acquisition leadtime for setup and for tooling.

(4) *Step 37.* Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

E-303.5 Economic evaluation phase (steps 38–56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in paragraphs (b) through (d) of this subsection.

(b) *Development of savings data (steps 38–40).* (1) *Step 38.* Estimate remaining program life cycle buy value.

(2) *Step 39.* Apply either a savings factor of 25 percent or one determined under local conditions and experience.

(3) *Step 40.* Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) *Computation of breakout costs (steps 41–47).* Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include—

(1) *Direct costs (steps 41–45).* Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government.

(i) Step 41. Estimate the cost to the Government for tooling or special equipment.

(ii) Step 42. Estimate the cost, if any, to the Government for qualifying the new source.

(iii) Step 43. Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control.

(iv) Step 44. Estimate the cost to the Government for purchasing rights to data.

(v) Step 45. Add estimated total direct costs to the Government to breakout the item.

(2) *Performance specification costs (steps 46–47).* (i) Step 46. Is the breakout candidate constructed to a performance specification?

(ii) Step 47. If the answer is yes in step 46, add performance specification breakout cost estimate elements to the result of step 45. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts used to repair such an assembly are essentially identical to parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes—

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs.

The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the competed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) *Comparison of savings and costs (steps 48–56).* Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate detailed design data package reduces costs sufficiently to make breakout economical.

(1) *Step 48.* Compare total costs of breakout (step 47) to estimated savings (step 40).

(2) *Step 49.* Are costs of breakout greater or less than estimated savings? If greater, proceed to step 50; if yes, proceed to step 51.

(3) *Step 50.* Is the breakout candidate constructed to a performance specification? If no, proceed to step 54; if yes, proceed to step 57.

(4) *Step 51.* Is it appropriate to obtain a detailed design data package? If yes, proceed to step 52; if no, proceed to step 54. The decision to change a performance specification part to a detailed design part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Acquisition of a performance specification part by a subsequently acquired design specification subjects the Government

to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the contracting leadtime period. Accordingly, the engineering evaluation should closely review design stability over the anticipated contracting leadtime in order to avoid acquiring an obsolete or nonstandard part if the decision is made to compete it.

(5) *Step 52.* Add the estimated cost of obtaining a detailed design data package to the results of step 45.

(6) *Step 53.* If the results of step 52 are less than the estimated savings, initiate action to obtain a detailed design data package. Proceed to step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the leadtime required to obtain the detailed design data package (see E–203(b)).

(7) *Step 54.* Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to step 55.

(8) *Step 55.* Can the part be acquired directly from the actual manufacturer? If no, proceed to step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) *Step 56.* Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

E–303.6 Supply feedback phase (steps 57–65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase in completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. First, all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) *Procedures.* (1) *Step 57.* Add all additional time factors required to breakout the part (steps 13, 14, 29, and 36).

(2) *Step 58.* Add the results of step 57 to the date of this review.

(3) *Step 59.* Compare the result of step 58 to the date that the contract or order must be placed.

(4) *Step 60.* Is the result of step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to step 61; if later, proceed to step 63.)

(5) *Step 61.* Can supply accept late delivery? If yes, proceed to step 62; if no, proceed to step 63.

(6) *Step 62.* Notify the inventory manager to compute requirements and initiate a purchase requisition. Proceed to step 64.

(7) *Step 63.* Code the part AMC 2. Insufficient time to compete on this buy.

(8) *Step 64.* Code the part AMC 2.

(9) *Step 65.* Begin actions to qualify new sources, if required and possible.

E–304 Limited screening procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see E–303). Extensive legal review of rights or technical review of data is not required; nor is backup information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to step 10.

(1) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part (see E–303.1).

(2) *Step 2.* Do the available documents establish Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) *Step 3.* Is the data package sufficient, accurate, and legible? If the Government does not have in its possession sufficient, accurate, or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) *Step 4.* Is the design of the part stable over the anticipated acquisition leadtime?

(5) *Step 5.* Is a satisfactory part now being produced?

(6) *Step 6.* Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) *Step 7.* Can the Government or a new source be responsible for quality assurance?

(8) *Step 8.* Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?

(9) *Step 9.* Assign AMC 2. Proceed to step 11.

(10) *Step 10.* Assign AMC 3, 4, or 5, as appropriate.

(11) *Step 11.* Establish the date of the next review (see E–104(c) and E–203(b)).

Part 4—Contractor's Assistance

E–400 General.

(a) Contractor's assistance in screening shall be requested on provisioned and replenishment parts after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance shall not be requested for parts covered by Government/industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that—

(1) Contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel; and

(2) No costs to the Government will be incurred for duplicate screening of parts.

E–401 Contractor's technical evaluation procedures.

(a) Contractor's technical evaluation for the screening process shall be required contractually by incorporating MIL–STD–789, which delineates the contractor's responsibilities and procedures and prescribes use of the contractor DD Form 1418, Technical Information Record, and the DD Form 1418–1, Technical Data Identification Checklist, a copy of each document listed on DD Form 1418–1, and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL–STD–789 is incorporated in a contract, the DD Form 1423, Contract Data Requirements List, shall specify the requirement for the submission of DD Form 1418, Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist, in accordance with MIL–STD–789.

Part 5—Reporting System

E–500 General.

This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

E–501 Reports.

(a) *Spare Parts Breakout Screening Report (RCS DD P&L(Q&SA)714A).* This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Departments and agencies shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) *Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B).* This is a cumulative

semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Departments and agencies shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as contracting leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually acquired. This report is intended to be an indication of the success of the breakout program, and designed to show trends in the coding and data available to buyers in the acquisition package.

E-502 Reporting procedures.

(a) Departments and agencies shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the formats in Exhibits IV and V.

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistant Secretary of Defense (Production and Logistics), ATTN: Deputy Assistant Secretary for Logistics.

E-503 Reporting instructions.

(a) *Spare parts breakout screening report.* Using the format in Exhibit IV, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see E-303.5).

(b) *Spare parts acquisition report.* Using the format in Exhibit V, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed acquisition (not anticipated acquisitions). Price differentials should be measured on each acquisition where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

EXHIBIT I—VALID AMC/AMSC COMBINATIONS

AMSC	Acquisition Method Code (AMC)					
	0	1	2	3	4	5
A	X	O	O	O	O	O
B	X	O	O	O	O	O
C	X	O	O	O	O	O
D	X	X	X	O	O	O
G	X	O	O	X	X	X
H	X	O	O	O	O	O
K	X	O	O	O	O	O
L	X	O	O	O	O	O
M	X	O	O	O	O	O
N	X	O	O	O	O	O
O	O	X	X	X	X	X
P	X	O	O	O	O	O
Q	X	O	O	O	O	O
R	X	O	O	O	O	O
S	X	O	O	O	O	O
T	X	O	O	X	X	X
U	X	O	O	O	O	O
V	X	O	O	O	O	O
Y	X	O	O	O	O	O
Z	X	O	O	O	O	O

O = Valid Combinations.
X = Invalid Combinations.

Exhibit II—Full Screening Decision Process Summary Flow Chart

Note: Exhibit II appears in the 1991 Looseleaf Edition of the Defense FAR Supplement. Copies can be obtained from: Defense Acquisition Regulations System, OUSD(A), Washington, DC 20301-3000.

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EXHIBIT III--LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART

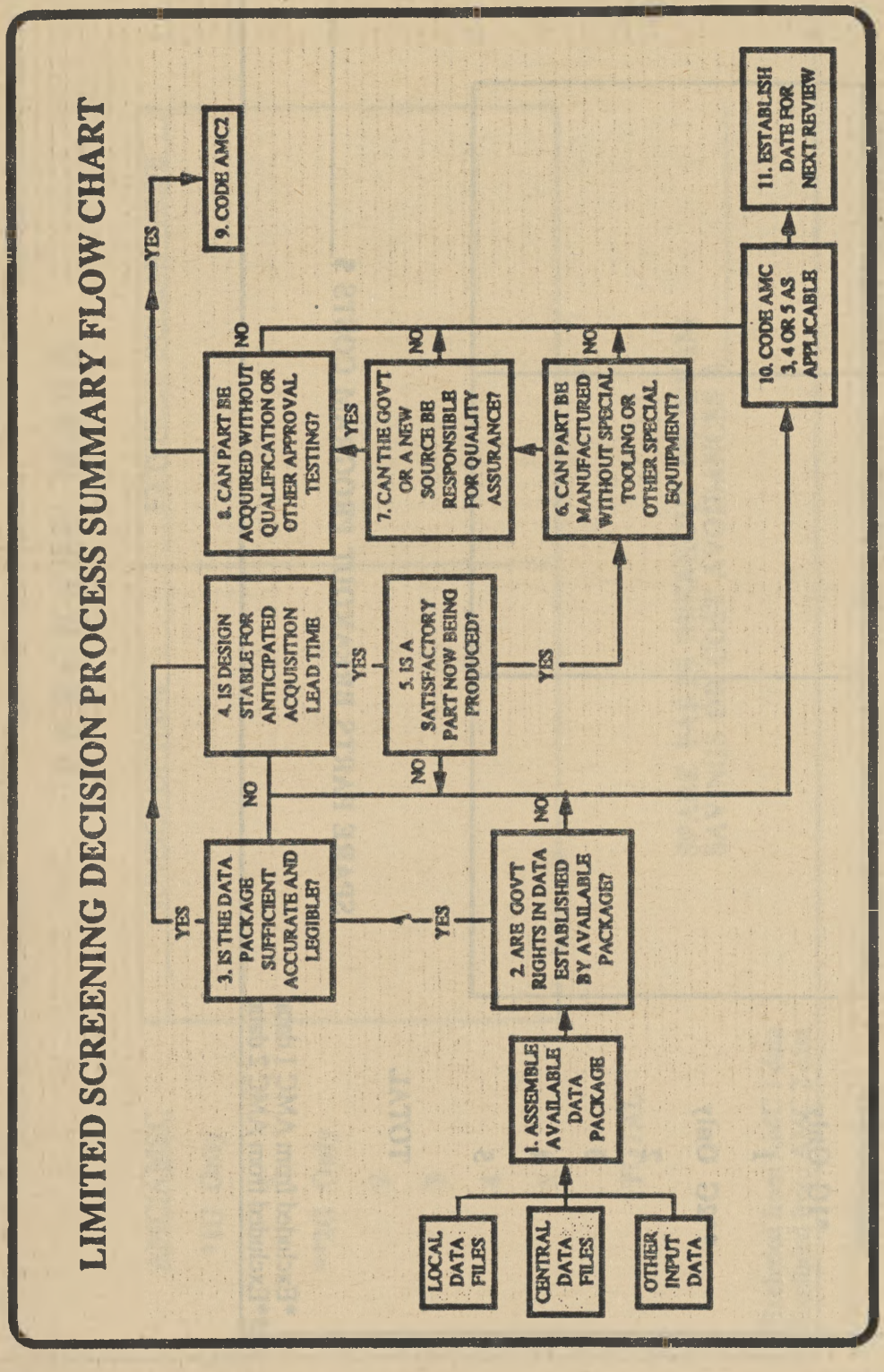

EXHIBIT IV--SPARE PARTS BREAKOUT SCREENING REPORT

SPARE PARTS BREAKOUT SCREENING REPORT

Report Activity_____ Fiscal Year_____ Period Ending_____

NUMBER OF NSNs

AMC/AMSC	LIMITED SCREENING	FULL SCREENING	TOTAL SCREENING
*1G Only			
1			
**2G Only			
2			
3			
4			
5			
TOTAL			

SPARE PARTS BREAKOUT PROGRAM COSTS $_____

*Excluded from AMC 1 data
**Excluded from AMC 2 data

EXHIBIT V--SPARE PARTS ACQUISITION REPORT

SPARE PARTS ACQUISITION REPORT

Report Activity_____ Fiscal Year_____ Period Ending_____

PURCHASE MADE

AMC/AMSC	NUMBER OF NSNs	EXTENDED DOLLAR VALUE
*1G Only		
1		
**2G Only		
2		
3		
4		
5		
TOTAL		

SPARE PARTS BREAKOUT PROGRAM
SAVINGS OR COST AVOIDANCES $_____

*Excluded from AMC 1 data
**Excluded from AMC 2 data

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Appendix F—Material Inspection and Receiving Report

Sec.

Part 1—Introduction.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—Introduction

F-101 General.

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

F-102 Applicability.

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246–7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213–1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

F-103 Use.

(a) The DD Form 250 is a multipurpose report used—(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin or destination;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice; and

(7) As commercial invoice support.

(b) Do not use the DD Form 250 for shipments—(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.

(d) Use the DD Form 250–1—(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words "INSPECTED FOR QUALITY ONLY."

F-104 Application.

(a) *DD Form 250.* (1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) Consolidation of Petroleum Shipments on a Single MIRR—(i) *Continental United States.* Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F-401, Table 1) before signing Block 21B.

(ii) *Overseas.* The same criteria as for continental U.S. applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single MIRR.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *DD Form 250–1.* (1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

F-105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c: 8 1/2 inches x 11 inches, DD Form 250–1: 8 1/2 inches x 14 inches) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

Part 2—Contract Quality Assurance (CQA) on Shipments Between Contractors

F-201 Instructions.

(a) Use the supplier's commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier's commercial shipping document/packing list:

Required CQA of listed items has been performed.

(Signature of Authorized Govt. Rep. or DoD Stamp)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be—

(1) One copy with shipment;

(2) One copy for the Government representative at consignee (via mail); and

(3) One copy for the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

F-301 Preparation instructions.

(a) *General.*

(1) Dates shall use seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 90AUG07, 90SEP24.

(2) Addresses shall consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—(i) The Commercial and Government Entity Handbook (H4/H8) code,

(ii) DoD Activity Address Directory (DODAAD) code, or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DODAAD, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs shall not be classified.

(b) Completion instructions—

(1) Block 1—Proc instrument iden (contract).

(i) Enter the 13 position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see 204.70)—

(A) Delivery orders under indefinite delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (iii), do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls/orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished by telephone or TWX message and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation /Modification of Contract), enter the contract modification six digit number or the two digit call or order number immediately following the PIIN or call/order four digit SPIIN.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. Proc instrument iden (contract)	(Order) No.
DSA400–90–F–1684	
GS–00S–61917.....	

(v) When a contract number other than PII number is used, enter that contract number.

(2) Block 2—Shipment No. (i) The shipment number has a three alpha character prefix and a four numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a "Replacement Shipment" is involved (Block 16(d)(6)).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to:

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F–305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iv) Contractors follow the procedures in F–306 to use commercial invoices.

(3) Block 3—Date Shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(4) Block 4—B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;"

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F–302).

(5) Block 5—Discount Terms. (i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(6) Block 6—Invoice No./date. (i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(7) Block 7—Page/of.

Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—Acceptance point.

Enter an "S" for Origin or "D" for destination.

(9) Block 9—Prime contractor/code.

Enter the code and address.

(10) Block 10—Administered by/code.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11—Shipped from/code/FOB.

(i) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—Payment will be made by/code. Enter the code and address of the payment office cited in the contract.

(13) Block 13—Shipped to/code. Enter the code and address from the contract or shipping instructions.

(14) Block 14—Marked for/code. Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

(15) Block 15—Item No. Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—Stock/part No./description. (i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or federal supply code (as published in Cataloging Handbook H4–1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04696–185–750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911–14003–104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See F–301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60–6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s): NSN or comparable identification _____ Quantity _____, Estimated Value _____ Authority _____"

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment number _____, date shipped _____."

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to _____, Quantity _____, Item _____, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification No. _____, dated _____

(17) Block 17—Quantity shipped/received. (i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for

purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F–305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced

17. Quantity
Ship/rec'd
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—Unit. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. Unit
LB
(SH)

(19) Block 19—Unit price. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20—Amount. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—Contract quality assurance (CQA). (i) The words "conform to contract" contained in the printed statements in Blocks A and B relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Command (DCMC).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMC. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) Origin. (A) The authorized Government representative shall—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name and office DODAAD code.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMC, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv)(A).

(1) For contracts administered by an office other than DCMC, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) Destination. (A) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(1) Place an "X" in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name and title.

(C) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by paragraph (B).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a Defense Contract Management Region or the DLA Finance Center is cited as the payment office in Block 12.

(E) When "FAST PAY" is entered in Block 21A, make no entries in this block.

(22) Block 22—Receiver's use. The receiving activity (Government or contractor) shall use this block to show receipt, quantity, and condition. The receiving activity shall enter the date the supplies arrived. For example, when off-loading or in-checking

occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(23) Block 23—Contractor use only. Self explanatory.

F-302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

F-303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F-304 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter "See Attached Distribution List."

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

F-305 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. SHIPMENT NO.
(AAA0001)
See Block 16

17. QUANTITY
SHIP/REC'D
19
(17)

16. STOCK/PART NO. DESCRIPTION
CORRECTIONS:
Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.
Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F-306 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(b) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE;" three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

F-307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F-401). Mark them "PACKING LIST."

F-308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

F-401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21A) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of

embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

Material Inspection and Receiving Report

TABLE 1.—STANDARD DISTRIBUTION

With Shipment *	4
Consignee (via mail)	2
(For Navy procurement, include unit price) (For foreign military sales, consignee copies are not required)	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a DCMR, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see F-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office	1
Payment Office ** 4	

TABLE 1.—STANDARD DISTRIBUTION—Continued

(Forward direct to address in Block 12 except—	
(i) When address in Block 10 is a DCMR or DCMAO and payment office in Block 12 is a DCMR or the DLA Finance Center, do not make distribution to the Block 12 addressee;	
(ii) When address in Block 12 is Defense Contract Management Operations Office (DCMOO), Kirtland AFB, NM, 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 or the alternative release procedures (see F-301, Block 21) are 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 DCMOO is the payment office in Block 12, send one copy to DCMOO immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DCMOO.)	
CAO of Contractor Receiving GFP	1

TABLE 1.—STANDARD DISTRIBUTION—Continued

(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59-H).)	

*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 multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies.

** Payment by DCMRs or the DLA Finance Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office, except when distribution will be made to DCMR or DLA Finance Center payment offices.

Material Inspection And Receiving Report

TABLE 2.—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in 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	Commander, US Army Security Asst. Center, ATTN: (See *), 3rd Street and "M" Avenue, New Cumberland Army Depot, New Cumberland, PA 17070-5096.	1
* Director, AMSAC-OE for these country codes	AG, AU, A2, AID, BC, BE, BY, CD, CI, CM, CN, CV, CX, DA, DE, DK, EG, EI, FI, FR, GA, GB, GH, GR, GV, GY, IS, IT, IV, KE, LI, LX, MI, MO, MR, NE, NI, NK, NO, NATO, PT, PU, RM, RW, SK, SL, SO, SP, SU, SW, SZ, SECPO, TK, TO, TU, UG, UK, UV.	
* Director, AMSAC-OX for these country codes	AC, AR, AT, A1, BA, BB, BD, BF, BG, BH, BL, BM, BR, BX, CB, CE, CH, CO, CS, DO, DR, EC, ES, FJ, GJ, GT, GU, HA, HO, ID, IN, IR, JA, JM, JO, KS, KU, LE, MF, MU, MX, NP, NU, NS, NZ, PA, PE, PI, PK, PN, PP, QA, SC, SI, SN, SR, ST, TC, TD, TH, TW, UY, VC, VE, YE.	
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.		
When above items are delivered to aircraft modification centers	Air Force Logistics Command, Aerospace Vehicle Distribution Office, (MCNAPV), Wright-Patterson AFB, OH 45433.	1
	DPRO	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 in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13), ATTN: Property Officer	3
Navy:		
Navy Foreign Military Sales	U.S. Navy International Logistics Control Office (NAVILCO), 700 Robbins Avenue, Philadelphia, PA 19111-5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Aviation Supply Office (ASO), (Code 0142) for aviation type material, 700 Robbins Avenue, Philadelphia, PA 19111-5098. and	2
	Ships Parts Control Center (SPCC) (Code 0143) for all other material, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055-0788.	2

TABLE 2.—SPECIAL DISTRIBUTION—Continued

As required	Address	Number of copies
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps, Headquarters, USMC, Washington, DC 20380-0001.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704-5000.	3
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

Part 5—Preparation of the DD Form 250-1 (Loading Report)

F-501 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/Barge. Line out "TANKER" or "BARGE" as appropriate and place an "X" to indicate loading report.

(b) Block 2—Inspection Office. Enter the name and location of the Government office conducting the inspection.

(c) Block 3—Report No. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—Agency Placing Order on shipper, city, State and/or local address (loading). Enter the applicable Government activity.

(e) Block 5—Department. Enter military department owning product being shipped.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number.

(g) Block 7—Name of prime contractor, city, State and/or local address (loading). Enter the name and address of the contractor as shown in the contract.

(h) Block 8—Storage contract. Enter storage contract number if applicable.

(i) Block 9—Terminal or refinery shipped from, city, State and/or local address. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either "FOB Origin" or "FOB Destination."

(j) Block 10—Order No. on supplier. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—Shipped to: (receiving activity, city, State and/or local address. Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L Number. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show "Com. B/L to GB/L."

(m) Block 13—Reqn. or request No. Enter number and date from the shipping instructions.

(n) Block 14—Cargo No. Enter the cargo number furnished by the ordering office.

(o) Block 15—Vessel. Enter the name of tanker or barge.

(p) Block 16—Draft arrival. Enter the vessel's draft on arrival.

(q) Block 17—Draft sailing. Enter the vessel's draft on completion of loading.

(r) Block 18—Previous two cargoes. Enter the type of product constituting previous two cargoes.

(s) Block 19—Prior inspection. Leave blank.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after loading.

(u) Block 21—Appropriation (loading). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy, or Air Force (as appropriate) owned stock."

(v) Block 22—Contract item No. Enter the contract item number applicable to the shipment.

(w) Block 23—Product. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—Specifications. Enter the specification and amendment number shown in the contract.

(y) Block 25—Statement of quantity. Enter in the "LOADED" column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than ½ of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 26 as to the probable or actual cause of the difference.

(z) Block 26—Statement of quality. (1) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. List waivers to technical requirements.

(3) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—Time statement. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—Remarks. Use this space for reporting—(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—Company or receiving terminal. Line out "OR RECEIVING TERMINAL" and get the signature of the supplier's representative.

(dd) Block 30—Certification by government representative. Line out "DISCHARGED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or its agent.

Part 6—Preparation of the DD form 250–1 (Discharge Report)

F–601 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out "TANKER" or "BARGE" as applicable and place an "X" to enter discharge report.

(b) Block 2—Inspection office. Enter Government activity performing inspection on the cargo received.

(c) Block 3—Report No. Leave blank.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter Government agency shown on loading report.

(e) Block 5—Department. Enter Department owning product being received.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number shown on the loading report.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and location of contractor who loaded the cargo.

(h) Block 8—Storage contract. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter source of cargo.

(j) Block 10—Order no. on supplier. Make same entry appearing on loading report.

(k) Block 11—Shipped to: (receiving activity, city, state and/or local address). Enter receiving activity's name and location.

(l) Block 12—B/L Number. Enter as appears on loading report.

(m) Block 13—Reqn. or Request No. Leave blank.

(n) Block 14—Cargo No. Enter cargo number shown on loading report.

(o) Block 15—Vessel. Enter name of tanker or barge discharging cargo.

(p) Block 16—Draft arrival. Enter draft of vessel upon arrival at dock.

(q) Block 17—Draft sailing. Enter draft of vessel after discharging.

(r) Block 18—Previous two cargoes. Leave blank.

(s) Block 19—Prior inspection. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after discharging.

(u) Block 21—Appropriation (loading). Leave blank.

(v) Block 22—Contract item no. Enter the item number shown on the loading report.

(w) Block 23—Product. Enter information appearing in Block 23 of the loading report.

(x) Block 24—Specifications. Enter information appearing in Block 24 of the loading report.

(y) Block 25—Statement of quantity. Enter applicable data in proper columns.

(1) Take "LOADED" figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN," as applicable.

(5) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

(z) Block 26—Statement of quality. (1) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(2) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading "TEST RESULTS."

(aa) Block 27—Time statement. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(bb) Block 28—Remarks. Use this space for reporting important facts such as—

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29—Company or receiving terminal. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal.

(dd) Block 30—Certification by government representative. Line out "LOADED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or the vessel's agent.

Part 7—Distribution of the DD Form 250–1

F–701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250–1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

F–702 Corrected DD Form 250–1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form "CORRECTED COPY." Enter the statement, "Corrections Have Been Verified," in Block 26 with the authorized Government representative's dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

Type of Shipment	Recipient of DD form 250-1	No. of copies			
		Loading (prepared by shipper or government representative)		Discharge (prepared by receiving activity)	
		Tanker	Barge	Tanker	Barge
All	Each Consignee (By mail CONUS only)	2	1	As Required	As Required
(On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy, attached to ullage report, in each of 4 envelopes. Mark the envelopes, "Consignee—First Destination," Consignee—Second Destination," etc. Deliver via the vessel.)	With Shipment	1	1	As Required	As Required
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	As Required	As Required	As Required	As Required
	Cognizant Inspection Office	1	1	1	1
	Government Representative responsible for quality at each destination.	1	1	1	1
	Government Representative at Cargo Loading Point.	1	1	*1	*1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20398-5100.	2	2	2	2
See the contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: if this is DASC-F send copies to: Defense Fuels Supply Center, ATTN: DFSC-RDX, Cameron Station, Bldg. 5, Alexandria, Va 22304-6160 (do not send copies to DASC-F).	2	2	2	2
For shipments and receipts of DFSC financed cargos for which DASC-F is not the paying office.	Defense Fuels Supply Center, Attn: DFSC-RF, Cameron Station, Alexandria, VA 22304-6160.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	Defense Fuels Supply Center, ATTN: DFSC-01, Cameron Station, Alexandria, VA 22304-6160.	1	1	**1	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070-5001.	2	2	2	2
Navy—On all shipments to Navy Operated Terminals.	Navy Fuels Petroleum Office, Cameron Station, Alexandria, Va 22304-6180.	2	1	2	1
On all shipments to AF Bases	Directorate of Energy management, SA ALC(SFT), Kelly AFB, TX 78241-5000.	1	1	1	1
On all Conus loadings	DFSC Fuels Region(s) cognizant of shiping point.	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of shipping and receiving point****.	1	1	0	0
For all discharges of cargos originating at DFSPs and discharging at activities not a Defense Fuel Support Point.	Defense Fuels Supply Center, ATTN: DFSC-RF, Cameron Station, Alexandria, VA 22304-6160.			***1	***1

*With copy of ullage report.
**Dry tank certificate to accompany DD Form 250-1 and ullage report.
***Copies of the DD Form 250-1, forwarded by bases, will include the following in block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
****See Table 4.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, Building 2404, McGuire AFB, NJ 08641-5000.
Area of Responsibility	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
b. DFR Central	Defense Fuel Region Central, 8900 S. Broadway, Building 2, St. Louis, MO 63125-1513.
Area of Responsibility	Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.
c. DFR South	Defense Fuel Region South, Federal Office Building, 2320 La Branch, Room 1213, Houston, TX 77004-1091.
Area of Responsibility	Alabama, Arizona, Arkansas, Caribbean Area, Florida, Georgia, Louisiana, Mexico, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, West Indies, Central America, and South America.
d. DFR West	Defense Fuel Region West, 3171 N. Gaffney Street, San Pedro, CA 90731-1099.
Area of Responsibility	California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.
e. DFR Alaska	Defense Fuel Region Alaska, Elmendorf AFB, Alaska 99506-5000.
Area of Responsibility	Alaska and Aleutians.
f. DFR Europe	Defense Fuel Region Europe, Building 2304, APO New York 09128-4105.
Area of Responsibility	Continental Europe, United Kingdom, Mediterranean Area, Turkey, and Africa (less Djibouti, Egypt, Ethiopia, Kenya, Somalia).
g. DFR Mideast	Defense Fuels Region, Middle East, P.O. Box 386, Awali, Bahrain, APO New York 09526-2830.
Area of Responsibility	Afghanistan, Bahrain, Djibouti, Egypt, Ethiopia, Iran, Iraq, Jordan, Kenya, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861-5000.
Area of Responsibility	Australia, Burma, East Indies, Hawaii, Indian Ocean, Japan, Korea, Malaya, Marianas, New Zealand, Philippines, Ryukyu Islands, South Pacific Islands, Sri Lanka, Taiwan, and Thailand.

Appendix G—Activity Address Numbers

Sec.

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G–101 Assignment and use of a number.
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Part 4—Marine Corps Activity Address Numbers.
Part 5—Air Force Activity Address Numbers.
Part 6—Defense Logistics Agency Activity Address Numbers.
Part 7—Defense Communications Agency Activity Address Numbers.
Part 8—Defense Mapping Agency Activity Address Numbers.
Part 9—Defense Nuclear Agency Activity Address Numbers.
Part 10—Miscellaneous Defense Activities Activity Address Numbers.
Part 11—On-Site Inspection Agency Activity Number.
Part 12—Strategic Defense Initiative Organization Activity Number.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

G–100 Scope.

This appendix identifies the activity address numbers to be used with the uniform procurement instrument identification numbering system prescribed in DFARS subpart 204.70.

G–101 Assignment and use of a number.

(a) Activities coding solicitations, contracts and related instruments shall use only those codes assigned by their respective department/agency activity address monitor(s).

(b) The six-character code is used in the first six positions of the procurement instrument identification number (PIIN). When required, activities also will be assigned a two position code. The two position code is used in the first two positions of the call/order serial number.

(c) Activity address monitors are—

Army—US Army Contracting Support Agency, Attn: Contract Support Office (SFRD–KS), 5109 Leesburg Pike, suite 302, Falls Church, VA 22041–3201

Navy—*Navy Accounting and Finance Center, (NAFC–5511), Washington, DC 20376–5001

Air Force—SAF/AQCX, Directorate of Contracting and Manufacturing Policy, Washington, DC 20330–5040

Defense Logistics Agency—Defense Logistics Agency, Contracting Systems Support Office (DLA-DCSSO), Cameron Station, Alexandria, VA 22304–6100

Marine Corps—*Headquarters, US Marine Corps, (Code LBP), Washington, DC 20380–0001

**Defense Mapping Agency—Director of Acquisition, Defense Mapping Agency, Washington, DC 20305–3000

**Defense Nuclear Agency—Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305–1000

**Defense Communications Agency—Chief, Logistics Management Office, Code 202, Defense Communications Agency, Washington, DC 20305–2000

* The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/order serial numbers is: Office of the Assistant Secretary of the Navy (RD&A), room 536, Crystal Plaza 5, Washington, DC 20350–1000.

** Agency activity address monitors forward requests for appendix G maintenance to the U.S. Army Contracting Support Agency (SFRD–KS).

G–102 Activity address number data base maintenance.

(a) The Defense Logistics Agency, DLA–DCSSO, Cameron Station, Alexandria, VA 22304–6100 is the executive agent for maintenance of six and two character code assignments. The executive agency distributes blocks of two character codes to department/agency activity address monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in either the six character or two character codes to their activity address monitor in accordance with department/agency procedures. Activity address monitors—

(1) Approve requests for additions, deletions, or changes;

(2) Notify the executive editor, Defense Acquisition Regulations System, OUSD(A)DP(DARS), Washington, DC 20301–3000; and

(3) Provide a copy of the notification to the executive agent.

(c) A copy of the Appendix G data base is available on tape or MS-DOS compatible floppy diskettes from the executive agent.

Part 2—Army Activity Address Numbers

DAAA03,B1—Pine Bluff Arsenal, attn: SMCPB–PO, Pine Bluff, AR 71602–9500

DAAA05, B2—Directorate of Contracting, Rocky Mountain Arsenal, attn: XRMAC–DOC, Commerce City, CO 80022–2180

DAAA08, B7—Rock Island Arsenal, attn: SMCRI–CT, Rock Island, IL 61299–5000

DAAA09, BA—HQ, AMCCOM, attn: AMSMC–PC (R), Rock Island, IL 61299–6000

DAAA15, ZU—HQ, AMCCOM, attn: AMSMC–PC (A), Aberdeen Proving Ground, MD 21010–5423

DAAA21, 2T—HQ, AMCCOM, attn: AMSMC–PC (D), Picatinny Arsenal, NJ 07806–5000

DAAA22, BV—Watervliet Arsenal, attn: SMCWV–PP, Watervliet, NY 12189–4050

DAAA31, GJ—McAlester Army Ammunition Plant, attn: SMCMC–PC, McAlester, OK 74501–5000

DAAB07, BG—USA Communications-Electronics Command, attn: AMSEL–PC, Fort Monmouth, NJ 07703–5000

DAAB08, 2V—USA Communications-Electronics Command, attn: Procurement Directorate, Base Ops, Fort Monmouth, NJ 07703–5008

DAAB10, ZP—Headquarters, U.S. Army Garrison, Vint Hill Farms Station, attn: SELVH–PC–OP, Warrenton, VA 22186–5172

DAAC01, BH—Anniston Army Depot, attn: SDSAN–DOC, Anniston, AL 36201–5003

DAAC09, ZR—Sacramento Army Depot, attn: SDSSA–K, Sacramento, CA 95813–5021

DAAC67, ZN—Letterkenny Army Depot, attn: SDSLE–P, Chambersburg, PA 17201–4152

DAAC69, D2—New Cumberland Army Depot, attn: SDSNC–P, New Cumberland, PA 17070–5001

DAAC71, ZS—Tobyhanna Army Depot, attn: SDSTO–K, Tobyhanna, PA 18466–5100

DAAC79, D7—Red River Army Depot, attn: SDSRR–P, Texarkana, TX 75507–5000

DAAC83, BJ—Corpus Christi Army Depot, attn: SDSCC–C, Corpus Christi, TX 78419–6170

DAAC89, BK—Tooele Army Depot, attn: SDSTE–CD, Tooele, UT 84074–0839

DAAD01, B5—USA Yuma Proving Ground, Procurement Directorate, attn: STEYP–CR, Yuma, AZ 85365–9103

DAAD03, B6—USA Jefferson Proving Ground, attn: STEJP–LG–C, Madison, IN 47250–5100

DAAD05, BM—USA Aberdeen Proving Ground, Support Activity, attn: STEAP–PR/(Bldg No. 314), Aberdeen Proving Ground, MD 21005–5001

DAAD07, BN—USA White Sands Missile Range, Directorate of Contracting, attn: STEWS–PR, White Sands Missile Range, NM 88002–5201

DAAD09, BP—USA Dugway Proving Ground, Procurement Directorate, attn: STEDP–DOC, Dugway, UT 84022–0538

DAAD10, ZX—USA Test & Evaluation Command, attn: AMSTE–PR, Aberdeen Proving Ground, MD 21005–5055

DAAE07, BR—USA Tank-Automotive Command, Warren, MI 48397–5000

DAAC60, C8—USA Military Academy, Purchasing & Contracting Division, Bldg 667A, attn: MAPC, West Point, NY 10996–1594

DAAC99, ZY—USA Program Manager-SANG, attn: AMCPM–NGA–A, APO New York, NY 09038–5005

DAAH01, CC—USA Missile Command, attn: AMSMI–PC, Redstone Arsenal, AL 35898–5280

DAAH03, D8—USA Missile Command, attn: AMSMI–PC–FC (Lab/Base Ops), Redstone Arsenal, AL 35898–5280

DAAJ02, D9—Aviation Applied Technology Directorate, attn: SAVRT–TY–CD, Fort Eustis, VA 23604–5577

DAAJ04—USA Charles Melvin Price Support Center, attn: AMSAV–PHI, Granite City, IL 62040–1801

DAAJ05, ZF—USA Aviation Systems Command, Building 404, attn: I.A.S. 21-Working Group, Fort Eustis, VA 23604–5577

DAAJ09, BS—USA Aviation Systems Command, 4300 Goodfellow Blvd., attn: AMSAV–PR, St. Louis, MO 63120–1798

DAAK01, BB—USA Troop Support Command (TROSCOM) 4300 Goodfellow Blvd., attn: AMSTR–PYMB, St. Louis, MO 63120–1798

DAAK60, C5—USA Natick Research, Development and Engineering Center, Directorate of Procurement, attn: AMSTR–PN, Natick, MA 01760–5011

DAAK70, E1—USA Belvoir Research, Development and Engineering Center, Procurement & Production Directorate, attn: AMSTR–PBP, Fort Belvoir, VA 22060–5606

DAAL01, 1Y—Electronics Technology & Devices Laboratory, attn: SLCET–DP, Fort Monmouth, NJ 07703–5302
DAAL02, D3—USA Laboratory Command Installation, Support Activity, 2800 Powder Mill Road, attn: SLCIS–C, Adelphia, MD 20783–1145
DAAL03—U.S. Army Research Laboratory, P.O. Box 12211, attn: SLCRO–PR, Research Triangle Park, NC 27709–2211
DAAL04, D6—USA Materials Technology Laboratory, Arsenal Street, attn: SLCMT–PR, Watertown, MA 02172–0001
DABT01, F6—Commander, U.S. Army Aviation Center, Contracting Office, Building T–00116, attn: ATZQ–C, Fort Rucker, AL 36362–5000
DABT02, 2A—Commander, U.S. Army Chemical and Military Police Centers and Fort McClellan, attn: ATZN–DOC, Fort McClellan, AL 36205–5000
DABT10, 2B—Commander, U.S. Army Infantry Center and Fort Benning, Bldg. 35, attn: ATZB–KTC, Fort Benning, GA 31905–5000
DABT11, 2C—Commander, U.S. Army Signal Center and Fort Gordon, Building 2050, attn: ATZI–CT, Fort Gordon, GA 30905–5041
DABT15, F9—Commander, U.S. Army Soldier Support Center and Fort Benjamin Harrison, attn: ATZI–CT, Fort Benjamin Harrison, IN 46216–5230
DABT19, 2D—Commander, U.S. Army Combined Arms Center and Fort Leavenworth, attn: ATZL–GDC, Fort Leavenworth, KS 66027–5000
DABT23, 2E—Commander, U.S. Army Armor Center and Fort Knox, Bldg. 4022, attn: ATZK–DC, Fort Knox, KY 40121–5060
DABT31, 2F—Commander, U.S. Army Engineer Center and Fort Leonard Wood, attn: ATZT–DOC, Fort Leonard Wood, MO 65473–5000
DABT35, 2G—Commander, U.S. Army Training Center and Fort Dix, Bldg. 5418, attn: ATZD–CO, Fort Dix, NJ 08640–6150
DABT39, 2H—Commander, U.S. Army Field Artillery Center and Fort Sill, attn: ATZR–Q, Fort Sill, OK 73503–0501
DABT43, 2J—Commander, Carlisle Barracks Bldg. 46, attn: ATZE–DOC, Carlisle Barracks, PA 17013–5002
DABT47, 2K—Commander, U.S. Army Training Center and Fort Jackson, Bldg. 4350, attn: ATZJ–DOC, Fort Jackson, SC 29207–5490
DABT51, 2L—Commander, U.S. Army Air Defense Artillery Center & Fort Bliss, P.O. Box 6078, attn: ATZC–DOC, Fort Bliss, TX 79906–0078
DABT57, 2N—Commander, U.S. Army Transportation Center and Fort Eustis, Bldg. 2746, attn: ATZF–CO, Fort Eustis, VA 23604–5000
DABT58, 2P—Commander, Fort Monroe, Bldg. T–195, attn: ATZG–C #62, Fort Monroe, VA 23651–6000
DABT59, 2Q—Commander, U.S. Army Quartermaster Center and Fort Lee, Bldg. T–7124, attn: ATZM–DC, Fort Lee, VA 23801–5000
DABT60, 1L—Director, TRADOC Contracting Activity, attn: ATCA, Fort Eustis, VA 23604–5538
DABT61, BF—Commandant, The Judge Advocate General's School, USA, attn: JAGS–SSL, Charlottesville, VA 22904–1781
DABT63, BL—Commander, U.S. Army Information Systems Command, attn: ASQH–DOC, Fort Huachuca, AZ 85613–5000
DABT64, YV—Chief, Purchasing and Contracting Office, Bldg. 440, attn: ATZR–ZQ, Fort Chaffee, AR 72905–5000
DABT65—Mission Contracting Activity at Fort Leavenworth, attn: MCAL, Fort Leavenworth, KS 66027–5000
DACA01, DACW01, CK—USA Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628–0001
DACA03, DACW03, CL—USA Engineer District, Little Rock, P.O. Box 867, Little Rock, AR 72203–0867
DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capital Mall, Sacramento, CA 95814–4794
DACA06, DACW06, CN—USA Engineer Division, South Pacific, 630 Sansone Street, room 1216, San Francisco, CA 94111–2206
DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105–1905
DACA09, DACW09, CQ—USA Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053–2325
DACA17, DACW17, CS—USA Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019
DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 77 Forsyth Street, S.W., room 313, Atlanta, GA 30335–6801
DACA21, DACW21, CV—USA Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402–0889
DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605–1592
DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604–1797
DACA25, DACW25, CD—USA Engineer District, Rock Island, P.O. Box 2004, Rock Island, IL 61204–2004
DACA27, DACW27, CY—USA Engineer District, Louisville, P.O. Box 59, Louisville, KY 40201–0059
DACA29, DACW29, CZ—USA Engineer District, New Orleans, P.O. Box 60267, New Orleans, LA 70160–0267
DACA31, DACW31, DA—USA Engineer District, Baltimore, P.O. Box 1715, Baltimore, MD 21203–1715
DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02254–9149
DACA35, DACW35, DC—USA Engineer District, Detroit, P.O. Box 1027, Detroit, MI 48231–1027
DACA37, DACW37, DD—USA Engineer District, St. Paul, 1421 USPO a Custom House, 180 East Kellogg Boulevard, St. Paul, MN 55101–1427
DACA38, DACW38, DE—USA Engineer District, Vicksburg, P.O. Box 60, Vicksburg, MS 39180–0060
DACA39, DACW39, DF—USA Engineer Water-Ways Experiment Station, P.O. Box 631, Vicksburg, MS 39181–0631
DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39181–0080
DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106–2896
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 Tucker Boulevard North, St. Louis, MO 63101–1986
DACA45, DACW45, DK—USA Engineer District, Omaha, 215 North 17th Street, Omaha, NE 68102–4978
DACA46, DACW46, DL—USA Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68101–0103
DACA47, DACW47, DM—USA Engineer District, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103–1580
DACA49, DACW49, DN—USA Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007–2979
DACA54, DACW54, DQ—USA Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890
DACA55, DACW55, DR—USA Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201–1159
DACA56, DACW56, DS—USA Engineer District, Tulsa, P.O. Box 61, Tulsa, OK 74121–0061
DACA57, DACW57, DT—USA Engineer District, Portland, P.O. Box 2496, Portland, OR 97229–2946
DACA58, DACW58, DU—USA Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208–2870
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW—USA Engineer District, Charleston, P.O. Box 919, Charleston, SC 29402–0919
DACA61, DACW61, CF—USA Engineer District, Philadelphia Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991
DACA62, DACW62, DX—USA Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY—USA Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ—USA Engineer District, Galveston, P.O. Box 1229, Galveston, TX 77553
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB—USA Engineer District, Memphis, 167 N. Mid–America Mall, B–202, Clifford Davis Federal Bldg., Memphis, TN 38103–1894
DACA67, DACW67, EC—USA Engineer District, Seattle, P.O. Box C–3755, Seattle, WA 98124–2255
DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362–9265

DACA89, DACW89, CG—USA Engineer District, Huntington, 502 8th Street, Huntington, WV 25701–2070
DACA70, DACW70, YX—USA Engineer Division, Southwestern, 1114 Commerce Street, Dallas, TX 75242–0216
DACA72, DACW72, ZA—USA Humphreys Engineer Center, Support Activity, Kingman Building, Fort Belvoir, VA 22060
DACA73, DACW73, CH—Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW., attn: CEPR, Washington, DC 20314–1000
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Cude Bldg. #2592, Fort Belvoir, VA 22060–5546
DACA78, DACW78, 9V—USA Engineer Middle East/Africa, Projects Office, P.O. Box 2250, Winchester, VA 22601–1450
DACA79, DACW79, 2R—USA Engineer District, Japan, APO San Francisco, CA 96343–0061
DACA81, DACW81—USA Engineer District, Far East, APO San Francisco, CA 96301–0427
DACA84, DACW84, ZH—USA Engineer Division, Pacific Ocean, Building 230, Fort Shafter, HI 96858–5440
DACA85, DACW85, ZJ—USA Engineer District, Alaska, P.O. Box 898, Anchorage, AK 99506–0898
DACA86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, P.O. Box 1600, Huntsville, AL 35807–4301
DACA88, DACW88, 0S—USA Construction Engineering Research Laboratory, P.O. Box 4005, Champaign, IL 61824–4005
DACA89, DACW89, Z—USA Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290
DACA90, DACW90—USA Engineer Division, Europe, attn: CEEUD–CT, APO New York, NY 09757–5301
DADA01, 2S—Letterman Army Medical Center, Bldg 1060, attn: HSHH–LCP, Presidio of San Francisco, CA 94129–6700
DADA03, 8W—Fitzsimons Army Medical Center, Directorate of Contracting, Bldg 205, attn: HSHG–LOC, Aurora, CO 80045–5001
DADA09, YY—William Beaumont Army Medical Center, P.O. Box 70003, attn: HSAA–W, El Paso, TX 79920–5001
DADA10, ZQ—USA Health Services Command, Bldg 129, Central Contracting Activity, attn: HSAA–C, Fort Sam Houston, TX 78234–6000
DADA11, 0V—Brooke Army Medical Center, Contracting Branch, Log Div, attn: HSHE–LOC, Fort Sam Houston, TX 78234–6200
DADA13, 0W—Madigan Army Medical Center, Purchasing and Contracting Office, attn: HSAA–M, Tacoma, WA 98431–5100
DADA15, 0X—Walter Reed Army Medical Center, Directorate of Industrial Operations, Bldg T–20, 1st Floor, attn: HSHL–ZF(SD), Washington, DC 20307–5001
DADA16, 0Y—Tripler Army Medical Center, Contracting Office, Bldg 160, attn: HSHK–LD–PC, Tripler AMC, HI 96859–5000
DAEA08, E4—Headquarters, 7th Signal Command & Ft Ritchie, Office of Acquisition, Bldg 148, attn: ASN–OA–PC, Fort Ritchie, MD 21719–5010
DAEA16, E7—Headquarters, 5th Signal Command, DCSLOG, attn: ASE–LG–CT, APO New York, NY 09056–3104
DAEA20, E8—Commander, HQ, 1st Signal Brigade, attn: ASQK–AM, APO San Francisco, CA 96301–0044
DAEA31, 1K—USAISC, Directorate of Contracting, Fort Devens, attn: ASPC–D, Ayers, MA 01433–5340
DAEA32, Y6—HQ, USAISC, Office of Acquisition Management, attn: ASPC–T, Fort Huachuca, AZ 85613–5000
DAHA01, 9B—USPFO for Alabama, P.O. Box 3715, Montgomery, AL 36193–4801
DAHA02, 0G—USPFO for Arizona, 5636 E. McDowell Road, Phoenix, AZ 85008–3495
DAHA03, 9D—USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72118–2200
DAHA04, 9N—USPFO for California, P.O Box 8104, San Luis Obispo, CA 93403–8104
DAHA05, Z0—USPFO for Colorado, Camp George West, Golden, CO 80401–3997
DAHA06, 1S—USPFO for Connecticut, State Armory, 360 Broad Street, attn: Contracting Officer, Hartford, CT 06105–3795
DAHA07, 9A—USPFO for Delaware, Grier Bldg., 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W—USPFO for Florida, P.O. Box 1008, St. Augustine, FL 32085–1008
DAHA09—USPFO for Georgia, P.O. Box 17882, Atlanta, GA 30316–0882
DAHA10, 2Y—USPFO for Idaho, P.O. Box 45, Boise, ID 83707–4501
DAHA11, 9E—USPFO for Illinois, 1301 North McArthur Blvd., Springfield, IL 62702–2399
DAHA12, 4E—USPFO for Indiana, P.O. Box 41346, Indianapolis, IN 46241–0346
DAHA13, 9I—USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z—USPFO for Kansas, P.O. Box 2099, Topeka, KS 66601–2099
DAHA15, 6P—USPFO for Kentucky, Boone National Guard Center, Frankfort, KY 40601–6192
DAHA16, 0A—USPFO for Louisiana, Jackson Barracks, New Orleans, LA 70146–0330
DAHA17, 0B—USPFO for Maine, Camp Keys, Augusta, ME 04333–0032
DAHA18, 0C—USPFO for Maryland, State Mil Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078–4094
DAHA19, 0D—USPFO for Massachusetts, 143 Speen Street, ATTN: Contracting Officer, Natick, MA 01760–2599
DAHA20, 9F—USPFO for Michigan, 3111 W St. Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K—USPFO for Minnesota, P.O. Box 288, Camp Ripley, Little Falls, MN 56345–0288
DAHA22—USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8880
DAHA23, 9H—USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101–1468
DAHA24, 9P—USPFO for Montana, P.O. Box 1157, Helena, MT 59624–1157
DAHA25—USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26—USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27—USPFO for New Hampshire, P.O. Box 2003, Concord, NH 03301–2003
DAHA28, ZK—USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805
DAHA29—USPFO for New Mexico, P.O. Box 4277, ATTN: Contracting Officer, Santa Fe, NM 87502–4277
DAHA30—USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31—USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32—USPFO for North Dakota, P.O. Box 5511, Bismarck, ND 58502–5511
DAHA33, 9M—USPFO for Ohio, 2811 W. Granville Road, Columbus, OH 43235–2712
DAHA34, 9J—USPFO for Oklahoma, 3501 Military Circle, N.E., Oklahoma City, OK 73111–4398
DAHA35—USPFO for Oregon, P.O. Box 14840, ATTN: USPFO–P, Salem, OR 97309–5008
DAHA36—USPFO for Pennsylvania, Dept. of Military Affairs, ATTN: Contracting Officer, Annville, PA 17003–5003
DAHA37—USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954
DAHA38—USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4766
DAHA39—USPFO for South Dakota, Camp Rapid, Rapid City, SD 57702–8186
DAHA40—USPFO for Tennessee, Powell Avenue, P.O. Box 40748, Nashville, TN 37204–0748
DAHA41, 9C—USPFO for Texas, P.O. Box 5218, ATTN: Contracting Officer, Austin, TX 78563–5218
DAHA42, ZE—USPFO for Utah, P.O. Box 2000 Draper, UT 84020–2000
DAHA43—USPFO for Vermont, Camp Johnson, Bldg. #3, Colchester, VT 05446–3004
DAHA44—USPFO for Virginia, 501 East Franklin Street, Richmond, VA 23219–2317
DAHA45—USPFO for Washington, Camp Murray, Tacoma, WA 98430–5000
DAHA46—USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–2396
DAHA47, 9G—USPFO for Wisconsin, Camp Douglas, WI 54618–9002
DAHA48—USPFO for Wyoming, P.O. Box 1709, Cheyenne, WY 82003–1709
DAHA49—USPFO for the District of Columbia, Bldg. 350, Anacostia Naval Air Station, Washington, DC 20315–0001
DAHA50—USPFO for Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51—USPFO for Alaska, 800 E. Diamond Blvd. #3–580, Anchorage, AK 99515–2097
DAHA70—USPFO for Puerto Rico, P.O. Box 3786, San Juan, PR 00904–3786
DAHA72—USPFO for Virgin Islands, #11–12 Golden Rock, Christiansted, St. Croix, VI 00820–1050
DAHA74—USPFO for Guam, P.O. Box 56, NAS, FPO San Francisco, CA 96637–1256
DAHA90—National Guard Bureau, Contracting Support, 5109 Leesburg Pike, Suite 401–B, Falls Church, VA 22041–3201
DAHC21, G3—MTMC Eastern Area, Acquisition Division, Bldg 42, Military Ocean Terminal, ATTN: MTEA–LOA, Bayonne, NJ 07002–5302

DAHC22—HQ MTMC, Directorate of Passenger Traffic, 5611 Columbia Pike, ATTN: MTPT, Falls Church, VA 22041–5050
DAHC23, G4—MTMC, Western Area, Oakland Army Base, ATTN: MTWA–LOA, Oakland, CA 94626–5000
DAHC24, 1B—HQ MTMC Acquisition Division, 5611 Columbia Pike, ATTN: MT–LOA, Falls Church, VA 22041–5050
DAHC26, 0E—HQ MTMC, TOPS Project Management Office, ATTN: MT–TP, Fort Belvoir, VA 22060–5898
DAHC30, 0F—MDW, DCS for Acquisition, Bldg 15, Cameron Station, Alexandria, VA 22304–5050
DAHC32, 0M—National Defense University, Bldg. 59/Contracting Office rm 113, Fort Lesie J. McNair, Washington, DC 20319
DAHC35, 2M—Ft Belvoir Directorate of Contracting, Bldg T742, Fort Belvoir, VA 22060–5075
DAHC40, 9T—USA TSA Southeast Commissary Region, Contracting Division, ATTN: LOTA–SE–C, Fort Lee, VA 23801–6025
DAHC41, 0H—USA TSA Northeast Commissary Region, Contracting Division, ATTN: LOTA–NE–C, Fort George G. Meade, MD 20755–5220
DAHC42, 0J—USA TSA Midwest Commissary Region, Contracting Division, ATTN: LOTA–MW–C, Fort Sam Houston, TX 78234–5000
DAHC43, 0K—USA TSA Western Commissary Region, Contracting Division, ATTN: LOTA–WE–C, Fort Lewis, WA 98433–7300
DAHC44, ZG—US TSA Contracting Group, Bldg P–12400, P.O. Box 5310, ATTN: LOTA–AM–C, Fort Lee, VA 23801–6020
DAHC76, 8U—HQS, 6th Inf Div(L) & USA Garrison, AK, Directorate of Contracting, P.O. Box 5–525, ATTN: APVR–DOC, Fort Richardson, AK 99505–0525
DAHC77, CJ—US Army Support Command, Hawaii, ATTN: APZV–KO, Fort Shafter, HI 96858–5025
DAHC90, YJ—U.S. Army Intelligence and Security Command (INSCOM), Contract Support Activity, attn: IAPARC–CSA, Fort Belvoir, VA 22060–5368
DAHC92, 1V, ZT—U.S. Army South, U.S. Army Garrison—Panama Directorate of Contracting, attn: SOCO–CO, APO Miami, FL 34002–5000
DAHC94, BD—U.S. Army, Information Systems Selection and Acquisition Agency (ISSAA), 2461 Eisenhower Avenue, Alexandria, VA 22331–0700
DAJA01, 9Q—Regional Contracting Office, Vicenza, attn: AEUCC–I, APO New York, NY 09221–5122
DAJA02, G5—Regional Contracting Office, Seckenheim, attn: AEUCC–S, APO New York, NY 09333–5000
DAJA04, 9R—Regional Contracting Office, Fuerth, attn: AEUCC–FU, APO New York, NY 09696–5345
DAJA06, 9S—Regional Contracting Office, Stuttgart, attn: AEUCC–ST, APO New York, NY 09154–0503
DAJA09, BT—Giessen Suboffice, RCO Frankfurt, attn: AEUCC–F–G, APO New York, NY 09169
DAJA10, 9U—Regional Contracting Office, Augsburg, attn: AEUCC–A, APO New York, NY 09178–0505
DAJA16, 8X—Regional Contracting Office, Grafenwoehr, attn: AEUCC–G, APO New York, NY 09114–5413
DAJA23, 9W—Directorate of Contracting, USA Berlin, attn: AEBA–C, APO New York, NY 09742–5003
DAJA25, 9X—Regional Contracting Office, Bremerhaven, attn: AEUCC–BR, APO New York, NY 09069–5505
DAJA37, G6—USAREUR Contracting Center, attn: AEUCC–C, APO New York, NY 09710–5345
DAJA45, 9Y—Regional Contracting Office, Burtonwood, attn: AEUCC–BW, APO New York, NY 09075–3738
DAJA61, 9Z—HQ USAREUR & 7th Army, attn: Regional Contracting Office Benelux, APO New York, NY 09667–5005
DAJA76, 8V—Regional Contracting Office, Frankfurt, Box 73, attn: AEUCC–F, APO New York, NY 09710–5345
DAJA83, 2Z—Rheinberg Suboffice, RCO Bremerhaven, attn: AEUCC–BR–R, APO New York, NY 09712–5311
DAJA84, B0—Fulda Suboffice, RCO Frankfurt, attn: AEUCC–F–FD, APO New York, NY 09146
DAJA85, B8—Hanau Suboffice, RCO Frankfurt, attn: AEUCC–F–H, APO New York, NY 09165–5345
DAJA86, C0—Mainz-Kastel Suboffice, RCO Frankfurt, attn: AEUCC–F–MK, APO New York, NY 09457
DAJA87, D0—Mid-East CAS Branch, USAREUR Contract Center, attn: AEUCC–C–CI, APO New York, NY 09672–0008
DAJA88, E0—United Kingdom CAS Branch, USAREUR Contract Center, attn: AEUCC–C–CU, APO New York, NY 09063–5000
DAJA89, F0—Wuerzburg Suboffice, RCO Fuerth, attn: AEUCC–FU–W, APO New York, NY 09800–2013
DAJA90, 0T—Bad Kreuznach Suboffice, RCO Frankfurt, attn: AEUCC–F–BK, APO New York, NY 09252–0029
DAJB03, F4—U.S. Army Korea Contracting Agency, attn: EAKC–CO, APO San Francisco, CA 96301–0062
DAKF01, 1A—Directorate of Contracting, attn: AFKC–ZM–DOC, Presidio of San Francisco, CA 94129–5000
DAKF03, 0Q—Directorate of Contracting, P.O. Box 27, attn: AFZW–DOC, Fort Ord, CA 93941–0027
DAKF04, ZE—Directorate of Contracting, P.O. Box 10039, attn: AFZJ–DC, Fort Irwin, CA 92310–5000
DAKF06, 1C—Directorate of Contracting, Building 6222, attn: AFZC–DOC, Fort Carson, CO 80913–5022
DAKF10, 1D—Directorate of Contracting, attn: AFZP–DC, Fort Stewart, GA 31314–5189
DAKF11, 1E—Directorate of Contracting, attn: AFZK–DOC, Fort McPherson, GA 30330–5000
DAKF12, BC—FORSCOM Central Contracting Office, attn: FCJ4–PRC, Fort McPherson, GA 30330–6000
DAKF15, 1F—Directorate of Contracting, attn: AFKE–ZO–DOC, Fort Sheridan, IL 60037–5000
DAKF19, 1G—Directorate of Contracting, attn: AFZN–DOC, Fort Riley, KS 66442–0248
DAKF23, 1H—Directorate of Contracting, attn: AFZB–DOC, Fort Campbell, KY 42223–1100
DAKF24, G1—Directorate of Contracting, attn: AFZX–DOC, Fort Polk, LA 71459–5000
DAKF27, 1J—Directorate of Contracting, attn: AFKA–ZI–DOC, Fort George G. Meade, MD 20755–5081
DAKF36, 1M—Directorate of Contracting, attn: AFZS–DOC, Fort Drum, NY 13602–5220
DAKF40, 1N—Directorate of Contracting, Drawer 70120, attn: AFZA–DC, Fort Bragg, NC 28307–0120
DAKF48, 1Q—Directorate of Contracting, attn: AFZF–DOC, Fort Hood, TX 76544–5059
DAKF49, 1R—Directorate of Contracting, attn: AFZG–DOC, Fort Sam Houston, TX 78234–5000
DAKF57, 1T—Directorate of Contracting, attn: AFZH–DOC, Fort Lewis, WA 98433–5000
DAKF61, 1U—Directorate of Contracting, attn: AFZR–DOC, Fort McCoy, WI 54656–5000
DAMD17, B3—US Army Medical Research, Acquisition Activity, Fort Detrick, attn: SGRD–RMA, Frederick, MD 21702–5014
DASG60, CB—USA Strategic Defense Command, Deputy Commander, P.O. Box 1500, attn: CSSD–CM–AC, Huntsville, AL 35807–3801

Part 3—Navy Activity Address Numbers

* An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00011, LB*, LBZ—Chief of Naval Operations, Washington, DC 20350–2000
N00013, MR—Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332
N00014, EE—Office of Naval Research, Arlington, VA 22217
N00015, L0*, L0Z—Naval Intelligence Command HQ, (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389
N00018, MC*, MD*, J5*, QA*, MCZ—Naval Medical Command, Washington, DC 20372–5120
N00019, EF*, GU*, EF0–9—Naval Air Systems Command, Washington, DC 20361
N00023, 4J*, L5*, 4J0–9—Commander, Naval Supply Systems Command, Washington, DC 20376
N00024, EH*, U0*, EH0–9—Naval Sea Systems Command, Washington, DC 20360
N00025, EJ*, FZ*, EJ0–9—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK*, EK0–9—Strategic Systems Programs, Department of the Navy, Washington, DC 20376–5002
N00033, EL*, EL0–9—Commander, Military Sealift Command, Washington, DC 20390
N00039, NS*, NS0–9—Space and Naval Warfare Systems Command, Washington, DC 20360
N00060, LH*, J0*, LHZ—Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511

N00061, NL*, NLZ—Commander-in-Chief, U.S. Naval Forces, Europe, (London, U.K.) FPO New York 09510
N00062, 8A*, L9*, R0*, 8A0–9—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100
N00063, NT*, NTZ—Naval Telecommunications Command, 4401 Massachusetts Avenue NW., Washington, DC 20394–5290
N00065, S0*, S0Z—Naval Oceanography Command, NSTL, MS 39529–5000
N00069, 8Q*, 8QZ—Naval Security Group HQ, 3801 Nebraska Avenue NW., Washington, DC 20390–0008
N00070, LP*, V5*, 4L*, LPZ—Commander in Chief, Pacific Fleet, Pearl Harbor, HI 96860–7000
N00072, 9T*, LC*, 9TZ—Commander, Naval Reserve Force, Code 17, New Orleans, LA 70146
N00074, QH*, QHZ—Naval Special Warfare Command, NAVPHIBASE Coronado, San Diego, CA 92155
N00101, 3R—Naval Air Station, South Weymouth, MA 02190
N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP, EQ—Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00105, JT—Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801
N00109, F1—Naval Weapons Station, Yorktown, VA 23491
N00123, ES—Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132–5106
N00124, M5—Naval War College, Newport, RI 02840
N00127, H1—Naval Air Station, Quonset Point, RI 02819
N00128, EU—Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088
N00129, EV—Submarine Base, New London, Groton, CT 06340
N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146, QK—Marine Corps Air Station, Cherry Point, NC 28533
N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153, N0—Governor, Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00158, 3V—Naval Air Station, Willow Grove, PA 19090
N00161, FA—Naval Academy, Annapolis, MD 21402
N00162 (MAJ00018), MDG–H—Naval Medical Clinic, Annapolis, MD 21402–5050
N00163, FB—Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164, FC—Naval Weapons Support Center, Crane, IN 47522
N00166 (MAJ00072), LC0–1—Naval Air Facility, Bldg. 3086, Andrews AFB, Washington, DC 20396–5130
N00167, FD—David W. Taylor Naval Ship, Research & Development Center, Carderock Laboratory, Bethesda, MD 20084–5000
N00168, FE—Naval Medical Command, National Capital Region, Bethesda, MD 20014
N0017A—Atlantic Fleet Weapons Training Facility (Code 51) (Roosevelt Roads, PR), Naval Station, Box 3023, FPO Miami 34051
N00171, N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173, FF—Naval Research Laboratory, Washington, DC 20390
N00174, FG—Naval Ordnance Station, Indian Head, MD 20640
N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709
N00183, JX—Commanding Officer, Naval Hospital, Portsmouth, Norfolk, VA 23708–5100
N00187, 3J—Navy Public Works Center, Norfolk, VA 23511
N00188, H2—Naval Air Station, Norfolk, VA 23511
N00189, FK, H3—Naval Supply Center, Norfolk, VA 23512
N00191, FL—Charleston Naval Shipyard, Naval Base, Charleston, SC 29408
N00193 (MAJ00024), EHD–G—Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408–7000
N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197, FM—Naval Ordnance Station, Louisville, KY 40214
N00203 (MAJ00018), MCL—Commanding Officer, Naval Hospital, Pensacola, FL 32512
N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146
N00206—Naval Air Station, New Orleans, LA 70146
N00207, FQ—Naval Air Station, Jacksonville, FL 32212
N00211 (MAJ00018), MCQ–S—Naval Hospital, Great Lakes, IL 60088–5230
N00213, H4—Naval Air Station, Key West, FL 33040
N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211
N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg. 10, Corpus Christi, TX 78419
N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94592
N00228, FU—Naval Supply Center, Oakland, CA 94625
N00231—Commanding Officer, Naval Medical Clinic, Quantico, VA 22134
N00232, (MAJ00018), MCC–E—Naval Hospital, Jacksonville, FL 32214–5222
N00236, NX—Naval Air Station, Alameda, CA 94501
N00244, NW—Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00245, (MAJ00070), LPN—Naval Station, San Diego, CA 92136–5000
N00246, H5—Naval Air Station, North Island, San Diego, CA 92135
N00247, HC—Naval Training Center, San Diego, CA 92133
N00249—Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305
N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253, FY—Commanding Officer, Naval Undersea Warfare EngineeringStation, Keyport, WA 98345
N00255, (MAJ00070), LPS–T, LPW–Y—Naval Station Puget Sound, Seattle, WA 98115–5000
N00262, (MAJ00027), MUT—Marine Corps Combat Development Command, Quantico, VA 22134–5001
N00267, (MAJ00018), MC0–1—Commanding Officer, Navy Medical Clinic, Key West, FL 33040
N00274, (MAJ00072), LCA–B—Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275, 3M—Naval Air Station, Glenview, IL 60026
N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00281, (MAJ00062), L90–1—Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285, (MAJ00018), MDR—Commanding Officer, Naval Hospital, Corpus Christi TX 78419
N00288—Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296, NY—Naval Air Station, Moffett Field, CA 94035
N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N00314, M7—Submarine Base, Pearl Harbor, HI 96860
N00334, N6—Naval Air Station, Barbers Point, HI 96862
N00383, GB, GC—Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389, KL, MM—Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO Miami 34051
N00406, CE—Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421, M8—Naval Air Test Center, Patuxent River, MD 20670
N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604, NQ—Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00619, (MAJ00018), QA0–9—Naval Hospital, Oakland, CA 94627–5000
N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651, H8—Naval Supply Depot, Subic Bay (Philippines), Box 33, FPO San Francisco, CA 96651
N00702, (MAJ00069), 8QM–N—Naval Security Group Activity, Winter Harbor, ME 04693
N00743, 8N—Commanding Officer, Naval Communication Station (Roosevelt Roads, PR), Box 3022, FPO Miami 34051
N00788, (MAJ00063), NTR–S—Commanding Officer, Naval Communication Unit, Washington, (Cheltenham, MD), Washington, DC 20390

N00849, (MAJ00069), 8QC—Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476–5000
N00886, QB—Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00927, (MAJ00063), NTA—U.S. Naval Communication Station (San Miguel), FPO San Francisco, CA 96656–1803
N00950, 8R—Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0417A, (MAJ00025), EJA—Naval Support Facility, P.O. Box 1000, Thurmont, MD 21788
N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670
N0429A, 3A—Naval Air Station, Point Mugu, CA 93042
N0434A, (N62980) MQL—United States Navy Band, Washington Navy Yard, Washington, DC 20374–1052
N0463A, (MAJ00024), EHC—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg 321, Panama City, FL 32401
V04697, (MAJ00060), LHA—USS Simon Lake, FPO Miami, FL 34085–2590
N0488A, HS—Navy Manpower Engineering Center Detachment, San Diego, CA 92147
N0597A, (MAJ31699), HXP–W—Director, Office of Civilian Personnel Management, ,Southeast Region, Bldg. A–67, Naval Base, Norfolk, VA 23511–6098
N0598A, (MAJ31699), HXN—Director, Office of Civilian Personnel Management, Pacific Division, Box 119 Pearl Harbor, HI 96860–5060
N0604A, (MAJ31699), HXJ–L—Director, Office of Civilian Personnel Management, Northwest Region, 2890 North Main Street, Suite 301, Walnut Creek, CA 94596–2739
N0605A, (MAJ31699), HXG–H—Director, Office of Civilian Personnel Management, Northeast Region, Bldg. 75–3 Naval Base, Philadelphia, PA 19112–5006
N0618A, (MAJ00062), 8AE—School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5240
N0619A, 8E—Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814
N08939—Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521
N09534—Navy Section, US Military Group (Lima, Peru), APO Miami, 34031
N09550, 4G—Commander Fleet Air Mediterranean (Naples, Italy), FPO New York, NY 09521
N30492, (MAJ00039), NSC—David W. Taylor, Naval Ship Research and Development Center, Detachment Puget Sound, Bremerton, WA 98324–5215
N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630
N30779, 3Z—Naval Auxiliary Landing Field, Goliad, TX 77963
N30829, (MAJ00061), NL0–2—Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), FPO New York 09522
N30929—Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station, (Attn: Supply Officer), Pensacola, FL 32508
N31149, (MAJ00024), EHA–B—Naval Sea Logistics Center, Det Philadelphia Naval Base, Philadelphia, PA
N31699, V8*, HX*, V8Z—Office of Under Secretary of the Navy, Washington, DC 20350–1000
N31701, (MAJ31699), V80–1—Assistant Secretary of the Navy, (Shipbuilding & Logistics), Washington, DC 20360–5000
N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N31954, (MAJ00062), R0X—Submarine Training Facility, San Diego, CA 92106
N32525, 8S—U.S. Naval Communication Detachment, Naples Detachment, (Sigonella, Italy), FPO New York 09523
N32778, (MAJ00070), 4LE—Fleet Activities, Chinhae (Korea), FPO San Francisco 98769–1100
N32832, 7K—Naval Aviation Logistics Center, European Repair and Rework, Activity Representative, (Alverca, Portugal), APO New York, NY 09285
N32960, K2—Navy Support Office, La Maddelena, (Sardinia Italy) FPO New York 09533
N33137, (MAJ00015), L0A–C—Naval Intelligence Operations Group, DET CTG 168.4, (Munich, Germany), APO New York 09108
N35316, (MAJ00060), J0G—Patrol Combatant Mission, Squadron Two, Mobile Logistics Support Group, Trumbo Point Annex, NAS Key West, FL 33040
N35949, (MAJ00018), J5S—Naval Hospital, Twentynine Palms, CA 92278–5008
N39167—Commanding Officer, Naval Branch Medical Clinic, Naval Air Station, Meridian, MS 39309
N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N41756, LE—Navy Engineering Logistics Office, Washington, DC 20000
N42237, 7A—Commanding Officer, Naval Submarine Base, Code N411, Kings Bay, GA 31547
N44405, (MAJ00062), 8AA—Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR), FPO Miami 34051
N44416, (MAJ00023), 4JL—Navy Publishing and Printing Service, Northern Area, 700 Robbins Avenue, Philadelphia, PA 19111–5093
N44930, KN—Intra-Fleet Supply Support Operations Program, Norfolk, VA 23512
N44967, KP—Naval Sea Systems Command Detachment, (PERA CSS), San Francisco, CA 94124–2995
N45045, (MAJ31699), V8A—Navy Comptroller Standard Systems Activity Det., Raleigh Oaks Plaza Office Bldg., 3606 Austin Peay Highway, Memphis, TN 38128–3757
N45406, LD—Officer in Charge, Naval Sea Systems Command Detachment, (PERA CV), Bremerton, WA 98310–0206
N45411, (MAJ00070), LPE—Assault Craft #5, MCB Camp Pendleton, CA 92055–5003
N45854, (MAJ00011), LBE—Fleet Surveillance Support Command, Chesapeake,Chesapeake, VA 23322–5010
N46079—Military Sealift Command Office, Northern Europe, (Bremerhaven, Germany), APO New York 09069–0006
N46450, (MAJ00023), L50–9—Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547
N46531, (MAJ31699), HX0–E—Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203
N46656, NP—Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132–5104
N46657, (MAJ00063), NT0–NT1—Telecommunication Management Detachment Pacific, Wahiawa, HI 96786–3050
N46658, LQ—Telephone Management Detachment East, Wards Corner Executive Center, Suite 222, 138 E. Little Creek Road, Norfolk, VA 23505
N46659, KJ—Telephone Management Detachment Europe, (Naples, Italy), FPO New York 09524
N46904, (MAJ00060), J00–1—Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg. CEP 104, Naval Station, Norfolk, VA 23511–6495
N47408, (MAJ00025), EJP–W—Naval Construction Battalion Center, Naval Facilities Engineering Command Contracts Office, Port Hueneme, CA 93043–5000
N47427, (MAJ00070), V5G—Naval Air Pacific Repair Activity Detachment, New Zealand, c/o U.S. Naval Support Force Antarctic Det., FPO San Francisco 96690–2900
N47875, (MAJ00019), GUP–S—Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714–3593
N47876, (MAJ00019), GUJ–L—Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503
N47877, GD—Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166–0516
N47878, (MAJ00019), GUV—Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910–0445
N47879, (MAJ00019), GU0–B—Naval Technical Representative Detachment Stratford, United Technologies Corporation, Sikorsky Aircraft Division, Stratford, CT 06497
N48521, (MAJ00019), GUX—Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101
N48758, (MAJ00070), V5R—Naval Air Pacific Repair Activity, Plant Rep. Office, Box 39, FPO Seattle 98767–2710
N52846, (MAJ00019), EFA–B—Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples, Italy), Box 50, FPO New York 09520–5000
N52855, LZ—Special Boat Unit 11, FPO San Francisco 96601–4517
N53210, (MAJ00060), LHJ–K—Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520
N53825, GY—Naval Surface Force, US LANTFLT, Norfolk, VA 23511–6002

N53999, (MAJ00060), J0Q–R—Seal Team Six, Naval Amphibious Company, Norfolk, VA 23521
N55131, (MAJ00060), J0A–B—Cargo Handling and Port Group, Williamsburg, VA 23187–5792
N55322, (MAJ00060), LHN—Explosive Ordnance Disposal Group Two, Fort Story, VA 23459–5024
N55418, (MAJ00070), V50— Naval Support Force, Antarctica, Detachment Christchurch, (Christchurch, New Zealand), FPO San Francisco 96690
N57007, V0—Commander, Middle East Force, (Jufair, Bahrain), FPO New York 09501–6008
N57012, GQ—Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57016, (MAJ00060), J0N—Commander Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511–6296
N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032, (MAJ00061), NLF–H—Naval Air Facility, (Mildenhall, UK), FPO New York 09127–5000
N57049, (MAJ00060), J0E–F, V–X—Naval Support Facility (Antiqua, West Indies), FPO Miami 34054
N57053, (MAJ00070), LPQ—Naval Facility, Centreville Beach, Ferndale, CA 95536–9766
N57070, (MAJ00060), LH7—Oceanographic System Atlantic, Norfolk, VA 23511–6687
N57075, (MAJ00060), LH9—Commanding Officer, Naval Facility Argentia (Canada), FPO New York 09597–1051
N57095, (MAJ00060), LH0–1—Atlantic Fleet Headquarters Support Activity, CINLANTFLEET, Norfolk, VA 23511
N57100, (MAJ00070), LP0–1—Naval Special Warfare Group One, NAVPHIBASE Coronado, San Diego, CA 92155
N60002, (MAJ00018), QAD—Commanding Officer, Naval Hospital, Millington, TN 38054
N60028, QC—Naval Station, Treasure Island, San Francisco, CA 94130
N60036, QD—Naval Weapons Station, Concord, CA 94520
N60042, (MAJ00070), LPU—Naval Air Facility, El Centro, CA 92243
N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087, 3P—Naval Air Station, Brunswick, ME 04011
N60169, W0—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191, 4A—Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200, 3G—Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211, 3D—Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234, 4R—Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508
N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801
N60259, H9—Naval Air Station, Miramar, San Diego, CA 92145–5000
N60268, (MAJ62980), MQ0–1—Navy Recruiting District Chicago, Glenview, IL 60026–5200
N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462, WE—Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791–1200
N60478, 3C—U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495, 3T—Naval Air Station, Fallon, NV 89406
N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514, GL—Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33 FPO New York 09593
N60530, GM—Naval Weapons Center, China Lake, CA 93555
N60656, GN—Navy Resale Activity, Naval Station, Annapolis, MD 21402
N60663, GR—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088
N60666, CS—Navy Resale Activity, Naval Air Station, Key West, FL 33040
N60676, GX—Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055
N60681, HA—Commissary Store Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136
N60693, HB—Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701, 4M—Naval Weapons Station, Seal Beach, CA 90740
N60865, (MAJ00070), V5X—Naval Forces, Marianas, (Guam), FPO San Francisco 96630
N60872, (MAJ0070), V5T—Naval Magazine (Guam), FPO San Francisco 96630–1300
N60895, HF—Commissary Store Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501
N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448
N60935, HH—Commissary Store Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212
N60936, HJ—Navy Resale Activity Commissary Region Support Office, Naval Air Station, Pensacola, FL 32508
N60937, HK—Navy Resale Activity Det Commissary Store, Naval Support Activity, New Orleans, LA 70140
N60938, HL—Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419
N60939, HM—Navy Resale Activity Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054
N60951, (MAJ00060), LHU—Fleet Accounting and Disbursing Center, U.S. Atlantic Fleet, Norfolk, VA 23511–6096
N60956, (MAJ31699), V8J–N—Navy Regional Finance Center, Great Lakes, IL 60088–5797
N61115, HN—Navy Resale Activity, Submarine Base, New London, Groton, CT 06340
N61119, HP—Naval Supply Depot, Guam, FPO San Francisco, CA 96630
N61165, NN—Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29408–5000
N61174, 7B—Naval Station, New York, Brooklyn, NY 11251
N61189, (MAJ00060), J0T—Naval Station, Philadelphia, PA 19112
N61217, HQ—Navy Resale Activity, Naval Air Station, Bermuda, FPO New York 09560
N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407
N61337, H0—Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339, HT—Commanding Officer, Naval Training Systems Center (N–601), 12350 Research Parkway, Orlando, FL 32826–3275
N61414, 4B—Naval Amphibious Base, Little Creek, Norfolk, VA 23521
N61463, (MAJ00060), LHC—Naval Base, Norfolk, VA 23511–6002
N61466—Commander, Naval Base, Bldg NH48, Charleston, SC 29408
N61510, HU—Navy Resale Activity, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630
N61533, HW—David W. Taylor, Naval Ship Research, and Development Laboratory, Annapolis, MD 21402
N61564, FS—Naval Hospital, NAVBASE (Guantanamo Bay, Cuba), FPO New York 09593
N61577, (MAJ00070), V5P—Naval Air Station, Agana (Guam), Box 60, FPO San Francisco 96630–1200
N61581, (MAJ00070), 4LT—Fleet Activities, (Yokosuka, Japan), FPO Seattle 98762–1100
N61685, (MAJ00065), S0A—Naval Oceanography Command Center (Guam), Box 12, FPO San Francisco 96630–2926
N61726, QL—Naval Hospital, Naval Submarine Base New London, Groton, CT 06349
N61751, (MAJ00018), MCN—Naval Medical Research Unit No. 3, Cairo (Egypt), FPO New York 09527–1600
N61755, (MAJ00070), V5E—Naval Station (Guam) FPO San Francisco 96630–1000
N61762, HY—Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002
N62021, 7V—Naval Amphibious Base, Coronado, 7V San Diego, CA 92155
N62161, HZ—Navy Resale Activity Det, Rough and Ready Island, Stockton, CA 95203
N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62191, (MAJ00062), L97—Commanding Officer, Naval Reserve Officers Training Corps, and Naval Administrative Unit, Room 20E–125, Massachusetts Institute of Technology, Cambridge, MA 02139
N62254, (MAJ00070), 4LX—Commander Fleet Activities, Okinawa, Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO Seattle 98770–1100
N62269, JC—Commander, Naval Air Development, Center, Johnsville, Warminster, PA 18974
N62271, QE—Naval Postgraduate School, Monterey, CA 93940
N62285, (MAJ00065), S00–1—Naval Observatory, Washington, DC, 34th and Massachusetts Avenue, NW, Washington, DC 20390–5100

N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office National Space Technology Laboratory, Bay St. Louis, MS 39552
N62367, (MAJ00023), 4JC—Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760–2490
N62376, 4K—Commanding Officer, Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628
N62381, JG—Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382—Military Sealift Command Office, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387—Commander, Military Sealift Command (Code M10–3), 4228 Wisconsin Avenue, Washington, DC 20016
N62395, JK—Navy Public Works Center, Mariana Island Guam (U.S.), FPO San Francisco 96630–2937
N62401, 3F—Navy Publication and Printing Service Office, Defense Printing Service, The Pentagon, Washington, DC 20350–3000
N62404, JJ—Military Sealift Command, Far East, (Yokahama, Japan), FPO Seattle 98760
N62410, (MAJ62980), MQ6—Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198–8667
N62412, (MAJ62980), MLR—Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109–5294
N62415, (MAJ62980), MLX—Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., suite 771, 1835 Assembly Street, Columbia, SC 29201–2430
N62416, NV—Navy Recruiting District Columbus, Room 609 Federal Bldg., 200 North High Street, Columbus, OH 44142–2474
N62419—Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62421, (MAJ62980), MQM—Commanding Officer, Navy Recruiting District, 8925 North Meredian Street, Room 250 Indianapolis, IN 46260
N62422—Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423—Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425—Commanding Officer, Navy Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62427, (MAJ62980), MLP—Navy Recruiting District Omaha, Overland-Wolf Bldg, 6910 Pacific, Omaha, NE 68106
N62429, (MAJ62980), MLE—Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204
N62430—Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62432, (MAJ62980), MQG—Navy Recruiting District, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2814
N62435, (MAJ62980), MQE—Navy Recruiting District Boston, 495 Summer Street, Boston, MA 02210–2103
N62437, (MAJ62980), MQ4—Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62438, (MAJ62980), MLQ—Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203–1668
N62440, (MAJ62980), MLT—Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108
N62441, (MAJ62980), MLG—Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016
N62442—Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62443 (MAJ62980), MLV—Navy Recruiting District, Federal Office Bldg., 2nd & Washington Avenues, S., Minneapolis, MN 55401
N62444—Commanding Officer (Code 602–2C), Navy Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146
N62448 (MAJ62980), MLN—Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612–1430
N62449 (MAJ62980), MLC—Navy Recruiting District Seattle, Naval Station, Bldg 30, Seattle, WA 98115–5105
N62467, JM—Commanding Officer, Naval Facilities Engineering Command, Southern Division (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411–0068
N62470, N7—Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511
N62471, JN—Officer in Charge of Construction, Naval Facilities Engineering Command, Contracts, Mid-Pacific, Pearl Harbor, HI 96860
N62472, JP—Naval Facilities Engineering Command, Northern Division U.S. Naval Base, Philadelphia, PA 19112
N62474, JR—Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066
N62477, JU—Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard, Washington, DC 20374
N62481, N8—Naval Air Station, Bermuda, FPO New York 09560
N62507 (MAJ00070), 4LJ—Commanding Officer, Naval Air Facility, Atsugi, Japan, Box 3, FPO Seattle 98767–1200
N62522, JV—Military Sealift Command, Europe, (London, UK), Box 3, FPO New York 09510–3700
N62535, HE—Marine Corps Air Station (HELO), Tustin, CA 92710
N62537—Military Sealift Command, Mediterranean Sub-Area (Naples, Italy), Box 23, FPO New York 09521–0600
N62538, K1—Military Sealift Command Office, NSC, Bldg Y100A, Norfolk, VA 23512
N62539—Military Sealift Command Office, United Kingdom, (London, UK), Box 29, FPO New York 09510–3700
N62573, K8—Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540
N62576, (MAJ00023), 4JG—Navy Publishing and Printing Service, 700 Robbins Avenue, Philadelphia, PA 19111–5094
N62578, J2—Naval Construction Battalion Center, Davisville, RI 02854
N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041
N62585, K3—Commander, Naval Activities, United Kingdom, (London, UK), FPO New York 09510
N62586 (MAJ00070), V5A–B—Naval Ship Repair Facility (Guam), FPO San Francisco 96630–1400
N62588, NR—Naval Support Activity, Naples (Italy), FPO New York 09521
N62593—Director, Navy Publications & Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146
N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408
N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501
N62613 (MAJ00027), MUE—Commanding Officer, Marine Corps Air Station(Iwakuni, Japan), FPO Seattle 98764–5001
N62638 (MAJ00072), LCN—Naval Inshore Undersea Warfare, Group Two, NSC Cheatham Annex, Bldg. 111, Williamsburg, VA 23187–8792
N62645, EG—Naval Medical Materiel Support Command, Fort Detrick, Frederick, MD 21701–5015
N62649, JY—Naval Supply Depot, Yokosuka (Japan), FPO Seattle 98762
N62651—Director, Navy Publications & Printing Service Detachment Office, Southeast Division, Pensacola, FL 32508
N62653 (MAJ00023), 4JW–X—Director, Navy Publications & Printing Service Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408
N62654 (MAJ00019), EFE—Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117
N62661 (MAJ00062), L97—Naval Education Training Center, Newport, RI 02841–5000
N62665, JQ—Supervisor of Shipbuilding, Conversion, and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673, 8P—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62686, T0—Navy Publishing and Printing Service Office, Naval District Washington, Building 157–2, Washington Naval Yard, Washington, DC 20374–1572
N62688, GW—Naval Station, Naval Base, Norfolk, VA 23511–6002
N62695—Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041
N62700 (MAJ00023), 4JJ—Navy Publications and Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5708
N62703 (MAJ00023), 4JA—Navy Publications and Printing Service, Detachment Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314

N62705 (MAJ00023), 4JN—Navy Publications and Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625–5045
N62706, JS—Navy Publications and Printing Service Office, Western Division, Bldg. 154, San Diego, CA 92136–5148
N62707 (MAJ00023), 4JS–U—Navy Publishing & Printing Service Detachment Office, Western Area, Pearl Harbor, Box 126, Pearl Harbor, HI 96860–5120
N62735 (MAJ00070), 4LP—Commander, Fleet Activities, (Sasebo, Japan), FPO Seattle 98766–1100
N62741, MB—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742, KB—Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, HI 96860
N62745, (MAJ00025), FZC–E—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO New York 09285
N62755, J7—Commanding Officer, Navy Public Works Center, Pearl Harbor, HI 96860–5470
N62757, (MAJ00072), 9TW–X—Naval Reserve Center, 7410 West Roosevelt Road, Forest Park, IL 60130–2592
N62762, (MAJ00024), EHU–W—Navy Shipbuilding Liaison Office, Spain, Box 36, (Madrid, Spain), APO New York 09285
N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, (Guam), FPO San Francisco, CA 96630
N62770, (MAJ00070), LPJ–L—Naval Ship Repair Facility, (Subic Bay, Philippines), Box 34, FPO San Francisco 96651–1400
N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530–0998
N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136–5119
N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607–2785
N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251–9000
N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568–2210
N62798, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124–2996
N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115–5001
N62808, (MAJ00025), FZO—Public Works Center, Subic Bay (Luzon, Republic of the Philippines), FPO San Francisco 96651–2900
N62816, (MAJ00023), L5A–C—Navy Publishing & Printing Services Det. Br. Office, Southeast Area (Naples, Italy), Box 108, FPO New York 09524–1400
N62832—Naval Activities, Rota, Spain, FPO New York 09540
N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841, (MAJ00030), EKA—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920–1623
N62844, K0—Naval Imaging Command, Washington Navy Yard, Washington, DC 20350–2000
N62849, (MAJ00019), EFC—Naval Aviation Engineering Service Unit, Philadelphia, PA 19112–5088
N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N62856, (MAJ00060), LHW–X—Naval Air Facility (Lajes, Azores), APO New York 09406–5000
N62863, K4—Naval Station, Rota, Spain, FPO New York 09540
N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manilla, Philippines), APO San Francisco, CA 96528
N62892, (MAJ00069), 8QA—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039–6428
R62894, (MAJ00070), 4LA—Commander, U.S. Naval Forces Korea, (Yongsan, South Korea), APO San Francisco, CA 96301–0023
N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62911, (MAJ62980), MQC—Navy Recruiting Area One, Scotia, NY 12302–9462
N62913, (MAJ62980), MLL—Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208–4887
N62915, (MAJ 62980), MQJ—Navy Recruiting Area Five, Building 3, NTC, Great Lakes, IL 60088–5135
N62917, (MAJ62980), ML0–1—Commander, Navy Recruiting Area Seven, 1499 Regal Row, suite 501, Dallas, TX 75247
N62918, (MAJ62980), MLA—Navy Recruiting Area Eight, 7677 Oakport Street, suite 650, Oakland CA 94621–1929
N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067
N62954, (MAJ62980), MQN—Navy Recruiting District Cleveland, 17535 Rosbough Boulevard, Middleburgh Heights, OH 44130
N62974, JB—Marine Corps Air Station, Yuma, AZ 85364
N62980, ML*, MQ*, MQR–Z—Naval Military Personnel Command, Washington, DC 20370
N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 26, Sturgeon Bay, WI 54235
N62995, 4H—Naval Air Station, Sigonella (Italy), FPO New York 09523
N63005, (MAJ00011), LBL–N—Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63007, (MAJ00060), LHS—Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511
N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station PO Bldg, San Diego, CA 92132
N63026, (MAJ00027), MUJ—Marine Corps Air Station, (Futenma, Japan), FPO Seattle 98772–5001
N63028, U2—Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032, KS—U.S. Naval Station, Keflavik (Iceland), FPO New York 09571
N63038, 8M—U.S. Naval Communication Unit, Cutler, East Machias, ME 04630
N63042, NZ—Naval Air Station, Lemoore, CA 93245
N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051—Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174
N63055, (MAJ00011), LBJ—Naval Investigative Service, Mid-Atlanta Region Norfolk, 293 Independence Blvd, Suite 525, Pembroke 5, Virginia Beach, VA 23462
N63058 (MAJ00011), LBC—Naval Investigative Service, Northwest Region, Bldg 7, NAVSTA Treasure Island, San Francisco, CA 94130
N63073, (MAJ00069), 8Q6–8—U.S. Naval Security Group Activity RAF, (Edzell UK), FPO New York 09518
N63080, KT—Navy Resale Activity, Chinhae (South Korea), FPO Seattle, WA 98769
N63082—Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63110—Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419
N63111—Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124 (MAJ00023) U00–9—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940
N63135 (MAJ00023) 4JD–E—Navy Publishing & Printing Service Management Office, Washington, DC 20374–1762
N63136—Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521
N63143, 8K—Naval Communication Station (Keflavik, Iceland), Box 22, FPO New York 09571
N63152, GZ—Fleet Combat Direction Systems, Support Activity, San Diego, CA 92147–5081
N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182, 8T—Naval Communication Station, (Rota, Spain), FPO New York 09539
N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63209 (MAJ00062) L9A—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106

N63210 (MAJ00062) L9B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011–3010

N63211 (MAJ00062) L9C—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109–1085

N63212 (MAJ00062) L9G—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712

N63213 (MAJ00062) L9J—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720–0001

N63214 (MAJ00062) L9M—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309–0374

N63215 (MAJ00062) L9U—Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616–3793

N63216 (MAJ00062) L9W—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201

N63217 (MAJ00062) L9Z—Commanding Officer Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331

N63218 (MAJ00062) R0B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201

N63219 (MAJ00062) R0E, L99—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1892, Houston, TX 77001

N63220 (MAJ00062) R0L—Commanding Officer, Naval Reserve Officers, Training Corps Unit, UCLA, Mens Gym Room 123, 405 Milgard Avenue, Los Angeles, CA 90024–1399

N63221 (MAJ00062) 8AB—Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089–0654

N63222 (MAJ00062) R0H—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044

N63223 (MAJ00062) R0K—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508

N63224 (MAJ00062) 8AD—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705

N63225 (MAJ00062) 8AH—Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233

N63226 (MAJ00062) 8AJ—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455–0108

N63227 (MAJ00062) 8AK—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843–3244

N63228 (MAJ00062) 8AM—Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118

N63229 (MAJ00062) 8AN—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, Oklahoma 73019

N63230 (MAJ00062) 8AR—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame Notre Dame, IN 46556–5601

N63231 (MAJ00062) 8AW—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112–1107

N63232 (MAJ00062) 8AY—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Seattle, WA 98195

N63234 (MAJ00062) L9Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820–6288

N63235 (MAJ00062) R05—Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907–0001

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461

N63274, 4F, 4W—Naval Electronic Systems Engineering Center, Vallejo, CA 94592

N63285 (MAJ00011) LB0—Naval Security and Investigative Command, Washington, DC 20388

N63290 (MAJ00062) R00–1—Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062) R0F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062) 8AV—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062) R0M—Commanding Officer,Naval Reserve Officers Training Corps unit, Rensselaer Polytechnic Institute, Troy, NY 12180–3590

N63296 (MAJ00062), L9F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062), R0A—Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062), L9D—Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062), R0U—Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610–2389

N63306 (MAJ00062), 8AS—Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056–1698

N63307 (MAJ00062), R0N—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062), L9R—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062), L9Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210–1169

N63310 (MAJ00062), R0P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062), 8AT—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062), L9X—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062), 8AL—Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062), R0R—Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085–1699

N63317 (MAJ00062), L9T—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903–3194

N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z–86, Naval Station, Norfolk, VA 23511

N63339, LL—Navy Resale Activity, Naval Station, Adak (Alaska), FPO Seattle, WA 98791

N63340, LM—Navy Resale Activity, Naval Station, Argentia (Canada), FPO New York 09597

N63341, LN—Navy Resale Activity Det. Commissary Store, Naval Air Station, Chase Field, Beeville, TX 78102

N63344, LR—Navy Commissary Store Region, Naval Station, Charleston, SC 29408

N63345, LS—Navy Resale Activity, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346, LT—Navy Resale Activity, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348, LV—Navy Resale Activity Det Commissary Store, Naval Air Station, Kingsville, TX 78364

N63349, LW—Navy Resale Activity, Naval Air Station, Lemoore, CA 93246

N63350, 3L—Navy Resale Activity, COMNAVACT, Dunstable, UK, FPO New York 09510

N63351, LY—Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352, KE—Navy Resale Activity Det Commissary Store, Naval Air Station, Meridian, MS 39301

N63353, MA—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO New York 09521

N63357, ME—Navy Resale Activity, Naval Station, Rota (Spain), FPO New York 09540

N63362, MK—Officer in Charge, Navy Resale Activity, Commissary Support Office

(Subic Bay, Philippines), P.O. Box 28, FPO San Francisco 96651
N63365, MN—Navy Resale Activity, Commissary Support Office (Yokosuka, Japan) Box 33, FPO Seattle 98762
N63367, MP—Officer in Charge, Commissary Div., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511
N63369—Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO New York 09159
N63381 (MAJ00011), LBA—Joint U.S. Military Advisory Group, Thailand, APO San Francisco 96346
N63387, JD—Navy Public Works Center, Naval Base, San Diego, CA 92136
N63394, L6—Naval Ship Weapon Systems Engineering Station, Port Hueneme, CA 93043
N63395, 8L—U.S. Naval Communication Station, Thurso (Caithness, UK), FPO New York 09516
N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383
N63406 (MAJ00070), V5C—Naval Submarine Base San Diego, 140 Sylvester Road, San Diego, CA 92106–3521
N63408, HV—Navy Material Transportation Office, Norfolk, VA 23511–6691
N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511
N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680
N63429, MH—Naval Communication Unit London (UK), FPO New York 10000
N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690
N63543 (MAJ00072), 9TC—Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502–1399
N63821 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Islands, FPO New York 09559
N63886 (MAJ00069), 8Q0–1—Naval Security Group Activity (Adak, AK), FPO Seattle 98777
N63891 (MAJ00069), 8QC—Naval Security Group, Northwest, Chesapeake, VA 23322
N64165 (MAJ00062), R0Z—Naval Unit, Lowry Air Force Base, CO 80230
N64181 (MAJ00062), R0W—Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553–1675
N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corona Annex, Corona, CA 91720
N64281, 3U, KX—Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511
N64356, KF—Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511–6097
N64980 (MAJ00061), NLA–C—Officer in Charge, Naval Weapons Facility, Detachment Machrihanish, UK, FPO New York 09515
N64981 (MAJ00061), NL5–7—Commanding Officer, Naval Weapons Facility (St. Mawgan UK), FPO New York 09511–9511
N65113, EZ—Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088–5600
N65114 (MAJ00025), EJC—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508–6500
N65115 (MAJ00025), FZA—Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO Seattle 98762–3100
N65116, MZ—Officer in Charge, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–2001
N65146, 7E—Procurement Branch, OP–09B31, Office of the Chief of Naval Operations Support Activity, Washington, DC 20350
N65198, 3H—Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401
N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860
N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406
N65256 (MAJ31699), V8C—Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022
N65428 (MAJ00018), MDP—Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO Miami 34051–8100
N65440, 4V—Officer in Charge, Navy Resale Activity, Exmouth, Western Australia, FPO San Francisco 96680
N65491 (MAJ00018), J5P—Naval Hospital (Subic Bay, Philippines), FPO San Francisco 96652–1600
N65492 (MAJ00018), MCA—Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813–5200
N65497, 4U—Commissary Store Division, NAVRESSO, Field Support Office, 2801 "C" Street, SW., Auburn, WA 98001
N65540 (MAJ00024), EHP–S—Naval Ship Systems Engineering Station, Philadelphia, PA 19112–5083
N65575 (MAJ00018), MCY—Naval Medical Clinic, Seattle, WA 98115
N65576—Navy Space Systems Activity, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
N65580, M2—Naval Electronic Systems Engineering Center, P.O. Box 55, Portsmouth, VA 23705
N65584, EW, 3E, KU, 3B—Naval Electronic Systems Engineering Center, P.O. Box 80337—Building #4, Code 104, San Diego, CA 92138
N65849 (MAJ31699), HXY–Z—Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92188
N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822
N65886—Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212
N65888, ED—Aviation Depot, North Island, San Diego, CA 92135
N65889—Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508
N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702
N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138
N65918, FT—Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136–5000
N65926 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402
N65928, N3—Naval Training Systems Center, Orlando, FL 32813
N65980 (MAJ00039), NSL–NSN—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684
N65995, KM—Officer in Charge, Naval Support Activity (Holy Loch, UK), FPO New York 09514
N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152
N66021, 7G—Commander Fleet Air, Western Pacific (Atsugi, Japan), FPO Seattle, WA 98767
N66022 (MAJ00018), MDW—Naval Dental Clinic, San Diego, CA
N66032, LK—Navy Automatic Data Processing Selection Office, Building 218, Washington Navy Yard, Washington, DC 20374
N66074 (MAJ00062), 8AU—Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University, Prairie View, TX 77445
N66094 (MAJ00018), QAA–B—Naval Hospital, Cherry Point, NC 28533–5008
N66095 (MAJ00018), J5E—Naval Hospital, NAS, Lemoore, CA 93246
N66097 (MAJ00018), MDE—Naval Hospital, Oak Harbor, WA 98278–8800
N66125 (MAJ00070), V5J—Naval Facility (Guam), FPO San Francisco 96630–2903
N66231 (MAJ00072), 9TS—Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great Lakes, IL 60088–5707
N66398 (MAJ62980), ML6–7—Navy Motion Picture Service, Flushing & Washington Avenues, Brooklyn, NY 11251–8400
N66458 (MAJ00065), S0C—Naval Oceanography Command, NAS, Brunswick, ME 04011–5000
N66604, N4—Naval Underwater Systems Center, Newport, RI 02840
N66612 (MAJ00062), L95—Commanding Officer, Naval Reserve Officers Training, Corps Unit, The Citadel, Charleston, SC 29409–0770
N66630 (MAJ00072), LCS—Naval Air Reserve Point Mugu, Naval Air Station, Point Mugu, CA 93042–5018
N66691, 4P—Commanding Officer, Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528
N66715, VJ—Commander, Navy Recruiting Command, Washington, DC 22203–1191
N66753 (MAJ00062), R0G—Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211
N66754 (MAJ00069), 8QX—Commanding Officer, Naval Security Group Activity (Sabana Seca, PR), FPO Miami 34053
N66809 (MAJ00062) R0V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404
N66810 (MAJ00062) L9H—Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813
N66833 (MAJ00060) LHL—Commanding Officer, U.S. Naval Station Panama

(Rodman, Canal Zone), FPO Miami 34061–1000
N66863 (MAJ00018) MCU–X—Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66890, LJ—Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592
N66898 (MAJ00018) QAF—Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142
N66957—Director, Navy Publications and Printing Service Det Branch Southeast Division, Bldg. 2049, NTC, Orlando, FL 32813
N66959 (MAJ00023) 4JR—Director, Navy Publications and Printing Service Det Office Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212
N66965 (MAJ00023) 4JQ—Navy Publishing and Printing Service Det Office, Western Area, Point Mugu, CA 93042–5027
N66972—Commanding Officer, Navy Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143
N67596—Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011—Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68047 (MAJ00070) 4L0—Navy Office, Singapore, FPO San Francisco, CA 96699–2100
N68056, JE—Naval Medical Command, Southwest Region, San Diego, CA 92134
N68057, VZ—Commanding Officer, Naval Regional Data Automation Center Norfolk, Code 212, Norfolk, VA 23511
N63064 (MAJ00062) R0D—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072 (MAJ00062) L9V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843
N68084 (MAJ00018) MDJ–M—Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408–6900
N68086, 7S—Naval Hospital, Newport, RI 02841
N68088 (MAJ00061) NLL–N—National Support Unit Headquarters, Commander-in-Chief Iberian Atlantic Area (Lisbon, Portugal), APO New York 09678–001
N68090 (MAJ00018) MD0–9—Naval Hospital, Long Beach, CA 90822–5199
N68092—Naval Medical Command, Northeast Region, Great Lakes, IL 60088
N68093 (MAJ00018) MCG–H—Naval Hospital, Camp LeJeune, NC 28542–5008
N68094, V9—Naval Hospital, Camp Pendleton, CA 92055–5008
N68095, JF—Naval Hospital, Boone Road, Bremerton, WA 98312–1898
N68096 (MAJ00018) J50—Commanding Officer, Naval Hospital (Guam), FPO San Francisco 96630–1600
N68097—Naval Medical Command, Northwest Region, Oakland, CA 94627
N68101 (MAJ00018) MDT–V—Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145–5199
N68139 (MAJ00062) 8AZ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University, Tallahassee, FL 32307
N68141 (MAJ00062) L9P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421–0902
N68142, NK—Naval Computer & Telecommunications Station, Naval Air Station, Pensacola, FL 32508–6100
N68165 (MAJ00060) J06–8—Naval Facility Brawdy (Brawdy, Wales, UK), FPO New York 09519
N68166 (MAJ00015) L01–2—Naval Technical Intelligence Support Center, 4301 Suitland Road, Washington, DC 20390
N68171, M3—Commanding Officer, Naval Regional Contracting Center (Naples, Italy), FPO New York 09521
N68175 (MAJ62980) MQA—Navy Recruiting District New Jersey, Parkway Towers, Bldg A, 485 US Route 1, So., Iselin, NJ 08830–3012
N68199—Commanding Officer, Navy Office of Information, Southeast, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200, VM—Director, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221, 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152
N68246 (MAJ00070) 4LL—Officer in Charge, U.S. Naval Supply Depot Yokosuka Det. (Sasebo, Japan), FPO Seattle 98766–2900
N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
R68251 (MAJ00070) LPC—Shore Intermediate Maintenance Activity, Pearl Harbor, Box 141, Pearl Harbor, HI 96860
N68292 (MAJ00018) J5A—Naval Hospital (Yokosuka, Japan), FPO Seattle 98765–1615
N68297, ET—Naval Magazine, Lualualei, Oahu HI 96792–4301
N68303 (MAJ00062) R0C—Commanding Officer, Naval Reserve Officers Training Corps Unit, State University of New York, Maritime College, Fort Schuyler, Bronx, NY 10465–4198
N68306 (MAJ00072) 9TF—Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg 200, Washington, DC 20374–2003
N68307 (MAJ00072) LCJ—Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68308 (MAJ00072) 9TQ—Naval Reserve Readiness Command, Region 20, Bldg 1, NAVSTA Treasure Island, San Francisco, CA 94130–5032
N68311, JL—Naval Station, Long Beach, CA 90822
N68322, 7Z—Naval Education & Training Program Management Support Activity, Code SU1, Saufley Field, Pensacola, FL 32509
N68323 (MAJ00011) LBC—Naval Legal Service Office, 200 Stovall Street, Alexandria, VA 22332–2400
N68327 (MAJ62980) ML8—Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800
N68328, (MAJ00072) 9TJ—Naval Reserve Readiness Command, Region 22, Bldg. 9, Naval Station, Seattle, WA 98115–5009
N68329, (MAJ00072), LCL—Naval Reserve Readiness Command, Region Five, Bldg. 1033, USAAP, Ravenna, OH 44266–9211
N68330, (MAJ00072), 9TN—Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC, Great Lakes, IL 60088–5026
N68331, (MAJ00072), LCE–F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112
N68331, (MAJ00072) LCE–F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Basè, Philadelphia, PA 19112
N68332, (MAJ00072), 9T0–1—Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031–0031
N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68348, (MAJ00072), 9TG—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E–35, Millington, TN 38054
N68349—Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450–2996
N68351, (MAJ00072), LCQ—Naval Reserve Readiness Command, Region One, Newport, RI 02840–5016
N68355, (MAJ00062), R0J—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450–2697
N68356, (MAJ00072) 9TD—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68357, (MAJ00072), 9TL—Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302–9465
N68358, (MAJ00072), 9TA—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68378, KQ—Navy Public Works Center, San Francisco Bay, Oakland, CA 94623
N68391, (MAJ62980), MLB—Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101–1304
N68401, (MAJ62980) MLJ—Navy Recruiting District, San Diego, Naval Training Center, Bldg 335, San Diego, CA 92133–6800
N68402, (MAJ31699), V8E—Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210–2203
N68409, (MAJ00018), MDC—Naval Dental Clinic, San Francisco, CA 94130–5030
N68436, KC, J6—Naval Submarine Base, Bangor, Code 863, KC Bremerton, WA 98315
N68441—Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508
N68443, 7T—Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314
N68451, MF—Navy Regional Data Automation Center, San Francisco, Naval Air Station, Alameda, CA 94501
N68470, (MAJ00018), J5J–M—Naval Hospital, (Okinawa, Japan), FPO Seattle 98778–1610

N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813
N68499, LX—Director, Naval Council of Personnel Boards, Ballston Center Tower #2, 801 North Randolph Street, Arlington, VA 22203–1989
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520, 7P—Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670
N68527, (MAJ00072), 9TT—Naval & MC Reserve Readiness Center, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, NY 11234–7097
N68546, QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68547, (MAJ00060), LHQ—Personnel Support Activity, Norfolk, VA 23511–5115
N68560, (MAJ00063), NTC–H—Naval Computer & Telecommunications Station, Jacksonville, FL 32212–0111
N68561, (MAJ00039), NSE—Navy Management Systems Support Office, Norfolk, VA 23511–6694
N68593, (MAJ00060), LHE—Naval Ocean Processing Facility, Dam Neck, VA 23461–5450
N68608, (MAJ00011), LBP–Y—Navy Regional Data Automation Center, 4400 Dauphine Street, New Orleans, LA 70145–7700
N68610, GF—Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg #5, Alameda, CA 94501–3874
N68646, (MAJ00024), EHJ–K—Naval Sea Systems Command, Automated Data Systems Activity, P.O. Box 100, Indian Head, MD 20640–0100
N68691, JW—Naval Plant Representative Office, (Melbourne, Australia), APO San Francisco 96405
N68692, (MAJ00062), 8AX—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110–2496
N68695, (MAJ00060), LHG—Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg 133, Naval Base, Philadelphia, PA 19112–5066
N68699, (MAJ00062), 8AP—Commanding Officer, Naval Reserve Officers Training Corps Unit, Hampton Roads, 5215 Hampton Blvd., Norfolk, VA 23508–8556
N68707, (MAJ00072), 9TU—Naval Reserve Maintenance Training Facility, Puget Sound, Tacoma, WA
N68709, (MAJ00060), J0C—Naval Air Station Mayport, Mayport, FL 32228
N68710, (MAJ00062), L9K—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–2306
N68717, (MAJ00062), L9L—Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215
N68725, (MAJ00062), R0Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721
N68726, (MAJ00062), R0T—Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052
N68727, (MAJ00062), 8AF—Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152–0001
N68728, (MAJ00062), 8AQ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663–1097
N68733, (MAJ00030), EKC—Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547–6600
N68742, (MAJ00070), LPA—Naval Base, Seattle, WA 98115–5012
N68753, (MAJ00070), V5L—Naval Pacific Repair Activity Det., Singapore, SAE Singapore, FPO San Francisco 96699–2700
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68829, (MAJ00060), J0J—Shore Intermediate Maintenance Activity (NRMF), Pier 2, Bldg. 68 NETC, Newport, RI 02841–5001
N68831, (MAJ00070), LPG—Shore Intermediate Maintenance Activity San Francisco, Bldg 162, NAS, Alameda, CA 94501–5065
N68836, J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N68857, (MAJ00062), 8AC—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409–4559
N68860, KR—Naval Supply Center—Pensacola, Pensacola, FL 32508–6200
N68863, LU—Naval Commercial Communications Office, 4401 Mass Avenue, NW., Washington, DC 20390–5290
N68877, (MAJ00062), R0Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213
N68881, (MAJ00062), L9E—Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314
N68891, (MAJ00060), LH5—Naval Station, Ingleside, TX 78362–5000
N70092, (MAJ00069), 8QJ–K, Q–R—Naval Security Station, 3801 Nebraska Avenue, NW.,Washington, DC 20390–8230
N70240, M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272, 8G, ND—Naval Communication Area, Master Station Atlantic, Norfolk, VA 23511–6898
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70278, V4—Naval Communication Station (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283, (MAJ00069), 8QE—Commanding Officer, Code 30, Naval Security Group Activity (Galeta Island, Canal Zone), FPO Miami 34060–9998
N70294, 8H—U.S. Naval Communication Area, Master Station MED (Naples, Italy), FPO New York 09524
N70295, 8J—U.S. Naval Communication Station (Nea Makri, Greece), FPO New York 09525
N70310, N2—Naval Radio Station R, Sugar Grove, WV 26815.

Part 4—Marine Corps Activity Address Numbers

M00027, MS*, MU*, MS0–9—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Development and Education Command, Quantico, VA 22134
M00318—Marine Corps Air Station (Kaneohe Bay, Oahu, HI), FPO San Francisco, CA 96628
M00681, NG—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050, MV—Marine Corps Air Station, El Toro (Santa Ana), CA 92709
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62974, NA—Marine Corps Air Station, Yuma, AZ 85364
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704
M67011, (MAJ00027), MSA—Director, 1st Marine Corps District, Garden City, Long Island, NY 11530
M67013, (MAJ00027), MSC—Director, 4th Marine Corps District, Philadelphia, PA 19112–5072
M67015, (MAJ00027), MSE—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016, (MAJ00027), MSG—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017, (MAJ00027), MSJ—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019, (MAJ00027), MSL—Director, 12th Marine Corps District, San Francisco, CA 94130
M67021, (MAJ00027), MUC—Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–9125
M67025—Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco 96610
M67029, (MAJ00027), MSN—Marine Barracks, Washington, DC 20003
M67030, (MAJ00027), MUP—Marine Corps Security Force Battalion Pacific, NAVSTA Mare Island, Vallejo, CA 94592–5022
M67290 (MAJ00027), MSY—Marine Aviation Training Support Group-90, NATTC, NAS Memphis, Millington, TN 38054–5123
M67351—Marine Detachment, London, APO New York 09510
M67353 (MAJ00027), MSQ—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67355 (MAJ00027), MUN—Landing Force Training Command Atlantic, Naval Surface Force, U.S. Atlantic Fleet, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–2350
M67385 (MAJ00027), MUO–1—Camp H. M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861

M67391, KY—Marine Corps Camp Det. (Camp Elmore), Norfolk, VA 23511
M67399, NF—Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400 (MAJ00027), QJ, MUA—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler (Ryuku Island, Southern), FPO Seattle, WA 98773
M67428, JA—Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443, LG—Marine Corps Finance Center, Kansas City, MO 64197
M67842, K6—East Coast Commissary Complex, Marine Corps Base, Camp LeJeune, NC 28542
M67853 (MAJ00027), MUR—Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511-5697
M67854 (MAJ00027), MU6-9—Marine Corps Research, Development and Acquisition Command, Washington, DC
M68479 (MAJ00027), MSU—4th Marine Division (Rein), FMF, USMCR, 4400 Dauphine Street, New Orleans, LA 70146-5400
M68522 (MAJ00027), MSW—Marine Corps Reserve Support Center, Purchasing Department, 16950 El Monte, Overland Park, KS 66211-1408

Part 5—Air Force Activity Address Numbers

(C) Denotes a Central Contracting Activity.
F01600, 5A—3800 ABW/LGC, Maxwell AFB, AL 36112-5320
F01620, 6K—HQ SSC/PK, Gunter AFS, AL 36114-6343
F02600, 5B—82 FTW/LGC, Williams AFB, AZ 85240-5004
F02601, 5C—836 AD/LGC, Davis-Monthan AFB, AZ 85707-5320
F02604, 5D—832 AD/LGC, Luke AFB, AZ 85309-5320
F02610, SR—AFPRO, Hughes Missile Systems Group, P.O. Box 11337, Emery Park Station, Tucson, AZ 85734-1337
F03601, 5E—97 BMW/LGC, Eaker AFB, AR 72317-5320
F03602, 5F—314 TAW/LGC, Little Rock AFB, AR 72076-5320
F04604, 5G—93 BMW/LGC, Castle AFB, CA 95342-5320
F04605, 5H—22 AREFW/LGC, March AFB, CA 92518-5320
F04606, SM—SM-ALC/PM, Sacramento Air Logistics Center, McClellan AFB, CA 95652-5320
F04607, 5J—63 MAW/LGC, Norton AFB, CA 92409-5320
F04609, 5K—831 AD/LGC, George AFB, CA 92394-5320
F04611, QQ—AFFTC/PK (C), Edwards AFB, CA 93523-5320
F04612, 5L—323 FTW/LGC, Mather AFB, CA 95655-5320
F04620, S6—AFPRO, TRW Electronics & Defense Sector, One Space Park, Redondo Beach, CA 90278-1078
F04626, 5M—60 MAW/LGC, Travis AFB, CA 94535-5320
F04630, RY—AFPRO, RI Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91303-2790
F04666, 5N—9 SRW/LGC, Beale AFB, CA 95903-5320
F04679, QR—AFPRO, Northrop Corp, One Northrup Avenue, Hawthorne, CA 90250-3296
F04681, QS—AFPRO, RI Corp, Los Angeles Division, P.O. Box 92098, Los Angeles, CA 90009-2098
F04682, QT—AFPRO, Hughes Aircraft Company, P.O. Box 92463, Los Angeles, CA 90009-2463
F04684, QW—4392 AEROSW/LGC, Vandenberg AFB, CA 93437-5320
F04688, QV—AFPRO, Aerojet-General Corp, P.O. Box 15846, Sacramento, CA 95852-1846
F04689, RN—2nd Satellite Tracking Group/LKD, Onizuka Air Force Base, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04690—CSTC/PM, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04691, QX—AFPRO, Lockheed Missile & Space Corp, 1111 Lockheed Way, P.O. Box 3504, Sunnyvale, CA 94088-3504
F04693, MG—SSD/PMB, Base Contracts, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04696, RB—AFPRO, RI Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803-3110
F04699, Q5—SM-ALC/PMK, Base Contracts, McClellan AFB, CA 95652-5320
F04700, Q2—AFFTC/PKB, Base Contracts, Edwards AFB, CA 93523-5000
F04701, TB—SSD/PM (C), Space Systems Division, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04702—HQ AAVS/LGC, Norton AFB, CA 92409-5439
F04703, R8—WSMC/PM (C), Western Space and Missile Center, Vandenberg AFB, CA 93437-6021
F04704, R9—BSD/PK (C), Ballistic Systems Division, Norton AFB, CA 92409-6463
F04705, RT—Det 6, 2762 Logistics Sq. (AFLC), Norton AFB, CA 92409
F04709, S5—Det 42, SM-ALC, Norton AFB, CA 92409-6447
F04710, TC—AFPRO, Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, CA 90846-0001
F04720, RD—AFPRO RI NAAO, OL-AA, 2825 East Avenue P, Palmdale, CA 93550-0319
F05600, 5P—LTTC/LGC, Lowry AFB, CO 80230-5320
F05603—HQ Air Force Space Command/PKD, Director of Systems Contracting, Stop 7, Peterson AFB, CO 80914-5001
F05604, SX—3d Space Support Wing/PKB, Stop 20, Peterson AFB, CO 80914-5000
F05611, 5Q—USAFA/LGC, USAF Academy, CO 80840-0189
F05617, RE—AFPRO, Martin Marietta Denver Aerospace, P.O. Box 179, Denver, CO 80201-0179
F06700, T5—AFPRO, Pratt & Whitney, 400 Main Street, East Hartford, CT 06108-0969
F07603, 5R—436 MAW/LGC, Dover AFB, DE 19902-5320
F08602, 5S—56 TTW/LGC, MacDill AFB, FL 33608-5320
F08506, RG—ESMC/PM (C), Eastern Space & Missile Center, Patrick AFB, FL 32925-5472
F08620, 5T—1 SOW/LGC, Hurlburt Field, FL 32544-5320
F08621, 5U—31 TFW/LGC, Homestead AFB, FL 33039-5320
F08626, QU—ASD/PK-1, Aeronautical Systems Division, Eglin AFB, FL 32542-5000
F08630, S1—ASD/PKRL, Eglin AFB, FL 32542-5000
F08635, RH—AFDTC/PK (C), Air Force Development Test Center, Eglin AFB, FL 32542-5000
F08637, 5V—HQ USAF ADWC/LGC, Tyndall AFB, FL 32403-5320
F08650, TJ—ESMC/PMK, Base Contracts, Patrick AFB, FL 32925-5472
F08651, Q3—AFDTC/PKO, Operational Contracting, Eglin AFB, FL 32542-5320
F08675, T2—AFPRO, Pratt & Whitney Aircraft, P.O. Box 109600, West Palm Beach, FL 33412-9600
F09603, RJ—WR-ALC/PM, Warner Robins Air Logistics Center, Robins AFB, GA 31098-5320
F09604, RU—Det 8, 2762 Logistics Sq (AFLC), Robins AFB, GA 31098
F09607, 5W—347 TFW/LGC, Moody AFB, GA 31699-5320
F09609, 5X—94 CSG/LGC, Dobbins AFB, GA 30069-5320
F09632, RK—AFPRO, Lockheed-GA Co., Marietta, GA 30063-0001
F09634, 5Y—HQ AFRES/LGC, Robins AFB, GA 31098-6001
F09650, Q6—WR-ALC/PMK, Base Contracts, Robins AFB, GA 31098-5320
F10603, 5Z—366 TFW/LGC, Mountain Home AFB, ID 83648-5320
F11602, 6A—CTTC/LGC, Chanute AFB, IL 61868-5320
F11603, 6B—928 TAG/LGC, Chicago O'Hare ARFF IL 60666-5000
F11623, 6C—375 AAW/LGC, Scott AFB, IL 62225-5320
F11624, X4—2026 CS/PGZ, Scott AFB, IL 62225-6001
F11626, RL—HQ MAC/TRC, Scott AFB, IL 62225-5001
F12617, 6D—05 AREFW/LGC, Grissom AFB, IN 46971-5320
F14614, 6E—384 BMW/LGC, McConnell AFB, KS 67221-5320
F14615, RP—AFPRO, Boeing Military Airplane Company, 3901 South Oliver Street, Wichita, KS 67277-7730
F16600, 6F—23 TFW/LGC, England AFB, LA 71311-5320
F16602, 6G—2 BMW/LGC, Barksdale AFB, LA 71110-5320
F17600, 6H—42 BMW/LGC, Loring AFB, ME 0475-5320
F17608—101 AREFW/LGC, Bangor International Airport, ME 04401-5320
F18400, S2—AFPRO, Westinghouse Defense and Electronics Systems Center, P.O. Box 1693, Baltimore, MD 21203-1693
F18600, RQ—AFSC/PK (C), Andrews AFB, DC 20334-5000
F19617, X0—439 CSG/LGC, Westover AFB MA 01022-5320
F19620, SQ—AFPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887-2941
F19628, RS—ESD/PK (C), Electronic Systems Division, Hanscom AFB, MA 01731-5000
F19630, RV—AFCAC/PK (C), Hanscom AFB, MA 01731-6340
F19650, SH—ESD/PKU, Base Contracts, Hanscom AFB, MA 01731-5320
F20603, 6J—379 BMW/LGC, Wurtsmith AFB, MI 48753-5320

F20613, 6L—410 BMW/LGC, K.I. Sawyer AFB, MI 49843–5320
F21611, 6N—934 TAG/LGC, Minneapolis-St. Paul IAP, MN 55450–5000
F22600, RC—KTTC/LGC, Keesler AFB, MS 39534–5000
F22608, 6Q—4 FTW/LGC, Columbus AFB, MS 39701–5000
F23606, 6R—351 SMW/LGC, Whiteman AFB, MO 65305–5320
F23608, 6S—442 CSG/LGC, Richards-Gebaur AFB, MO 64030–5000
F24604, 6T—341 SMW/LGC, Malmstrom AFB, MT 59402–5320
F25600, 6U—55 SRW/LGC, Offutt AFB, NE 68113–5320
F25606, TD—3908 CONS/LGC, Offutt AFB, NE 68113–5000
F26600, S4—554 OSW/LGC, Nellis AFB, NV 89191–5320
F26606, 6M—37 Tactical Fighter Wing/LGC, Nellis AFB, NV 89191–5320
F27604, R5—509 BMW/LGC, Pease AFB, NH 03803–5320
F28609, 6V—438 MAW/LGC, McGuire AFB, NJ 08641–5320
F28620, S8—OL–A, 1605 MASW/LGC, McGuire AFB, NJ 08641–5000
F29601, RW—Air Force Space Technology Center (AFSC)/PKR, Kirtland AFB, NM 87117–5320
F29605, 6W—27 TFW/LGC, Cannon AFB, NM 88103–5320
F29650, R3—Air Force Space Technology Center (AFSC)/PKB, Kirtland AFB, NM 87117–5320
F29651, 6X—833 AD/LGC, Holloman AFB, NM 88330–5320
F30602, RX—RADC/PK (C), Rome Air Development Center, Griffiss AFB, NY 13441–5700
F30617, 6Y—914 TAG/LGC, Niagara Falls IAP, NY 14304–5320
F30625, ST—AFPRO, Eaton AIL, Eaton Corporation, AIL Div., Commack Road, Deer Park, Long Island, NY 11729–9998
F30635, S3—416 BMW/LGC, Griffiss AFB, NY 13441–5320
F30636, 6Z—380 BMW/LGC, Plattsburgh AFB, NY 12903–5320
F31601, BU—317 TAW/LGC, Pope AFB, NC 28308–5320
F31610, BW—4 TFW/LGC, Seymour Johnson AFB, NC 27531–5320
F32604, BX—57 AD/LGC, Minot AFB, ND 58705–5320
F32605, BY—321 SMW/LGC, Grand Forks AFB, ND 58205–5320
F33600, RZ—WPCC/PMR, PMS, PMT & PMY, Wright-Patterson AFB, OH 45433–5320
F33601, Q7—WPCC/PMK, Base Contracts, Wright-Patterson AFB, OH 45433–5320
F33615, SG—ASD/PMR, Directorate of R&D Contracting, Wright Patterson AFB, OH 45433–6503
F33620, SN—AFPRO RI NAAO, OL–AB, Rockwell International, P.O. Box 1259, Columbus, OH 43216–1259
F33630, C1—910 TAG/LGC, Youngstown MAP, OH 44473–0910
F33654, SB—AFPRO, General Electric Company, Cincinnati, OH 45215–6303
F33657, SC—ASD/PM (C), Aeronautical Systems Division, Wright-Patterson AFB, OH 45433–6503
F33659, Q8—2803 ABG/PM, Newark AFS, OH 43055–5320
F33660, TA—2083 ABG/PM6, Newark AFB, OH 43057–5320
F33661—Air Force Contract Maintenance Center (AFCMC), Wright-Patterson AFB, OH 45433–5000
F33661, S1—AFCMC/CM, Wright-Patterson AFB, OH 45433–5000
F33661, MJ—Det 33, AF Contr. Maint. Center, APO New York 09667–6207
F33661, SS—Det l6 AFCMC, APO New York 09633–5000
F33661, S8—AFLC Logistics Support Group—Saudi Arabia, AFCMC Contract Management Division, APO New York 09238–5002
F33661, SV—Det 17 AFCMC, APO New York 09378–5000
F33661, R1—Det 28 AFCMC, APO SF 96214–0006
F33661, SU—Det 19 AFCMC, APO New York 09283–0001
F33661, YE—Det 32 AFCMC, APO New York 09672–0008
F33661, TQ—Det 34 AFCMC, APO New York 09254–5305
F33661, VF—Det 36 AFCMC, APO New York 09240–5000
F33733, J8—HQ AFSC/PLMM, Wright-Patterson AFB, OH 45433–6503
F34600, C2—71 FTW/LGC, Vance AFB, OK 73705–5000
F34601, SD, TA—OC–ALC/PM, Oklahoma City Air Logistics Center, Tinker AFB, OK 73145–5320
F34608, TF—HQ EID/PK, Tinker AFB, OK 73145–6343
F34612, C3—443 MAW/LGC, Altus AFB, OK 73523–5320
F34650, Q9—OC–ALC–PMK, Base Contracts, Tinker AFB, OK 73145–5320
F35610, C4—114 TFTS/LGC, Kingsley Field, Klamath Falls, OR 97601
F36629, C7—911 TAG/LGC, Greater Pittsburgh IAP, PA 15231–5320
F36700, C8—913 TAG/LGC, Willow Grove ARF, PA 19090–5130
F36701, SF—AFPRO, GE Re-Entry Div, P.O. Box 8555, Philadelphia, PA 19101–8555
F36601, C9—363 TFW/LGC, Shaw AFB, SC 29152–5320
F38604, T3—HQ USCENTAF/LGC, Shaw AFB, SC 29152–5002
F38605, CA—354 TFW/LGC, Myrtle Beach AFB, SC 29579–5320
F38610, CR—437 MAW/LGC, Charleston AFB, SC 29404–5320
F39601, CT—44 SMW/LGC, Ellsworth AFB, SD 57706–5320
F40600, Q4—AEDC/PK (C), Arnold Engineering Development Center, Arnold AFB, TN 37389–5000
F40650, D1—AEDC/PKP, Base Contracts, Arnold AFB, TN 37389–5000
F41608, SA, QU—SA–ALC/PM, San Antonio Air Logistics Center, Kelly AFB, TX 78241–5320
F41612, D4—STTC/LGC, Sheppard AFB TX 76311–5000
F41613, D5—7 BMW/LGC, Carswell AFB, TX 76127–5320
F41614, E2—GTTC/LGC, Goodfellow AFB TX 76908–5000
F41620, E3—64 FTW/LGC, Reese AFB TX 79489–5000
F41621, SJ—HQ ESC/LEC, San Antonio, TX 78243–5000
F41622, QY—HSDPKO, Brooks AFB, TX 78235–5320
F41624 HSD/PK(C), Brooks AFB, TX 78235–5320
F41636, ZV—3700 Contracting Squadron, Lackland AFB, TX 78236–5000
F41640—HQ AFCOMS/DOC, Kelly AFB, TX 78241–6290
F41650, YA—SA–ALC/PMK, Base Contracts, Kelly AFB, TX 78241–5320
F41652, E5—96 BMW/LGC, Dyess AFB, TX 79607–5320
F41685, E6—47 FTW/LGC, Laughlin AFB TX 78840–5000
F41687, E9—67 TRW/LGC, Bergstrom AFB, TX 78743–5320
F41689, SK—3303 CS, Randolph AFB, TX 78150–5001
F41691, Y0—12 CONS/LGC, Randolph AFB, TX 78150–5000
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Fort Worth, TX 76101–0371,
F41800, T9—San Antonio Contracting Center, Ft Sam Houston AIN, P.O. Box 8218, San Antonio, TX 78208–8218
F41853, WP—AFPRO LTV, LTV Aerospace and Defense Co, P.O. Box 655907, Dallas, TX 75265–5907
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, 9504 IH 35 North, Rm 330, San Antonio, TX 78233
F42600, QP, SY—OO–ALC/PM, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42610, TE—OO–ALC/PM, ICBM Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42620, TG—OO–ALC/PM, Aircraft Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42630, XP—OO–ALC/PM, Commodities Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42650, R2—OO–ALC/PMK, Base Contracts, Hill AFB, UT 84056–5320
F42651, R6—AFPRO, Morton Thiokol Corp, P.O. Box 524/MS Z–10, Brigham City, UT 84302–0524
F44600, F3—1 TFW/LGC, Langley AFB, VA 23665–5320
F44650, Q1—4400 CONS/LGCN (C), Langley AFB, VA 23665–5000
F45603, F5—62 MAW/LGC, McChord AFB, WA 98438–5320
F45613, F8—92 BMW/LGC, Fairchild AFB, WA 99011–5320
F45632, SP—AFPRO, The Boeing Company, P.O. Box 3707, Seattle, WA 98124–3707,
F47606, G7—440 TAW/LGC, Gen. Billy Mitchell Field, 00 College Ave., Milwaukee, WI 53207–5000
F48603, G9—90 SMW/LGC, F.E. Warren AFB, WY 82001–5320
F49620—AFOSR/PK (C), Bolling AFB, DC 20332–6448
F49642, J1—1100 CNS/CN (AFDW), Operational Contracting, Andrews AFB, DC 20331–5320
F49650, X0—1100 CNS/SP (AFDW), Specialized Contracting, Andrews AFB, DC 20331–5320
F61040, M1—1605 MASW/LGC, APO New York 09406–5320
F61051—USDAO, American Embassy—Brussels, APO New York 09667

F61060—USDAO, American Embassy—Sofia, APO New York 09757
F61080—USDAO, American Consulate General—Prague, APO New York 09757
F61100—USDAO, American Embassy—Copenhagen, APO New York 09170
F61101, T1—Det 1, Space Combat Operations Staff/LGC, APO New York 09170–5000
F61121, RF—USAFE Contracting Office, OL A DET 4, 7000 CONS/LGC, APO New York 09193–5320
F61130—USDAO, American Embassy—Helsinki, APO New York 09664
F61171—USDAO, American Embassy—Athens, APO New York 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7030 CONS/LGC, APO New York 09223–5320
F61180—USDAO, American Consulate General—Budapest, APO New York 09757
F61210—USDAO, American Embassy—Rome, APO New York 09794
F61211, N9—USAFE Contracting Region—Italy, Det 6, 7000 CONS/LGC, APO New York 09293–5320
F61214, U9—USAFE Contracting Office, OL–A Det 6, 7000 CONS/LGC, APO New York 09240–5320
F61220, BZ—AFLC/SCE–PM, Support Center Europe, APO New York 09240–5320
F61230, XV—AFLC SGE/RMP, APO New York 09243–5000
F61250, TP—USAFE Contracting Office, OL–B DET 6, 7000 CONS/LGC, APO New York 09694–5320
F61256—USAFE Contracting Office, OL–C DET 6, 7000 CONS/LGC, APO New York 09161–5320
F61260—USDAO, American Embassy—The Hague, APO New York 09159
F61264—USAFE Contracting Office, OL–B DET 10, 7000 CONS/LGC, APO New York 09669–5320
F61270—USDAO, American Embassy—Oslo, APO New York 09085
F61271, T8—USAFE Contracting Office, OL–A Det 2, 7000 CONS/LGC, APO New York 09085–5320
F61280—USDAO, American Consulate General—Belgrade, APO New York 09757
F61290—USDAO, American Embassy—Lisbon, APO New York 09678
F61301—USDAO, American Embassy—Bucharest, APO New York 09757
F61308, W3—USAFE Contracting Region—Spain, Det 5, 7000 CONS/LGC, APO New York 09283–5320
F61310—USDAO, American Embassy—Madrid, APO New York, NY 09285
F61354, W8—7241 ABG/LGC, APO New York 09224–5320
F61355, T4—HQ TUSLOG/LGC, APO New York 09254–5320
F61358, W9—39 TACG/LGC, APO New York 09289–5320
F61503, UC—435 TAW/LGC, APO New York 09057–5320
F61504, T6—7350 ABG/LGC, APO New York 09611–5320
F61517, UF—USAFE Contracting Region—Eifel, Det 3, 7000 CONS/LGC, APO New York 09132–5320
F61519, R4—USAFE Contracting Region—Mosel, Det 10, 7000 CONS/LGC, APO New York 09109–5320
F61521, UH—USAFE Contracting Office—Rhineland Pfalz, Det 2, 7000 CONS/LGC, APO New York 09012–5320
F61527—USAFE Contracting Office, OL–C Det 10, 7000 CONS/LGC, APO New York 09027–5320
F61546, UJ—USAFE Contracting Center, Det 1, 7000 CONS/LGC, APO New York 09633–5320
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York 09012
F61700, TM—USAFE Contracting Office, OL–A Det 9, 7000 CONS/LGC, APO New York 09150–5320
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 CONS/LGC, APO New York 09194–5320
F61712, UM—USAFE Contracting Office, OL–B Det 4, 7000 CONS/LGC, APO New York 09755–5320
F61730, UQ—USAFE Contracting Office, OL–C Det 4, 7000 CONS/LGC, APO New York 09238–5320
F61775, UV—USAFE Contracting Region—UK North, Det 4, 7000 CONS/LGC, APO New York 09179–5320
F61815, T7—USAFE Contracting Office, OL–A Det 10, 7000 CONS/LGC, APO New York 09292–5320
F61817, UW—USAFE Contracting Office, OL–A Det 5, 7000 CONS/LGC, APO New York, NY 09286–5320
F61910, WJ—USAFE Contracting Office, OL–A Det 3, 7000 CONS/LGC, APO New York 09188–5320
F62032, 4D—HQ USMTM/SAS–LGC, APO New York 09616–5320
F62321, RA—313 AD Contracting Center/LGC, APO SF 96239–5320
F62509, QZ—432 TFW Base Contracting Division/LGC, APO SF 96519–5000
F62562, SW—475 ABW Contracting Center/LGC, APO SF 96328–5320
F62600—5 DSCS/LGC, APO SF 96287–5000
F63197, UX—USAFE Contracting Office, OL–A Det 7, 7000 CONS/LGC, APO New York 09291–5320
F64133, S9—633ABW/LGC, APO SF 96334–5320
F64605, TN—15 ABW Contracting Center/LGC, Hickam AFB, HI 96853–5320
F64608—Communications/ADPE Branch, 15ABW Contracting Center, Hickam AFB, HI 96853–5320
F64620, SZ—HQ PACAF/LGC, Hickam AFB, HI 96853–5001
F64719, TK—13 AF Contracting Center/LGC, APO SF 96274–5320
F65501, WF—Det 2, 5000 CONS/LGC, Elmendorf AFB, AK 99506–5001
F65503, WH—Det 1, 5000 CONS/LGC, Eielson AFB, AK 99702–5320
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506–5001
F66501—USAFSO/LGC
R7—APO Miami 34001–5320

Part 6—Defense Logistics Agency Activity Address Numbers

DLAH00, YK—Defense Logistics Agency, ADP/Telecommunications Contracting Office, Cameron Station, Alexandria, VA 22304–6100
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, Memphis, TN 38114–5297
DLA003, TT—Defense Depot Ogden, Ogden, UT 84407–5000
DLA004, WX—Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070–5001
DLA005, TV—Defense Depot Tracy, South Chrisman Road, Tracy, CA 95376–5000
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106–2895
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–5210
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185–0001
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA200, X1—Defense Reutilization and Marketing Service, Federal Center, Battle Creek, MI 49017–3092
DLA300, VS—Defense National Stockpile Center, 1745 Jefferson Davis Hwy, Suite 100, Arlington, VA 22202–5000
DLA301, VT—Defense National Stockpile Center, Zone 1 Management Office, Room 19–116, 26 Federal Plaza, New York, NY 10078–5000
DLA302, VU—Defense National Stockpile Center, Zone 2 Management Office, 3200 Sheffield Avenue, Hammond, IN 46327–5000
DLA303, VY—Defense National Stockpile Center, Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000
DLA400, TY—Defense General Supply Center, Richmond, VA 23297–5000
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297–5000
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297–5000
DLA430—Defense General Supply Center, COPS, Richmond, VA 23297–5000
DLA500, TZ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA510, W2—Defense Industrial Supply Center, Base Operating Support System (BOSS), 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA520—Defense Industrial Supply Center, Product Verification Testing (PVT) Acquisitions, 700 Robbins Avenue, Philadelphia, PA 19111–5096

DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22304–6160
DLA700, UB—Defense Construction Supply Center, P.O. Box 3990, Columbus, OH 43216–5000
DLA710, YL—Defense Construction Supply Center, Commercial Activities & Services Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA730, WZ—Defense Construction Supply Center, Military Interdepartmental Purchase Request, MIPR Division, P.O. Box 3990, Columbus, OH 43216–5000
DLA740, XJ—Defense Construction Supply Center, High Demand Group (MINI–ICP), P.O. Box 3990, Columbus, OH 43216–5000
DLA750, UB—Defense Construction Supply Center, Contracts Division I, P.O. Box 16704, Columbus, OH 43216–5010
DLA760, UB—Defense Construction Supply Center, Contracts Division II, P.O. Box 16704, Columbus, OH 43216–5010
DLA770, UB—Defense Construction Supply Center, Contracts Division III, P.O. Box 16704, Columbus, OH 43216–5010
DLA8AC, UG—DCMAO, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712–2700
DLA8AL, Y1—DCMAO, Atlanta, 805 Walker Street, Marietta, GA 30060–2789
DLA8AM, YQ—DPRO McDonnell Douglas, P.O. Box 5669, Titusville, FL 32783–5669
DLA8AN, Z4—DCMAO Clearwater, 1100 Cleveland Street, suite 200, Clearwater, FL 34615–4822
DLA8AP, Z5—DPRO Grumman St. Augustine, 5000 US HWY 1, North, P.O. Drawer 3447, St. Augustine, FL 32085–3447
DLA8AQ—DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060–2789
DLA8AR—DPRO Michoud, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29503, New Orleans, LA 70189–0503
DLA8AS—DCMR Atlanta, Termination Settlement Division, 805 Walker Street, Marietta, GA 30060–2789.
DLA8AT, UL—DCMR, Atlanta, 805 Walker Street, Marietta, GA 30060–2789
DLA8AU, QV—DPRO Aerojet, Sacramento, P.O. Box 15846, Sacramento, CA 95852–1846
DLA8BA, UN—DCMAO Birmingham, 2121 8th Avenue North, Room 104, Birmingham, AL 35203–2376
DLA8BC, UP—DCMAO Bridgeport, 555 Lordship Blvd., Stratford, CT 06497–5000
DLA8BF, W1—DPRO Bell Helicopter Textron, P.O. Box 1605, Fort Worth, TX 76101–1605
DLA8BK, Z3—DPRO Boeing Louisiana, Inc., 4300 Legion Street, Lake Charles, LA 70601–5166
DLA8BL, Y4—DPRO Textron Lycoming Division, 550 South Main Street, Stratford, CT 06497–7593
DLA8BM, UR—DCMAO Baltimore, 200 Towsontown Blvd., West, Towson, MD 21204–5299
DLA8BN, US—DPRO AT&T Technologies, Inc., 204 Graham Hopedale Road, Burlington, NC 27217–2941
DLA8BP, UT—DCMR Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BQ, TU—DPRO Boeing Helicopter, P.O. Box 16859, Philadelphia, PA 19142–0859
DLA8BR, SP—DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124–3707
DLA8BS, Y3—DCMAO Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BT, UU—DPRO Allied Signal, Route 46, Teterboro, NJ 07068–1173
DLA8BU, XC—DCMAO Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202–2392
DLA8BV, YT—DPRO General Electric, Lakeside Avenue, Burlington, VT 05401–4984
DL8BW, RP—DPRO Boeing Military Airplanes, P.O. Box 7730, Wichita, KS 62777–7730
DLA8CD, UZ—DCMAO Cedar Rapids, 1231 Park Place, NE, Cedar Rapids, IA 52402–2023
DLA8CH, UY—DCMR Chicago, O'Hare International Airport, P.O. Box 66475 Chicago, IL 60666–0475
DLA8CL, VB—DCMR Cleveland, J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2063
DLA8CM, U5—DPRO BMY Marysville, 13311 Industrial Parkway, Marysville, OH 43040–9599
DLA8CN, Y5—DCMAO Cleveland, J. Celebrezze Federal Building, 1240 East Ninth St, Cleveland, OH 44199–2064
DLA8CO, X6—DPRO Loral, 1432 Exeter Road, Akron, OH 44306–3893
DLA8CS, VE—DPRO General Dynamics, 5001 Kearny Villa Road, P.O. Box 85375, San Diego, CA 92138–5357
DLA8DA, VG—DCMR Dallas, 1200 Main Street, Dallas, TX 75202–4399
DLA8DB, Z7—DCMAO Dallas, P.O. Box 50500, Dallas, TX 75250–5050
DLA8DC, VH—DCMAO San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
DLA8DD, U4—DPRO Rockwell International, 3200 E Renner Road, MS 462–115, Richardson, TX 75082–2402
DLA8DL, TC—DPRO Douglas, Long Beach, 3855 Lakewood Boulevard, Long Beach, CA 90846–0001
DLA8DM, Y7—DCMAO Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2506
DLA8DN, VK—DCAMO, Denver, 750 W Hampden Avenue, Suite 250, Englewood, CO 80110–2199
DLA8DP, VL—DCMAO, Dayton, c/o Defense Electronics Supply Center, Building 1, Dayton, OH 45444–5300
DLA8EC, YP—DCAMO, Chicago, O'Hare International Airport, P.O. Box 66911, Chicago, IL 60666–0911
DLA8EG, ST—DPRO, Eaton, AIL DIV, Commack Road, Deer Park, NY 11729–9998
DLA8FL, VN—DPRO, ITT, Defense Group, 500 Washington Ave, Nutley, NJ 07110–3698
DLA8FM, 3N—DPRO, FMC, Minneapolis, 4800 East River Road, Minneapolis, MN 55421–1402
DLA8FS, VR—DPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103–0367
DLA8FT, Y2—DPRO, Ford Newport Beach, Administration Building, Room 313, Ford Road, Newport Beach, CA 92658–8900
DLA8GB, KK—DPRO, Grumman Aerospace, Bethpage, Bethpage, NY 11714–3531
DLA8GC, SB—DPRO, GE Aircraft Engines, Cincinnati, Mail Drop N–1, Cincinnati, OH 45215–6303
DLA8GD, YB—DPRO, Westinghouse, 18901 Euclid Ave, Cleveland, OH 44117–1388
DLA8GE, 7Q—DPRO, General Electric, Aircraft Engines, Lynn, 1000 Western Avenue, Lynn, MA 0910–0445
DLA8GF, SL, TH—DPRO, General Dynamics, Fort Worth, P.O. Box 371, Fort Worth, TX 76101–0371
DLA8GG, KD—DPRO, General Dynamics, Pomona, P.O. Box 2505, Pomona, CA 91769–2505
DLA8GL, VV—DPRO, General Electric Company, M/S 9–2 Automated Systems Department, Bedford Street, P.O. Box 538, Burlington, MA 01803–0949
DLA8GM, VW—DCMAO, Grand Rapids, Riverview Center Building, 678 Front Street, NW, Grand Rapids, MI 49504–5352
DLA8GN, VX—DCMAO, Garden City, 605 Stewart Avenue, Garden City, NY 11530–4761
DLA8GP, YF—DPRO, General Dynamics, Lima, 1155 Buckeye Road, Lima, OH 45804–1898
DLA8GQ, SF—DPRO, General Electric, Philadelphia, 230 Goddard Boulevard, King of Prussia, PA 19406–2902
DLA8GR, M0, NJ—DPRO, General Electric, Pittsfield, 100 Plastics Avenue, Pittsfield, MA 01201–3696
DLA8GW, Z2—DPRO, General Dynamics, Warren, 28251 Van Dyke Street, Warren, MI 48090–5000
DLA8HB, WA—DPRO, PEMCO Aeroplex, Inc., P.O. Box 12447, Birmingham, AL 35202–2447
DLA8HC, WB—DCMAO, Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
DLA8HD, WC—DPRO, Kearfott/Plessey, 164 Totowa Road, M/S 11A30, Wayne, NJ 07474–0975
DLA8HL, QT—DPRO, Hughes, Los Angeles, P.O. Box 92463, Los Angeles, CA 90009–2463
DLA8HM, WD—DPRO, Honeywell, Honeywell Plaza, 2701 Fourth Avenue, South Minneapolis, MN 54408–1792
DLA8HN—DPRO, Hercules, Magna, P.O. Box 157, Magna, UT 84044–0157
DLA8HR, Z9—DCMC Residence Hawaii, Federal Building, Room 4115, 300 Ala Moana Boulevard., Honolulu, HI 96813–4908
DLA8HS, XT—DPRO, Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
DLA8HT, SR—DPRO, Hughes Missile Systems Group, P.O. Box 11337, M/S E–4, Tucson, AZ 85734–1337
DLA8HU, XG—DPRO, Hughes, Building 600, Mail Station C107, P.O. Box 3310, Fullerton, CA 92634–3310
DLA8JJ, WG—DCMAO, Indianapolis, Building 1, Fort Benjamin Harrison, IN 46249–5701
DLA8JK, Z8—DPRO, GMC Allison, 2001 South Tibbs Avenue, Indianapolis, IN 46241–4812
DLA8JL, X2—DPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808–1286

DLA8KA, XY—DPRO, Kaman Aerospace, Old Windsor Road, P.O. Box 2, Bloomfield, CT 06002–0002
DLA8LA, WL—DCMR, Los Angeles, 222 N Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LB, WM—DPRO, Litton, 5490A Canoga Ave, Woodland Hills, CA 91367–6619
DLA8LC, Y8—DCMAO, El Segundo, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LD, WP—DPRO, LTV Aerospace and Defense, P.O. Box 655907, M/S 4915, Dallas, TX 75265–5907
DLA8LE, KZ— DPRO, Lockheed, Burbank, P.O. Box 551, Burbank, CA 91520–1070
DLA8LF, QX—DPRO, Lockheed, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LG, RK— DPRO, Lockheed Aeronautical Systems Company—Georgia, 865 Cobb Drive, Marietta, GA 30063–0260
DLA8LS, KH—DPRO, Lockheed Missiles, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LT, WN—DPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401–0379
DLA8MB, V1—DPRO, Harris, Melbourne, 1425 Troutman Boulevard, N.E., Palm Bay, FL 32905–4102
DLA8MC, V2—DPRO, Rockwell International-MSD, P.O. Box 1357, Duluth, GA 30136–4099
DLA8MD, RE—DPRO, Martin Marietta, Denver, P.O. Box 179, Denver, CO 80201–0179
DLA8MF, QF—DCMAO, Puerto Rico, Box DLA N S G A, FPO Miami, FL 34053–0007
DLA8MH, X9—DPRO, McDonnell Douglas Space Systems Company, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2048
DLA8ML, TR—DPRO, McDonnell Douglas Helicopter, 5000 East McDowell Road, Mesa, AZ 85025–9797
DLA8MM, XL—DPRO, Martin Marietta, Orlando, P.O. Box 55837, Mail Point 49, Orlando, FL 32855–5837
DLA8MN, WQ—DCMAO, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116–1893
DLA8MS, JZ—DPRO, McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166–0516
DLA8MW, WR—DCMAO, Milwaukee, H. S. Reuss Federal Building, suite 340, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2282
DLA8NC, WV—DCMAO, Ottawa, P.O. Box 3416, Station D, Ottawa, On Canada K1P 6L4
DLA8NF, WW—DCMAO, Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
DLA8NH, YS—DPRO, Lockheed Sanders, Inc., Daniel Webster Highway, South, P.O. Box 868, Nashua, NH 03061–0868
DLA8NJ, WT—DCMAO, Springfield, 240 Route 22, Springfield, NJ 07081–3170
DLA8NK, QR—DPRO, Northrop, Hawthorne, One Northrop Avenue, Hawthorne, CA 90250–3296
DLA8NL, Z1—DCMAO, New Orleans, P.O. Box 29283, New Orleans, LA 70189–0283
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827–1298
DLA8NN, YN—DPRO, Harris, 6801 Jericho Turnpike, Syosset, NY 11791–4465
DLA8NY, WU—DCMR, New York, 201 Varick Street, New York, NY 10014–4811
DLA8NZ, Y9—DCMAO, New York, 201 Varick Street, New York, NY 10014–4811
DLA8PA, WY—DCMAO, Phoenix, The Monroe School, 215 N 7th Street, Phoenix, AZ 85034–1012
DLA8PE, T5—DPRO, Pratt & Whitney, East Hartford, 400 Main Street, East Hartford, CT 06108–0969
DLA8PH, XA—DCMR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101–7478
DLA8PL, X3—DCMAO, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101–7699
DLA8PM, XB—DPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110–4198
DLA8PP, XD—DCMAO, Pittsburgh, 1612 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
DLA8PR, X7—DPRO, GE Aerospace, Marne Highway and, Borton Landing Road, Moorestown, NJ 08057–3095
DLA8PW, T2—DPRO, Pratt & Whitney, West Palm Beach, P.O. Box 109600, West Palm Beach, FL 33410–9600
DLA8RA, 7H—DCMC Residency, Annapolis, P.O. Box 1488, Annapolis, MD 21404–1488
DLA8RB, XF—DPRO, Raytheon, Spencer Laboratory, Wayside Ave, Burlington, MA 01803–0901
DLA8RC, RY—DPRO, Rockwell, Canoga Park, 6633 Canoga Avenue, Canoga Park, CA 91303–2790
DLA8RD, RB—DPRO, Rockwell, Anaheim, 3370 Miraloma Avenue M/SAB02A, Anaheim, CA 92803–3110
DLA8RL, QS—DPRO, Rockwell, Los Angeles, P.O Box 92098, Los Angeles, CA 9009–2098
DLA8RP, XM—DCMAO, Reading, 45 South Front Street, Reading, PA 19602–1094
DLA8SA, XN—DCMAO, San Antonio, 615 East Houston, P.O. Box 1040, San Antonio, TX 78294–1040
DLA8SD, X8—DPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125–0066
DLA8SF, XR—DCMAO, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066–3070
DLA8SK, XQ—DPRO, Link Flight Simulation, Kirkwood Plant, Binghamton, NY 13902–1237
DLA8SL, XS—DCMR, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2811
DLA8SN, XU—DCMAO, Syracuse, 615 Erie Boulevard, West, Syracuse, NY 13204–2408
DLA8SS, LF—DPRO, UTC Silorsky Aircraft Division, Stratford, CT 06497–7553
DLA8ST, X5—DCMAO, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2812
DLA8SW, XW—DCMAO, Seattle, Building 5D, Naval Station Puget Sound, Seattle, WA 98115–5010
DLA8SY, XX—DPRO, GTE Government Systems Corporation, 200 First Ave, Needham, MA 02194–9123
DLA8TB, R6—DPRO, Thiokol, P.O. Box 524, Mail Stop X–10, Brigham City, UT 84302–0524
DLA8TE, XZ—DPRO, Texas Instruments, Inc., P.O. Box 660246, M/S 256, Dallas, TX 75266–0246
DLA8TO, U3—DPRO, McDonnell Douglas/ Rockwell, 2000 North Memorial Drive, Tulsa, OK 74115–3833
DLA8TR, S6—DPRO, TRW, Redondo Beach, One Space Park, Redondo Beach, CA 90278–1078
DLA8TW, SQ—DPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
DLA8UG, NH—DPRO, Unisys, Great Neck, Long Island, Great Neck, NY 11020–7001
DLA8VC, YC—DCMAO, Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
DLA8WB, S2—DPRO, Westinghouse Electric, Baltimore, P.O. Box 1693, M/S 1265, Baltimore, MD 21203–1693
DLA8WK, YD—DCMAO, Wichita, U.S. Courthouse, suite B–34, 401 North Market, Wichita, KS 67202–2095
DLA8WR, YH—DPRO, Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088–0200
DLA8WS, YG—DPRO, Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11–7, Sunnyvale, CA 94088–3499
DLA8WT, Z8—DPRO, Grumman Aerospace Corporation, P.O. Box 9015, Stuart, FL 33495–9015
DLA8WU, VA—DPRO, Northrop, 600 Hicks Rd, Rolling Meadows, IL 60008–1098
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000
DLA910, U7—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444–5000

Part 7—Defense Communications Agency Activity Address Numbers

DCA100, VC—Defense Communications Agency, (ZD10), Contract Management Division, attn: PL, Washington, DC 20305–2000
DCA200, VP—DECCO (ZD11), attn: RGC, Scott AFB, IL 62225–8300
DCA400—DECCO–Europe (ZD13), attn: RS, APO New York, NY 09136–5000

Part 8—Defense Mapping Agency Activity Address Numbers

DMA600, BQ—Defense Mapping Agency System Center, (ZD40), 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207
DMA650—Defense Mapping Agency, (ZD43), Hydrographic/Topographic Center *SXO*, Building 4011, Ft. Sam Houston, TX 78234–5000
DMA700, 8Y—Defense Mapping Agency, (ZD41), Aerospace Center, 3200 South Second Street, attn: AQI, St. Louis, MO 63118–3399
DMA800, YZ—Defense Mapping Agency, (ZD42), Hydrographic/Topographic Center AQ, 6500 Brookes Lane, Washington, DC 20315–0030

Part 9—Defense Nuclear Agency Activity Address Numbers

DNA001, 8Z—Defense Nuclear Agency, (ZD30), Headquarters, 6801 Telegraph Road, attn: AM, Washington, DC 22310
DNA002, 0N—Defense Nuclear Agency, (ZD31), Field Command, attn: Office of Procurement, Kirtland AFB, NM 87115–5000
DNA004—DNA Armed Forces Radiobiology Research Institute, (ZD32), attn: Building 42, Bethesda, MD 20814–5145

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA902—Armed Forces Radio and Television Service, (ZD02), 10888 La Tuna Canyon Road, Sun Valley CA 91352–2058

MDA903, F7—Defense Supply Service—Washington, (ZD03), Room 1D245, The Pentagon, Washington, DC 20310–5200

MDA904, BE—Maryland Procurement Office, (ZD04), 9800 Savage Road, attn: I411, Ft George G. Meade, MD 20755–6000

MDA905, B4—Uniformed Services University of the Health Sciences, (ZD05), 4301 Jones Bridge Road, Bethesda, MD 20814–4799

MDA906—Office for the Civilian Health & Medical, Program of the Uniformed Services (CHAMPUS) (ZD06), attn: Contract Management, Aurora, CO 80045–6900

MDA907—Purchasing and Contracting Office, (ZD07), Menwith Hill Station, APO New York 09210

MDA908, 2X—Virginia Contracting Activity, (ZD50), P.O. Box 46563, attn: RSQ, Washington, DC 20050–6563

MDA946—WHS Contracting Office, (ZD46), Real Estate/Facilities Directorate, The Pentagon, room 2E174, Washington, DC 20301–1155

MDA911, 2U—Headquarters, U.S. Special Operations Command, (ZD22), attn: SOKO, MacDill Air Force Base, FL 33608–6001

MDA970, ZL—Defense Evaluation Support Activity, (ZD70), Building 20451, attn: DESA–PD, Kirtland AFB, NM 87117–5000

MDA972, WS—DARPA Contract Management Office, (ZD72), 1400 Wilson Blvd, Arlington, VA 22209–2309

Part 11—On-Site Inspection Agency Activity Number

0S1A01—On-Site Inspection Agency, (ZD74), Washington/Dulles International Airport, Washington, DC 20041–0498

Part 12—Strategic Defense Initiative Organization Activity Number

SDIO84—Strategic Defense Initiative Organization, (ZD60), The Pentagon, room 1E1019, attn: SDIO/CT (Mrs. Wilhelm), Washington, DC 20301–7100

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federal register

Wednesday
July 31, 1991

Part III

Department of Health and Human Services

Social Security Administration

Supplemental Security Income Modernization Project Issue Paper; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project Issue Paper

AGENCY: Social Security Administration, HHS.

ACTION: Publication of SSI Modernization Project Issue Paper.

SUMMARY: The Social Security Administration (SSA) takes this opportunity to publish an issues paper produced as a result of the public meetings of the Supplemental Security Income (SSI) Modernization Project. A 60-day comment period is allowed from the date of publication in the **Federal Register**.

DATES: Comments must be submitted on or before September 30, 1991.

TO SUBMIT COMMENTS OR REQUEST FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 311, Altmeyer Bldg., P.O. Box 17073, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA has undertaken a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of the Project is intended to create a dialogue that provides a full examination of how well the SSI law and the policies developed by SSA to implement the law serve the needy aged, blind, and disabled. To begin this dialogue, the Commissioner involved 24 people who are experts in the SSI program and/or related public policy areas. The experts represent a wide range of interests regarding programs that serve aged, blind, and disabled persons. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, is the chairperson. The Project held public meetings in Baltimore, Maryland; Washington, DC; New York City, New York; Chicago, Illinois; Los Angeles, California; Montgomery, Alabama; and Atlanta, Georgia. These meetings were announced in the **Federal Register** and individuals were invited to testify either in person or through correspondence to the Project staff. During these meetings, the public as well as the experts have expressed their individual views and concerns about the SSI program. The purpose of this initial dialogue was to exchange ideas and information about the program. This exchange facilitated the sharing of ideas among attendees' constituencies, including advocacy groups, state and local governments and academicians.

The SSI Modernization Project Staff now publishes the following paper in the **Federal Register** which identifies the major issues that have surfaced, summarizes the testimony growing out of the public meetings and includes the options for change that have been identified as a result of the public testimony. These options reflect possibilities for solution of issues by participants in the public meetings of the experts and through correspondence with the project. They should not be identified as the views of SSA or of the SSI Modernization Project experts. During the public meetings, 239 individuals testified on their own behalf or on behalf of organizations which they represented. In addition, approximately 100 individuals or groups wrote to the Project to provide testimony regarding the problems with the SSI program and to offer options to resolve these problems.

In some cases, the status quo is an option which has been advocated by the public. The status quo is discussed in each section under the heading, "Current Approach." It should also be noted that all the options for change would require legislation unless they are specifically identified as requiring a regulatory change only.

SSA invites the public to comment on the issues and options by September 30, 1991. Comments should be sent to the address shown above for the SSI Modernization Project. Commenters need not limit their remarks to the issues or options presented in the paper; additional issues with proposed solutions and additional options to address the issues contained herein may be submitted. Commenters should also feel free to state their support for the status quo as described in "Current Approach." Commenters may choose to respond only to specific topics rather than to the entire paper. It would be helpful if individuals or groups would indicate the order in which they would like to see implemented the various options they support. Responses may be hand written.

The responses will be used by the SSI Modernization Project experts at their November meeting to formulate their individual points of view concerning which options they support and which deserve priority consideration.

Dated: July 19, 1991.

Peter D. Spencer,

Executive Staff Director, SSI Modernization Project.

Topical Listing

Services Provided by the Social Security Administration
Adequacy of the Income Floor in the SSI Program
State Supplementation With an Increased Federal Benefit
Assets/Resources
Unearned Income
In-kind Support and Maintenance
Couples
Definition of "Substantial Gainful Activity"
Work Incentives
Role of SSA Field Office versus Role of Disability Determination Services in Initial Disability Claims Intake Process
Processing Disability Appeals
The Definition of "Aged"
Accounting Issues:
- Test Annual Prospective Accounting Model(s)
- Triple Counting and Termination of Income
- Five Paydays
- Monthly Verification of Wages
- State Supplementation Payments Computation

Linkage of the SSI and Medicaid Programs
Linkage of the SSI and Food Stamp Programs
Representative Payment
Funding for Outreach Activities
Information and Referral Services
Homelessness
Advisory Council Review

Services Provided by the Social Security Administration

Background: Between 1984 and 1990, SSA underwent a planned staff reduction in excess of 17,000 positions. The downsizing ended in 1990 but current staffing levels remain approximately 21 percent below the pre-1984 levels. Over the same period, SSA's overall workloads either remained constant or increased. SSI claims based on disability, for example, increased by more than 20 percent.

The Chairman of the House Ways and Means' Subcommittee on Social Security recently asked the Commissioner of Social Security how a staff increase of 6,000 would improve SSA's services. The Commissioner responded that funds for additional staff would be devoted to priority workloads such as processing additional disability and appellate cases; processing additional workloads generated by provisions of recent

legislation; reducing the busy rate on the 800 number service; and increasing time spent in field offices on new claims, postentitlement actions, and continuing eligibility reviews.

Summary of Testimony from Public Hearings: Witnesses alleged that—

Service in General. The loss of employees has affected SSA's ability to do what the public has grown to expect. SSA claims representatives no longer seem to want to help people.

"[T]he lines are long, the minutes spent with each applicant are short." (Legal services representative)

"[T]he single most important change that can be made to humanize the SSI program is to increase staffing levels." (Legal services panel)

There is a need for more outreach. However, receipt of additional claims without adequate resources will have a negative impact on program objectives, staff morale, and service delivery.

Staff Qualifications and Training. SSA needs more and better trained bilingual workers. Field staff need disability sensitivity awareness training and better understanding of the SSI program and its work incentives.

Processing Delays. The most obvious result of SSA understaffing is the severe delay in processing claims at all stages.

Field Offices Lack Privacy. For the sake of employees and claimants alike, relatively soundproof privacy screens are needed around claims representatives' desks.

"It is undignified to ask people to talk about . . . intimate details of their lives without any privacy . . . . perhaps this seems insignificant, yet individual dignity is never insignificant." (Law school advocate coordinator)

Computer Modernization Needed. There are "repeated input errors" (legal services attorney) and staff often does not have time to repeat the procedure until it is correct.

"So many problems are caused by mix-ups on the computer." (Health clinic worker)

Program Integrity.

"We regret that the oversight and enforcement of the representative payee program seems to have virtually disappeared." (Adult protective services administrator)

Teleservice (800 Number) System. The toll-free number system is not working. Staff shortages have brought more busy signals, calls not being returned, and lack of consistency in information provided.

What Readers May Wish to Consider: Those responding to this document are encouraged to share their views, especially those growing out of actual experiences, regarding service deficiencies and their recommendations for overcoming these deficiencies.

Adequacy of the Income Floor in the SSI Program

Current Approach: The Report of the Senate Finance Committee dated September 26, 1972 stated that the legislation which created the SSI program would "create a new Federal program administered by the Social Security Administration, designed to provide a positive assurance that the Nation's aged, blind, and disabled people would no longer have to subsist on below-poverty-level incomes." The initial Federal SSI benefit standard specified that all individual benefits would be determined on the basis of their relationship to a uniform Federal floor. The first income floor, established in 1972, was below the poverty guideline.

Although the SSI program created a new, uniform benefit standard, Congress recognized that, because of variations in living costs, nationwide uniformity of assistance levels was not necessarily appropriate or desirable. States were authorized to provide benefits which would bring the income of beneficiaries in their States above the Federal income floor. Because Federal SSI benefits are indexed annually, their real (and relative) value remains largely unchanged from the levels established in 1974.

The current Federal benefit standard or income floor for single SSI recipients with no other income is $407 per month ($4,884 annually). It is $610 per month ($7,320 annually) for couples with no other income.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Current benefits are inadequate. The current Federal SSI benefit levels are substantially below the Federal poverty levels.

"The amount allowed under the SSI program is simply inadequate to meet basic human needs (food, shelter, clothing, etc.)" (State mental health administrator)

"The amount of money SSI recipients receive is not enough to live on, even in rural areas." (Legal services attorney)

Costs in today's economy have increased. The increase in the cost of living for the aged, blind and disabled is much greater than the annual increase in the SSI benefit levels.

"There is no way in today's economy that one can meet his basic needs for food, shelter and clothing on that income." (Senior citizens activities administrator)

"There are many clients who are existing on minimal financial resources, who are in financial crisis due to high rents and inflammatory costs, including medical expenses." (Private social services coordinator)

Quality of life is diminished. An independent, quality life style cannot be maintained at the current SSI benefit level.

"We find it very difficult to purchase clothing or enjoy some diversified entertainment other than going to a senior center." (Senior center representative)

Many SSI recipients "live in constant fear" (SSI recipient) that rent, electric and phone bills will be raised or that costly household repairs will be needed. Many have to "choose between medicine, food, and a decent place to live." (State social services committee)

SSI benefit should be raised. Participants must not continue to subsist with income below the poverty line.

"We urge [SSA] to fulfill the original intent of the SSI program by increasing benefits to the poverty level in three steps beginning in the next fiscal year* * *" (Parent volunteer)

Poverty guidelines understate costs but may be the only useable measure. The poverty guidelines, an overall standard of the poverty threshold, are used for administrative determinations. While they understate the true costs of a minimal standard of living, the poverty guidelines, as a measure of SSI benefit adequacy, are useful because they are readily available and they are widely recognized. The annual 1991 poverty guidelines are $6,620 for one person and $8,880 for two persons.

Options for Change

1. *Raise the SSI Federal benefit standards to 100 percent of the poverty guideline for individuals and couples, and achieve that by three equal incremental increases over a 3-year period.*

The annual 1991 SSI Federal benefit standard for an individual ($4,884) is 73.78 percent of the $6,620 annual 1991 Federal poverty guideline for one person. The annual 1991 SSI Federal benefit standard for a couple ($7,320) is 82.43 percent of the $8,880 annual 1991 Federal poverty guideline for two persons. In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,463	7,839	455	653
1993	6,041	8,359	503	696
1994	6,620	8,880	551	740

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

2. *Same as option 1 above, but raise the SSI Federal benefit standards to 110 percent of the poverty guideline.*

In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,683	8,055	473	671
1993	6,482	8,959	540	746
1994	7,282	9,768	606	814

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

3. *Same as options 1 and 2 above, but raise the SSI Federal benefit standard to 120 percent of the poverty guideline.*

In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,904	8,431	492	702
1993	6,925	9,543	577	795
1994	7,944	10,656	662	888

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

State Supplementation With an Increased Federal Benefit

Current Approach: States use supplementary payments to achieve more adequate benefits for their aged, blind and disabled. State supplementary payments allow a State to provide a minimum income floor, subsidize certain living arrangements, and serve as a link to Medicaid eligibility in many States. Over 2 million SSI recipients (more than 40 percent) receive State supplementary payments.

The amount of supplementation varies significantly from State to State as do the conditions under which States provide supplementary payments. For example, California has a number of supplementation levels and supplements nearly all of its SSI recipients in a variety of living arrangements; in that State, most total benefits (SSI plus State supplementary payments) are greater than the Federal poverty level. In contrast, Texas pays no supplementation, and several States only supplement individuals in protected living arrangements.

When the SSI program began, some States reduced their costs by reducing the amount of supplementation they paid when SSI benefits were adjusted for the cost of living. Some recipients were no better off after the SSI benefit was increased. To avoid this benefit erosion, the SSI statute was amended in 1976 to require States to pass along any SSI increases. That is, States must maintain their supplementary payment levels or the total amount of supplementation that they pay from year to year regardless of any SSI benefit adjustment for the cost of living.

Summary of Testimony From Public Hearings: There was no specific testimony about State supplementation of SSI benefits increased to reflect an increment of the Federal poverty level. However, witnesses did allege that recipients are not able to keep up with the cost of living in Michigan and California. Those States reduced some of their supplementary payments levels in 1991.

Option for Change

Eliminate the requirement for States to maintain State supplementary payments

Most State payment levels, added to the current SSI level, do not exceed the Federal poverty level. Increased SSI benefits tied to the Federal poverty level would subsume most of the needs that are met at present by State supplementary payments. However, 36 States and the District of Columbia currently have at least one supplementation level which brings some total benefit levels above the Federal poverty level.

Assets/Resources

Current Approach: The SSI program uses the value of a person's assets as one of two measures of need in determining eligibility. The other measure of need is income. Assets are things a person owns. "Resources" is the name the SSI program uses to identify the assets that are considered when determining eligibility. An individual or a couple whose countable resources are higher than the limit in the statute are ineligible for SSI. The statutory limit for an individual is $2,000. The limit for a couple is $3,000.

Meaning of resources. Resources are cash, other personal property and real property that an individual owns and has the right to turn into cash to use for his own basic needs of food, clothing, and shelter. Not everything a person owns is a resource. A person may own something that he does not have the right to turn into cash or use for his basic needs. These things are a person's assets, but they are not resources that the SSI program uses to determine eligibility.

Countable and excludable resources. Resources that count against the limits are called "countable resources." Examples of common types of countable resources are cash, nonhome real property, checking and savings accounts, time deposits, stocks and bonds, and property agreements and property rights. Not all resources count against the statutory limits of $2,000 and $3,000.

The statute provides that some items, called resource exclusions, will be excluded in whole or in part in determining whether resources are within the $2,000/$3,000 limits. A partial list of these items includes: the home, household goods and personal effects, an essential automobile, burial spaces and funds, life insurance, retroactive SSI and Social Security benefits, property essential to self-support, and resources set aside as part of a plan for achieving self-support.

Treatment of trusts. Money in a trust is treated according to the basic rules concerning what makes an asset a resource and which resources count. In order for the money to be considered the person's resource, the person must be legally able to go into the trust and use the money for his support. If the person cannot legally go into the trust and use the money for his support, the money is not considered to be his resource. These rules allow money in any amount to be put in trust for an individual while he or she remains eligible for SSI.

Transfer of assets. If a person gives away something he owns or sells it for less than it is worth, there is no effect on his SSI eligibility. However, the Medicaid statute provides that if a person gives away a resource or sells it for less than its value, he may not be eligible for Medicaid covered nursing services for up to 30 months.

Before July 1, 1988, if a person gave away something or sold it for less than it was worth, the difference between the fair market value and what the person received was counted as the person's SSI resource for 24 months.

Time-limited resource exclusions. Some resources are not counted for a limited number of months, ranging from 1 to 9 months. These time-limited exclusions give people extra time to use the resources before they are counted toward the SSI limit. Examples of these time-limited exclusions are: Retroactive SSI and Social Security payments which are excluded for 6 months, and payments from a fund established by a State to aid victims of crime or certain relocation assistance provided by a State or local government which are excluded for 9 months.

Overpayments due to excess resources. When a person is paid too much SSI because resources exceeded the statutory limit by $50 or less, the person usually does not have to pay back the SSI unless the failure to report the excess resources in a timely manner was willful and knowing.

Reasons for resource limits and exclusions. People are expected to use any other means of support, including personal savings and property, before receiving SSI.

The SSI statute and regulations single out certain assets and resources for special treatment. The idea behind the resource exclusions is that certain property is so essential to one's well-being (for example, the home a person lives in) that its owner should not be expected to sell it and use the cash to meet day-to-day living expenses. In addition, certain funds which are paid for, or set aside for, special purposes are not counted in the SSI program (for example, money paid to a victim of a crime or set aside for burial expenses).

There is a crucial connection between the statutory resource limits and the amount and variety of resource exclusions. The role of resource exclusions in the future must be considered in light of how sufficient the resource limits are.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Limits are too low. Savings of $2,000 or $3,000 do not make a person economically secure. The SSI limits restrict a recipient's ability to rely upon savings for financial support and emergencies. Increases in the resource limits have not kept pace with increases in the Federal benefit rate.

Exclusions are not adequate. The current resource exclusions do not allow a person to hold enough in reserve for future needs. The burial fund exclusion of $1,500 does not realistically reflect the price of a funeral today. Many young disabled people have not had the opportunity to acquire the types of resources that are excluded in the SSI program, such as a home.

Individual vs. couple limit. A couple should be allowed to have as much countable resources as currently allowed for two individuals (or $4,000). On the other hand, while a couple may have more unforeseen expenses than an individual, those expenses are not always twice those of an individual.

Too complicated. The resource rules are too complicated and prevent people from understanding and participating in the SSI program. The complexity contributes to a sense of helplessness that can prevent a person from seeking assistance in the first place, or that can discourage a recipient from seeking a new path to economic independence. SSA personnel find the rules are so complicated that it is often difficult for them to provide clear and simple explanations to the public.

Dignity cannot be maintained. The current resource limits require that a person sacrifice dignity in exchange for public assistance.

"* * * [t]he limitations posed on assets virtually assure that a person on SSI will continue to live below the poverty level * * *." (Outreach program director)

"You go round in circles trying to figure out what you can legally do to help your own child cope with a very stingy SSI system." (Mental health alliance chairperson)

Disadvantages the elderly. The current resources test disadvantages the elderly who, after many years of struggling to save, may have accumulated modest savings. Elderly persons are often forced to spend assets to gain, or retain, SSI eligibility.

Trust policy. Families should be allowed to set up trusts to provide supplemental support and care not covered by public funds. The range of purposes for which trust disbursements can be used without those disbursements being considered income should be broader, e.g., education, medical care, social services, and housing costs.

On the other hand, questions were raised with regard to the fairness and appropriateness of allowing individuals with large amounts of property to have the property "sheltered" to gain SSI eligibility. Current policy favors individuals in families with large amounts of disposable assets and those who can obtain the legal assistance needed to set up a trust.

Transfer of assets policy. It is not appropriate to permit individuals to "give away" large amounts of assets and become eligible for SSI. On the other hand, people are not motivated to do this for SSI; they really do it for Medicaid, where penalties do apply.

Options for Change

1. Resource Limits

(a) Increase resource limits to $5,000 and $7,500 with additional changes in exclusions

Raise the resource level to $5,000 for an individual and $7,500 for a couple. In addition, exclude up to $5,000 of funds in a trust and count the rest, regardless of how the trust is set up. Eliminate the current exclusions for life insurance and burial funds—such items would offset the $5,000 trust limit. Maintain all other resource exclusions.

(b) Increase resource limits to $7,000 and $10,500 with little change in other rules

Raise the resource level to $7,000 for an individual and $10,500 for a couple. Count all funds in a trust, regardless of how the trust is set up. Maintain all current resource exclusions, including the life insurance and burial fund exclusions.

(c) Increase resource limits to $12,000 and $15,000 with fewer resource exclusions

Raise the assets level to $12,000 for an individual and $15,000 for a couple. Exclude a home, an essential car, business property essential for self-support, and household goods and personal effects. Eliminate all other exclusions, including the exclusions for life insurance and burial funds. Do not count an asset that is not readily convertible to cash, such as real property. Count as resources funds in a trust established with an individual's (or spouse's) own money and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs.

In light of the higher assets limits, this option restricts the types of trusts that would be excluded from countable resources. Funds and property in certain trusts would be excluded only when trust assets are intended to meet the individual's special needs beyond the basic needs for which SSI provides.

2. Time-Limited Resource Exclusions

(a) Change the current periods for the time-limited exclusions to 9 months

(b) Change the current periods for the time-limited exclusions to 12 months

3. A "Sliding Scale" approach to excess resources

Resources over the limit would result in a reduced SSI benefit, as opposed to across-the-board ineligibility. Only

when resources were significantly higher would a person lose all eligibility.

This option can be implemented using a formula. For example, using the current limit of $2,000 for an individual, if a recipient's countable assets were valued at $2,001–$3,000, the Federal benefit otherwise payable would be reduced by 20 percent. If assets totaled $3,001–$4,000, benefits would be reduced by 30 percent, and so forth. Using the above formula, the individual would become ineligible for any Federal benefit if countable assets exceeded $10,000. The percentages can be higher or lower to reflect a higher or lower asset level.

4. Calculating overpayments that result from excess resources

The amount of an overpayment resulting from excess resources would not be greater than the maximum amount that the individual's resources exceeded the resource limit. Upon notification that countable resources exceed the limit, the individual would reduce resources below the limit or lose SSI eligibility on a prospective basis.

Unearned Income

Current Approach: The SSI program uses two measures of need: income and resources. Income is used to determine whether someone is eligible for benefits as well as how much the benefits should be. By contrast, resources (certain things people own) only determine whether someone is eligible for benefits; they do not affect the actual amount of benefits paid.

Meaning of income. Income, in general, is anything a person receives that can provide food, clothing, or shelter. Sometimes, income takes the direct form of food, clothing, or shelter. More often, it comes in the form of cash (including checks and electronic funds transfers).

Income, under the statute, is either earned or unearned. Earned income comes from wages, self-employment, and similar sources. Unearned income is every other kind of income. Examples of common types of unearned income are Social Security benefits, veterans benefits, rental and lease income, interest and dividend income, and "in-kind support and maintenance" (food, clothing, and shelter).

Income from a spouse or parent. When a married person applies for SSI benefits, part of the husband's or wife's income may count as if it belonged to the applicant. Similarly, if a child applies for SSI benefits, part of the parents' income may count as if it belonged to the child. This process of counting some of a husband's, wife's, or parent's income is called "deeming," because the SSI program "deems" part of the relative's income to be available for the support of the applicant or recipient.

Exclusions from income. Income exclusions provide a financial advantage to persons who receive certain kinds of income. The Social Security Act provides many exclusions from income. Other exclusions, however, are found in other statutes relating to specific types of income. There are more than 50 income exclusions provided by law.

The $20 monthly general income exclusion. The first $20 of monthly income does not count. The $20 was set at the beginning of the program. It has never been increased, although the Federal benefit standard has more than tripled since it was first set in 1972. The $20 is subtracted first from any unearned income a person has. If the person has less than $20 in unearned income (or none at all), any remaining amount of the $20 is subtracted from any earned income.

Interest and dividends. The amounts of interest and dividends received usually are quite small. These amounts count as income unless they can be excluded under a provision that allows for exclusion of income that is "infrequent or irregular" or under the $20 monthly general income exclusion.

Often, the "infrequent or irregular" exclusion cannot apply, even when the amount of the interest or dividend is very small. This is because interest and dividends often are received both "regularly" and "frequently." To be considered "infrequent," the income must be received no more than once every three months and in an amount not greater than $20.

Parent-to-child deeming of income. The Secretary of Health and Human Services determines, through regulations, how much of a parent's income counts as an SSI child's income.

The regulations provide three different formulas for deeming income from the parents to the child. In all three formulas, an amount is first subtracted from the parents' income for any other children they may have. This allows the parents to use some of their money to support these other children. After this subtraction is done, the three formulas take over. If all remaining income of the parents is earned income, one formula applies. If all remaining income is unearned income, a second formula applies. If the remaining income is a mixture of earned and unearned income, a third formula applies.

Income from individually held Indian trust land. Many Federal statutes provide for the exclusion from income of payments made to members of Indian tribes and groups. There is, however, no specific exclusion that applies to income derived from individually held Indian trust land.

Individually held Indian trust land is managed by the Bureau of Indian Affairs for the benefit of individual Indian landowners. It may generate income, typically from agricultural leases. Indians receive a portion of the lease income in proportion to the amount of land they own.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The $20 General Income Exclusion

(a) *Has lost value.* The exclusion has lost much of its value since 1972, when the amount was fixed in the statute.

It should be increased to reflect the increased cost of living since 1972. The increased amount should be adjusted in the future for inflation, so that the new amount does not lose its relative value as prices rise in the years to come.

(b) *Should apply only to unearned income.* The concept of the $20 general income exclusion should be changed. Instead of applying it to either unearned or earned income, the exclusion would be much more understandable to the public if it applied only to unearned income.

Interest and Dividends

(a) *Should be excluded.* Interest and dividends should be excluded from income, especially given the current $2,000 limit on resources an individual recipient may own to be eligible for SSI benefits. The very small amount of interest and dividends that usually comes from such resources is not worth the administrative burden of keeping track of it. The exclusion of interest and dividends would reward SSI recipients who are thrifty and who try to save money.

Some interest and dividends get excluded under the "infrequent or irregular" exclusion, while other interest and dividends must be counted, when the only difference is how often the bank or company chooses to pay its interest or dividends. Quarterly and monthly payments should be excluded.

(b) *Should count.* Interest and dividends should continue to count as income. Counting them helps to distinguish the greater need. If the resource limits are increased in the future, it will be even more important to count interest and dividends as income because the possible amounts received will be larger.

Parent-to-Child Deeming of Income

(a) The three formulas currently in use do not always produce equitable and reasonable results. Often, a slight change in the breakdown of the parents, income (e.g., from a mixture of earned and unearned income to only earned income) can produce a major increase in the amount of income deemed to the SSI child. This happens because of the differences between the formulas used in these two situations.

(b) A change in the number of non-SSI children in the household (e.g., when the parents have a baby) can have an effect on the SSI benefit that is opposite from what a reasonable person might expect should happen. Often, instead of deeming less money to the SSI child after the baby's birth, more money must be deemed because of the way the formulas work.

"Social Security should treat a parent's earned income in the same way it treats earned income received by an SSI recipient. [SSA] should not penalize a disabled child because the parent has only earned income and not both earned and unearned income. [SSA] should not penalize a disabled child because he or she has siblings in the home." (Advocacy group attorney)

Individual Indian Trust Income

SSI's treatment of such income is one of the most chronic and complex SSI problems faced by Indian elderly. They are confused by the inconsistency of having such money count as income, while monies from other excluded Indian lands are excluded from income. The income virtually always is unpredictable, and SSI benefits based on estimates of such income are, therefore, often inaccurate. Further, tribal elders may assign their rights to the income to a tribal credit program as repayment of a previous loan, leaving these individuals with neither the trust income nor SSI.

Options for Change

1. The $20 General Income Exclusion

(a) Index the general income exclusion for inflation

Set its value at one-seventh of the Federal benefit standard, which already is indexed for inflation. To avoid odd amounts, round the resulting value to the nearest multiple of $10.

The original $20 general income exclusion represented one-seventh of the Federal benefit standard that took effect in January 1974, when the program began. This option would restore the 1:7 ratio that existed then.

This option would result in an immediate increase in the exclusion to $60, based on the current 1991 Federal benefit standard. If the Federal benefit standard were increased to 100, 110, or 120 percent of the 1991 poverty guideline of $6,620 for one person, the general exclusion would rise as follows:

Year	100 percent	110 percent	120 percent
1992.....	$60	$70	$70
1993.....	70	80	80
1994.....	80	90	90

Note: The actual 1992–1994 exclusion amounts would be adjusted for increases in the cost of living relative to 1991. (See "Adequacy of the Income Floor".)

(b) Index the exclusion for inflation as in Option 1.a. above, but apply the exclusion only to unearned income

This option assumes a companion increase in the basic earned income exclusion, so that no recipient would lose SSI benefits as a result of the change.

2. Interest and Dividends

(a) Exclude from income all interest and dividends

Under current resource limits ($2,000 for an individual, $3,000 for a couple), monthly interest at a 5 percent rate of return would yield less than $9 for an individual and $13 for a couple.

(b) Count interest and dividends, but only if the resource limits are increased significantly or the Federal benefit standard is increased to the poverty level or higher

3. Parent-to-Child Deeming

Adopt, for use in all parent-to-child deeming situations, the current formula used when the parents have both earned and unearned income.

The single formula would provide the same exclusions to the parental income as apply to a recipient's own. It also would provide a deduction equal to the Federal benefit standard for an individual or a couple in recognition of the needs of the parent or parents. This formula would yield deemed income no greater than that obtained using the other two methods now in use.

Only a regulatory change is needed to implement this option. On July 8, 1991, the Secretary of Health and Human Services published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 30884) to initiate such a change. The period for public comment on the proposed rule closes September 6, 1991.

4. Individual Indian Trust Income

Exclude up to $4,000 per year per individual of income derived from individually held Indian land (as proposed in S. 754, a bill now pending in Congress).

In-Kind Support and Maintenance

Current Approach: One type of income that the SSI program considers is "in-kind support and maintenance." In-kind support and maintenance is any food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Shelter means room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. There are two rules for valuing in-kind support and maintenance: The one-third reduction rule and the presumed maximum value rule.

One-third reduction rule. The one-third reduction rule applies when an SSI individual lives in someone else's household and receives both food and shelter from that person. The value of one-third of the Federal benefit rate is counted as additional income, instead of determining the actual dollar value of the food and shelter received. The result is that the SSI benefit is reduced by one-third.

An SSI claimant is not living in another person's household if he owns the home he lives in, has rental liability, is receiving noninstitutional care such as in a foster care home, pays his pro rata share of household operating expenses, or if all the people who live in the household receive public assistance payments. In addition, a person is not living in another person's household if he only receives food or shelter (but not both) from the other person.

Presumed maximum value rule. When an SSI individual receives food, clothing, or shelter (from someone with whom he lives or does not live) but the one-third reduction rule does not apply, the presumed maximum value rule is used. The value of any food, clothing, or shelter a person receives is presumed to be worth a maximum of one-third the Federal benefit rate plus the amount of the general income exclusion ($20).

This amount is counted as unearned income unless the presumed maximum value is higher than the actual value of the food, clothing, or shelter received. In such a case, the actual amount received is counted as unearned income.

Discovering in-kind support and maintenance. To make determinations about in-kind support and maintenance, many personal questions are asked about the person's living arrangements when he applies for SSI and periodically thereafter when his eligibility is redetermined. These include questions about the household operating expenses,

the number and relationship of other household members, and any help the household may receive to meet expenses. Questions are also asked of and statements obtained from other household members, even though these other people may not be applying for SSI benefits themselves. Because of an infinite variety of living arrangements, it is very complicated for SSA to figure the amounts of in-kind support and maintenance to charge and for recipients to understand why they are being charged those amounts.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Family support. The in-kind support and maintenance rules act as a disincentive to family members helping each other. The rules are in direct conflict with other government programs which encourage family involvement.

"Because SSI reduces benefits or denies eligibility to people who are living in the home of another, this only serves to create further financial hardship for the family of the elderly or disabled and discourages family support. This situation encourages institutionalization, which is a much more expensive alternative to home caregiving."
(Outreach program coordinator)

Intimidation. Potential SSI eligibles do not apply because they fear the loss of financial support they currently receive from their families, and because they do not wish to go through the application process that intrudes into their families' lives.

Unmet needs. Individuals have other expenses in addition to food, clothing, and shelter. When they are charged in-kind support and maintenance because they fail to pay their pro rata share of the household operating expenses, they are often placed in the position of having to choose between paying these other expenses or paying their full pro rata share of household expenses leaving little or no money left to cover their other expenses. For recipients in high-cost areas the reduction in benefits only puts them further behind economically. This makes them more dependent on others for their support, and often lowers their self-esteem.

Distinguishing private from public support. Public support, such as a public housing subsidy or food stamps, is excluded from income. Counting support and maintenance provided by family or friends is unfair because it penalizes those who get help from private rather than public sources.

Consistency with other programs. Other public assistance programs like Aid to Families with Dependent Children do not count in-kind support and maintenance. It is confusing that this type of help is counted for SSI but not for other Federal assistance.

Administrative relief. SSA employees find that determining whether an SSI claimant receives in-kind support and maintenance and its value is one of the most complex and time-consuming tasks they face. An inordinate amount of time is spent developing this area. The complexity of the rules makes it very difficult to explain to recipients the effect of in-kind support and maintenance on the amount of their benefits.

Target available funds. In-kind support and maintenance does provide the SSI program with a way to account for provision of an individual's needs by others. It should not be ignored when program dollars are limited. It is a way of directing available funds to those who are in greatest need.

Options for Change

1. Eliminate Counting In-kind Support and Maintenance

The SSI income test would include only a claimant's actual cash income. There would be no reduced benefit based on receipt of food, clothing, or shelter.

2. Adopt a "Flat Fee" Approach

Under this option, when a person pays an amount at least equal to one-fourth the Federal benefit rate toward food and/or shelter, there would be no in-kind support and maintenance counted as income to an SSI individual. If the individual does not pay that amount, the difference between one-fourth the Federal benefit and what he pays would be charged as in-kind support and maintenance.

Couples

Current Approach: The statute has always distinguished between eligibility for individuals with and without eligible spouses. An individual with an eligible spouse is paid based on a Federal benefit standard which is one and a half times the individual standard. An eligible couple has a resource limit which is one and a half times the resource limit for an individual. This distinction can be traced to the Social Security benefit programs in which a spouse is entitled to a benefit equal to half the benefit paid to the wage earner. The difference is also based on the premise that two people can live together more economically than if each lived alone. As a result, some members of a couple receive less SSI benefits than if they were eligible as two individuals.

Holding out. The SSI statute also provides that two people who are not legally married but who hold themselves out to the community as married are treated as a couple. This provision is known as "holding out."

Eligibility unit. The couple as an eligibility unit is a concept that carries throughout the program. When two members apply for SSI, they do so with a single application. When SSA determines eligibility for a couple, they add together all countable income and subtract it from the couple's benefit standard to determine payment amount. The total is divided equally and paid in separate checks.

Income exclusions are applied differently to couples than they are to individuals. Each individual receives a $20 general income exclusion and a $65 earned income exclusion. In contrast, a couple, as a unit, receives one $20 general exclusion and one $65 earned income exclusion.

Couples are also treated differently with respect to resource exclusions. A couple may have, for example, only one automobile excluded for necessary transportation and have a total of $2,000 excluded in household goods and personal effects. In contrast, two individuals may each have an automobile excluded and may each have $2,000 in excluded personal items.

When members of a couple separate. When members of a couple separate, they are treated as individuals the first full month of separation. If the members of a couple separate and get back together frequently, SSA must make adjustments to payment and eligibility status.

Some advantages. Some people are better off as a result of the "couples" rules. A person whose income or resources are too high for eligibility as an individual may be eligible as a member of a couple. This can happen when the spouse's income and resources are low. For example, Mr. Johnson receives a Social Security benefit of $550. His disabled wife has no income. Mr. Johnson is not eligible for SSI as an individual because his income is too high for the Federal benefit standard of $407. But, if Mr. and Mrs. Johnson are treated as a couple, they are eligible for a monthly benefit of $80. ($550 less $20 general income exclusion=$530; $610 (couple's Federal benefit standard)—$530=$80.) The second advantage is that (in most States) treating Mr. and Mrs. Johnson as a couple allows them both to be eligible for Medicaid.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Marriage penalty. The couple's benefit standard creates a significant disincentive to marriage. This is especially true when two individual recipients who receive full benefits consider getting married. These individuals would probably have to reduce their level of resources as well as adjust to the lower couple's benefit standard. Others testified that some married couples who are unable to survive financially divorce each other so they each can receive an individual's benefit.

"Choose between economic survival and living in a morally and legally sanctioned relationship." (Mental retardation director)

Work disincentive. Both members of a couple are discouraged from working because a couple gets only one $65 earned income exclusion.

Individual expenses. Two people actually have double expenses: both get sick, both need clothes, both may have work expenses.

Social norms. Continued treatment of married individuals as couples is consistent with social expectations. Married couples traditionally provide support to each other and pool their assets to pay expenses. It may be inappropriate to break the link between the SSI couple's benefit and the Social Security spouse's benefit.

Options for Change

1. Change the Definition of a Couple

(a) *Eliminate the concept of "holding out."*

Individuals who live together but are not legally married would be treated as two individuals. The current treatment of married couples would continue.

(b) *Treat any two individuals who live together as a couple.*

Any two individuals who share a household would be treated as a couple regardless of their marital status.

(c) *Eliminate the idea of couple.*

Members of couples would be treated as individuals.

2. Increase the Income Exclusions for Couples

The current couple structure would be maintained but each member of a couple would have a full set of exclusions.

3. Retain the Couple Structure But With an Increased Benefit Standard and Increased Exclusions

The couple structure would remain but each member would get a full set of exclusions and the couple's benefit standard would be increased.

This option is based on increasing the benefit payable to an individual to a percentage of the poverty guideline; for example: 100 percent, 110 percent, or 120 percent. A comparable increase would apply to couples by basing the couple's benefit on the "poverty guideline for two persons" and raising that benefit to the same percentage of the poverty guideline as the individual benefit. (See "Adequacy of the Income Floor".)

This option would make the couple's benefit approximately 134 percent of the individual's benefit standard.

Definition of "Substantial Gainful Activity"

Current Approach: To be eligible for supplemental security income benefits based on disability, a person must be disabled or blind as defined in the SSI statute. The law defines disability as the inability to do "substantial gainful activity" by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months.

Once a person meets the initial supplemental security income eligibility requirements, however, substantial gainful activity is no longer part of the definition of disability. Work impacts SSI post-eligibility only from the standpoint of benefit offset. Cash payments are offset $1 for every $2 of earned income after applying appropriate income exclusions.

Substantial gainful activity, as defined by the Secretary, is any significant physical or mental activity in employment or self-employment. Generally, earnings above a specific amount, currently $500 per month after deducting the cost of impairment-related work expenses and subsidized earnings, represent work at the substantial gainful activity level.

Earnings that are not directly related to a person's productivity are treated as subsidized earnings because the true value of the person's services is significantly less than the earnings received. Work in special employment situations such as sheltered workshop, transitional, and supported employment is evaluated under the substantial gainful activity guidelines only after deducting the cost of impairment-related work expenses and subsidized earnings. However, such work can be substantial gainful activity if the value of a person's services is over $500 per month despite these deductions.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Working disabled poor are denied benefits. The Supplemental Security Income Program is an inadequate maintenance program designed to keep the disabled poor and dependent, with penalties for finding work or other outside resources. The medical field encourages people with disabilities to live and work as normal a life as possible, but when a person follows this advice, it has an adverse effect on meeting SSA's eligibility requirements.

"[W]orking men who are seriously ill with verified terminal diseases have been rejected by the system sometimes two or three times." (Outreach worker)

"[W]e have a growing phenomenon in America called the working poor who are disabled * * * have no insurance * * * do not have very much in terms of medical documentation." (Legal service attorney)

"[T]he client currently is earning $660 net wages. We requested an initial SSI application for this client and * * * [were] advised that we could not apply for SSI benefits. If the client stopped working she could reapply for SSI and based on her disability of mental retardation could return to work; receive SSI benefits at a reduced rate with medical card and still be entitled to earn over $1,300 per month." (Representative payee agency)

Policy is contradictory. Although work under a certain level does not count as substantial gainful activity under current rules, this exclusion does not address the contradiction in policy which now exists: To get on the supplemental security income rolls, an individual must not be able to work; but, once on the supplemental security income rolls, an individual is encouraged to work. A change to the definition of substantial gainful activity will make the eligibility test for disability closer to the post-eligibility test. This would create more equality in the program and encourage more supplemental security income people to remain at work.

Option for Change

Change the definition of "substantial gainful activity" in the SSI program to recognize that persons with disabilities may work. To establish initial eligibility to SSI an individual would be considered to be earning at the substantial gainful activity level only if he/she is earning above the substantial gainful earnings level (generally $500 per month), without the significant support services.

Under this proposal, SSI recipients who work using significant supports would not be considered to be doing substantial gainful activity. Work activity with significant support services would be disregarded, without consideration of the actual value of the

person's services in employment or self-employment in terms of disability evaluation. Wages and self-employment income would still count in terms of evaluating need and determining the benefit amount.

Significant support services can include, but are not limited to:

(a) Attendant care on-the-job or substantial attendant care to prepare for work;

(b) Use of a job coach in a sheltered employment situation;

(c) Job-related support services, such as those furnished through transitional employment programs for persons with mental illness; and

(d) Employer accommodations which create a highly specialized environment not normally found in the competitive job market.

In determining if work is substantial gainful activity, SSA would continue to disregard the cost of impairment-related work expenses when calculating the individual's earnings.

Work Incentives

Current Approach: Work incentives are rules which are meant to encourage people who want to work to do so by allowing them to keep some of their SSI and Medicaid. Many of the current SSI work incentives are exceptions to the regular income and resource counting rules. Under the work incentive rules, portions of a recipient's income and resources are excluded. Specifically, the Social Security Act allows for the exclusion of:

(a) The earned income of a child who is a student subject to limits set by the Secretary (currently $400 per month and $1,620 per year).

(b) The first $65 of a person's earned income, plus any portion of the $20 general income exclusion not applied to the person's unearned income.

(c) Amounts of earned income a person with a disability uses to pay for certain work expenses the person has because of the disability. These expenses are known as impairment-related work expenses and may include things like special equipment or certain transportation costs.

(d) Half of a person's remaining earned income after the above exclusions are applied.

(e) Any portion of the earned income of a person who is blind which is used to pay expenses related to earning the income. These are called blind work expenses. The expenses do not have to be related to the person's blindness—they only have to be work related. Examples of these expenses include taxes, dog guide expenses, meals bought during work hours, etc.

(f) Income (earned or unearned) or resources which a blind or disabled person uses to fulfill an approved plan for achieving self-support. This plan is written specifically for the individual. The plan allows the person to set aside income or resources for a period of time to pay for things needed to reach a job goal. A plan may be used to pay for things like training, an education, job coaching, equipment, etc.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Difficult rules to understand. The income and resource counting rules are complex and difficult for SSI recipients to understand.

Two sets of rules apply. People who get both SSI and Social Security must deal with different rules under each program, making it doubly difficult to understand the consequences of working.

Rules vary. Different rules apply to each category (i.e., aged, blind, and disabled) of SSI beneficiaries.

Need for transition. A recipient should be allowed a period of time to get use to a job before his or her benefits are reduced. The Social Security Disability Insurance Program has a trial work period during which a person may earn over $200 for 9 months without losing any benefits. However, this may result in a sudden reduction in benefits at the end of the period.

Earned income exclusion is low. The $65 earned income exclusion is too low. It should be increased to $200 which is the same as the amount needed to earn a Social Security trial work period month. Also, $200 is approximately the amount the earned income exclusion would be if the original $65 figure were indexed for inflation.

Continuing disability reviews. Some recipients are afraid to go back to work because they fear that they could lose their benefits when a continuing disability review is conducted.

Note: Continuing disability reviews are conducted to determine if a person is still disabled. Some reviews are triggered by a work attempt. Other reviews are conducted periodically based on the nature of the person's disability; in these reviews, the fact that a person has worked or is working can affect the review decision.

Impairment-related work expenses. The impairment-related work expense rule should be changed so it is more like the blind work expense rule.

Note: Under current rules, a person who is disabled may only exclude expenses he or she has because of the disability. A person who is blind may exclude any work expense, regardless of whether it is related to the person's blindness. For example, a person who is blind may exclude any transportation expense but a person with a disability may only exclude transportation costs which a non-disabled person would not have. In addition, a person who is blind may exclude the amount of the taxes deducted from his or her pay; a person who is disabled cannot exclude taxes.

Unemployment and workers' compensation. When a person loses his or her job and collects unemployment compensation or workers' compensation, the SSI benefit is lowered. This happens because these other benefits are considered unearned income and are not subject to the same exclusions as the person's earnings had been. The effect is that the person loses his or her job and is then worse off financially because the unemployment or workers' compensation is counted differently than the prior earnings.

Rules don't apply to aged. Aged, blind, and disabled individuals all should be permitted to benefit from the same work incentives.

A plan for achieving self-support is time-limited. The SSI regulations limit the length of a plan for achieving self-support to 36 months (48 months if a lengthy educational or training program is involved). This is not enough time for some people, especially when their disability interferes with completion of the plan.

Options for Change

1. Conduct a Demonstration to Determine the Impact of the Following Rule Changes

(a) Recipients would be entitled to a work attempt period during which all of their earnings are excluded.

(b) The earned income exclusion would be raised from $65 to $200 and the SSI benefit would be reduced by $1 for every $3 (instead of the current $1 for every $2) earned over the $200 level.

The increased exclusion amount would be intended to compensate for work expenses which the recipient has. Therefore, this exclusion would replace all of the existing earned income exclusions except for the student earned income exclusion and plans for achieving self-support. Individuals whose actual work expenses are more than the amount of earnings excluded (i.e., more than $200 plus two-thirds of the remaining income) could have an individual exclusion computed which would exclude the person's actual work expenses. All work-related expenses would be excluded regardless of whether they are disability related, similar to the current blind work expense exclusion, and they would be available to all SSI recipients.

(c) Continuing disability reviews triggered by work activity would be eliminated and scheduled medical reviews for working recipients would be deferred for 3 years after beginning work.

(d) Unemployment compensation, workers' compensation, sick pay, and other similar benefits received because of recent work activity would be treated as earned income rather than unearned income.

(e) The time limit for completing a plan for achieving self-support would be eliminated.

(f) Individuals who receive benefits based on age would be eligible for all work incentives.

These elements are intended to be used together. However, comments are invited as to whether a particular element should or should not be included in the revised package of work incentives.

Under this option, the Social Security Administration would test the new package of work incentives on a small scale to determine if it would actually result in more recipients working. At the end of the test, the Social Security Administration could then make changes to the package as necessary before seeking legislation for national implementation.

2. Pursue Legislation Without Conducting a Demonstration

Under this option, the Social Security Administration would not test the new package, but would seek legislation to implement it nationwide.

Other Work Incentives Changes

Current Approach: In addition to the various exceptions to the income counting rules, the SSI program has other work incentives which do not affect the benefit amount. The most significant are sections 1619 (a) and (b) of the Social Security Act. These rules allow a working SSI recipient to maintain eligibility for SSI and/or Medicaid.

To establish SSI eligibility, a person cannot be performing significant physical or mental activities for pay or profit. This is known as substantial gainful activity. Usually, earnings of over $500 per month indicate substantial gainful activity. Once a person has received at least 1 month of "regular" SSI benefits, he or she can continue to qualify under section 1619(a) when earnings are more than the substantial gainful activity level (i.e., earnings are over $500 per month). Section 1619(a) allows recipients who earn more than the substantial gainful activity level to continue to receive cash benefits as long as their disability continues and they meet all other SSI program requirements. Unlike the Social Security Disability Insurance program, benefits are not stopped because the person shows the ability to work.

If a working SSI recipient's total income is too high to allow a payment, the recipient may continue to qualify for Medicaid under section 1619(b). To qualify, the person's unearned income (including the income of a spouse which is deemed to the recipient) must be low enough that the person would receive an SSI payment if he or she was not working. The person must also need Medicaid in order to work and not have enough earnings to replace the benefits he or she would lose if SSI eligibility were lost.

Some States make their own Medicaid eligibility decisions. In these States, if the person loses Medicaid eligibility under the State's rules before qualifying for section 1619, the State is not required to provide Medicaid when the person becomes eligible under section 1619. In addition, when determining Medicaid eligibility, these States do not always exclude income or resources which are excluded for SSI purposes.

States are not required to pay a supplementary payment to someone who receives benefits under section 1619(a). Currently, most States which supplement regular SSI payments pay a supplement in section 1619(a) cases; eight do not.

Summary of Testimony from Public Hearings: Witnesses alleged that—

Some lose Medicaid. Working recipients in certain States do not benefit from section 1619 since they may actually lose their Medicaid before qualifying for section 1619.

Spousal income should not count. A spouse's income should not be counted when determining a person's eligibility under section 1619(b).

States should supplement 1619 payments. States should be required to supplement 1619(a) payments if they supplement regular SSI payments.

Prior month of regular eligibility required. A person must first receive a regular SSI payment for 1 month before qualifying for section 1619. Because of this rule, many persons who lose their Social Security benefits because they are earning above the substantial gainful activity level are not able to establish SSI eligibility under section 1619 if they had not already received a regular SSI payment.

State Medicaid exclusions may differ. Twelve States make their own Medicaid eligibility decisions according to their own rules instead of the Social Security Administration making the Medicaid decision based on SSI eligibility rules. When making Medicaid eligibility decisions, those States may count resources which are excluded for SSI under a plan for achieving self-support.

Recipients cannot save earnings. Recipients are not able to save money from their earnings for future life needs such as buying a home.

Options for Change

1. Provide Medicaid Under Section 1619 to all Working Individuals.

This option would modify section 1619 to provide Medicaid to all individuals with earned income, as opposed to just those who exceed the substantial gainful activity level or who are ineligible due to earnings, which are the current section 1619 eligibility criteria.

2. Disregard Deemed Income of a Spouse When Determining an Individual's Continued Medicaid Eligibility Under Section 1619(b)

Under this option, only the person's own income would be considered to determine if he or she were eligible under section 1619(b).

3. Require States Which Supplement Regular SSI Payments to Supplement Payments Under Section 1619(a)

4. Provide SSI Benefits for Individuals Who Lose Their Social Security Benefits Due to Substantial Gainful Activity

5. Do not Count Resources Set Aside Under a Plan for Achieving Self-Support When Determining Medicaid Eligibility in States Which Make Their Own Medicaid Eligibility Decisions Using Their Own Rules

Currently, in the 12 States which make Medicaid eligibility decisions using their own rules, a person can set aside resources under a plan for achieving self-support and become eligible for SSI. However, the State may still count the resource when making the Medicaid eligibility decision and the person may not be eligible for Medicaid even though he or she gets SSI. This change would eliminate that consequence.

6. Allow Working Recipients to Put Some of Their Earnings in an Excluded "Independence Account" Which Could Be Used Only for Specified Purposes Such as Purchasing a Home or Vehicle

Role of SSA Field Office Versus Role of Disability Determination Services in Initial Disability Claims Intake Process

Current Approach: The initial SSI disability claims intake process involves the information gathering activities by

SSA field offices when a person files an application for disability benefits. The information gathered during this process is essential to claims adjudication and the disability decision. It includes the claimant's statement regarding how the alleged impairment affects work and daily activities. Additionally, critical SSA field office employee observations of the claimant are recorded. The information not only allows the State disability determination services to initiate medical development, it helps them tailor development requests for information from both medical and, if appropriate, nonmedical sources.

Claims for SSI disability benefits are usually initiated through contact with a teleservice center. The teleservice center, in most instances, mails the Disability Report (Form SSA–3368) to the claimant for completion and schedules an interview at the local field office. The interview is conducted by a claims representative, either in person or by telephone.

During the interview the basic application forms are reviewed with the claimant and completed. These forms are designed primarily to elicit nondisability factors of entitlement. Form SSA–3368 also is finally completed at this time. Information provided on the SSA–3368 includes descriptions of the claimant's impairments and activities of daily living, the claimant's medical sources, and the interviewer's observations regarding the claimant's overall condition. Along with the SSA–3368, the applicant completes a form authorizing SSA to obtain medical evidence from the claimant's treating sources. The disability claims file is then forwarded to the disability determination services for review and a disability determination. Although State organizations, the disability determination services are funded by SSA and base their determinations on Federal statutes and SSA rules and regulations governing the disability program.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Delays in the process: Delays in the disability adjudicative process are caused, in part, by nonspecific or incomplete disability information obtained from the claimant by SSA field office employees at the time of claims intake. To complete the informational requirements, the disability determination services must often recontact the claimant by telephone. In some cases, impairments go undiscovered, resulting in inappropriate decisions, or are discovered late in the process, resulting in processing delays. At the same time, claimants' failure to provide all information relevant to their claims is caused by a lack of understanding as to what is required to establish disability under the Social Security Act.

Face-to-face contact: A face-to-face interview between the claimant and a knowledgeable public employee is a means of improving the process. It would provide a more complete assessment of the claimant's overall condition.

"[T]hese interviews are especially important for evaluating a claimant's subjective allegations of pain." (Legal assistance attorney)

"[S]ome claimants deny psychological problems and only indicate minor physical ailments on their application * * *We have clients who are delusional and indicate on their application jobs and training they have never had or they overstate the training or job experience making them appear to be more functional than they really are. Upon personal contact it becomes quite clear that they suffer from psychological problems or are delusional." (Advocate and paralegal)

Disability decision-makers often do not have the most complete or pertinent medical information on which to base their decisions, especially with regard to mental impairments or residual functional capacity. An early face-to-face interview could help to ensure the development of all pertinent medical information.

Options for Change

1. Field Office Disability Expert Conducts Disability Interview

The differences between this option and the current process are the degree of disability expertise on the part of SSA claims representatives and the return to SSA field offices of the initial development of medical evidence. Claims representatives would receive disability program training similar to that provided disability determination services disability examiners. They would become disability experts who would be responsible for all aspects of the initial application process. Responsibilities would include taking the basic application forms and assuring that the nondisability factors of entitlement/eligibility are met, as well as conducting the disability interview and other disability functions listed below:

—Complete all applicable forms during the interview;
—Provide the claimant a complete explanation of the disability process, as well as prompt, accurate answers to the claimant's disability-related questions;
—Explain how claimants can assist in the claims development process (e.g., by urging their doctors to provide prompt responses to requests from disability determination services for medical evidence);
—Initiate requests for medical evidence from treating sources;
—Identify cases for terminal illness and other emergency or priority processing;
—Make presumptive disability decisions using expanded criteria;
—Make observations about the claimant;
—Route the claim to the disability determination services in the usual manner following completion of the interview; and
—Act as a liaison between the claimant, the field office, and the disability determination services.

2. State Disability Determination Services Employee Conducts Disability Interview

Under this option, the interviewers would be disability examiners from the State disability determination services. They would be assigned to SSA field offices permanently or on a rotational basis (daily or weekly) to conduct the disability interview.

The case flow process would begin with the claims representative. However, after taking the basic application forms, the claims representative would refer the claimant to a State disability examiner who would perform all of the functions performed by the SSA disability expert in option 1.

Processing Disability Appeals

Current Approach: Claimants who appeal their disability claims frequently wait a year before they receive a final decision. There are no time limits for deciding the case.

Each time a decision is made on a claim for benefits, a written notice is sent to the claimant. If the claimant does not agree with the decision, he or she has a right to appeal. Each time an appeal is filed, a new decision is made and the claimant is provided a written notice of the appeal decision. There are three appeals steps in the administrative review process. The claimant usually has 60 days from the date he or she receives a notice to appeal the decision.

Claims for disability benefits under Social Security or Supplemental Security Income are first decided by State Agencies according to Federal/State regulations. If a claimant disagrees with

an initial determination, he or she may ask for a reconsideration. To ensure that the claimant receives a new and independent determination, persons in the State agencies other than those who made the initial determination review all of the evidence in file when the initial determination was made plus any additional evidence which is obtained.

If the claimant does not agree with the results of the reconsideration, he or she may ask for a hearing before an Administrative Law Judge. At the hearing, the Administrative Law Judge reviews what has gone on before in the case, states what issues must be decided, and asks the claimant and any witnesses questions. Claimants frequently get a representative for the first time at this level. The claimant and his or her representative may question the witnesses, present new evidence, and examine the evidence on which the Administrative Law Judge's decision is based. The Administrative Law Judge makes a new decision based on all the evidence including the information presented at the hearing.

If the claimant disagrees with the decision made by the administrative law judge, he or she can ask for a review of that decision by the Appeals Council. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to an Administrative Law Judge. The Appeals Council will send the claimant a notice explaining its action.

If the claimant does not agree with the Appeals Council decision, or if the Appeals Council declines to review the Administrative Law Judges' decision, the claimant may bring a civil action in the appropriate Federal district court.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Changes in the disability determination process needed. The disability determination process should be restructured so that the process is more caring and efficient. While applicants await a final decision, essential services (e.g., Medicaid, in-home support services administered by the State) are often withheld.

"The process these people have to go through is not handled in a caring manner nor is it efficient." (Support group director)

Low allowance rates. One problem with the current reconsideration process is the low allowance rate (16 percent). Denials at the reconsideration level result in appeals to the next step in the appeals process—the SSA Administrative Law Judge—and a high number of disability determination services decisions are overturned at that level.

"[O]ne of the reasons [the] Project was established was the State's concern with the low percentage of clients found disabled at the initial and reconsideration stages of the application process." (SSI Advisory Project attorney)

"In all the years that I have been representing SSI claimants, not one has ever obtained a reversal at the recon[sideration] level. Certainly any appropriate process worthy of its name must reverse some cases, but I have never encountered one." (Legal services attorney)

Face-to-face contact at reconsideration. There is a lack of first hand observation by the initial and reconsideration level decision-makers of the claimant's impairment-related limitations.

"[Reconsideration claims are] not being reviewed properly, ultimately being rubber stamped." (Support group director)

"An informal or formal conference should be a part of every reconsideration request. Often, face-to-face testimony and/or claimant input can affirm what documents can only allude to." (SSI advocate)

Eliminate the reconsideration step. Given the prevalence of low allowance rates at the reconsideration level and the length of time it adds to the adjudicative process, reconsideration should be eliminated.

"* * * instead of recon[sideration], let's permit claimants to go directly to a hearing and let them be seen by a person who has the authority to make a decision about their case." (Legal services attorney)

Delays in the appeals process. By the time a case gets to the hearing level, the administrative law judge considers the evidence too old to make a decision and the judge then fails to order the necessary tests to update the file. It is then up to the applicant to provide new evidence and these individuals often cannot afford to do so. Time limits should be set up for SSA to make a final decision on a claim.

"We propose that a fund be set up so that when the SSA is at fault, the recipient can be reimbursed at once and will not have to wait." (Senior citizen advocate)

"I hope that this panel will reorganize the appeal process so that a person who applies for SSI and/or Social Security will have their case heard in an expeditious manner. I know personally of a case that has been on appeal for years." (Advocacy group representative)

Options for Change

1. Face-to-Face Predenial Interview; Eliminate Reconsideration

For this option, the State disability determination services would process the SSI claim under current procedures up to the point where an unfavorable decision is indicated. However, unlike the current process, the disability determination services would prepare and release a personalized predenial notice. This notice would tell the claimant what evidence is in file and that based on this evidence the claimant cannot be found eligible for disability benefits/payments under the Social Security Act. The notice would also offer the claimant an opportunity for a face-to-face interview before the formal denial is issued. If the claimant declines the interview, the disability determination services would release the denial decision with appeal rights to the Administrative Law Judge hearing level. There would be no reconsideration step.

If the claimant chooses to have a face-to-face interview, it would be an informal meeting between the claimant and the decision-maker. The claimant would have an opportunity to review the claims folder prior to the face-to-face interview, ask questions, explain why his or her impairment(s) prevents him or her from working, submit additional evidence in support of the claim, and present witnesses. Following this interview, the decision-maker would obtain any additional evidence if indicated by the results of the interview and make a formal decision. If the decision is a denial, the claimant would receive a denial notice explaining the decision and offering appeal rights to the Administrative Law Judge.

2. Eliminate the Reconsideration Step

This option would eliminate the reconsideration step altogether in SSI disability issues. It would retain the current decision process up to the point of an initial disallowance. However, in the denial notice the claimant would be offered the opportunity to appeal directly to an Administrative Law Judge. This is consistent with the handling of some SSI posteligibility issues.

3. Establish Time Limits To Complete Cases Under Appeal

This proposal would establish time limits to process SSI cases at each successive level of appeal. For example, when an individual requests reconsideration of the initial denial the disability determination services would be required to make a reconsidered

decision within a set period of time. Time limits would apply to cases processed at every level of appeal. If the time limits are not met, payments would begin.

The Definition of "Aged"

Current Approach: From the beginning of the program, the SSI statute has defined an aged individual as age 65 or older. This originated from the definition used in the former programs under titles I and XVI of the Social Security Act. It is also currently the age at which full retirement benefits are payable under the old-age and survivor's insurance program (title II). The Medicare and Medicaid programs use age 65 as an entrance point for the nondisabled.

In other situations, other ages have a role in eligibility determinations. For example, under Social Security, an insured individual can collect "early retirement" benefits at age 62, and older women may begin collecting widows' benefits at age 60. The Older Americans Act sets age 60 as the point of eligibility for programs it funds. On the other hand, beginning with the year 2000, the age for unreduced title II retirement benefits (age 65) will increase gradually until it reaches age 67 in the year 2022.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Physical aging. Some needy individuals approaching age 65 may be physically "aged" even though they have not chronologically reached age 65. For example, some minority groups have shorter life spans than the general population.

Need for a "bridge." There is a need for a "bridge" for individuals under age 65 who have worked for many years and have exhausted their unemployment compensation benefits, but are not old enough for social security retirement benefits and pensions. Such individuals may be unable to find work because of the job market or because of declining health even though they do not meet the eligibility requirements for disability benefits. Others who might benefit from a bridge starting as early as age 50 include "displaced homemakers" and widows who have been out of the workforce for a number of years and are unable to find work due to their age or a lack of marketable skills. Such persons are particularly vulnerable to poverty.

Need for health insurance. If earlier eligibility for SSI would bring along with it eligibility for Medicaid, it would provide much-needed health coverage for older persons who are unlikely to have insurance at a time when health problems may start or become more severe.

Impact on other options. If money available for program expansion is limited, providing benefits to new groups of eligibles could limit increased benefits to those already on the rolls.

Options for Change

1. Lower the Age Requirement to Age 62

Under this option, needy individuals could be eligible to receive benefits upon attainment of age 62, without having to meet the tests for disability or blindness.

This would provide a minimum income level to needy older people who may not have worked long enough to be eligible for early retirement pensions or social security benefits, or those whose earnings have been so low that benefits are minimal.

Adoption of this option would increase the initial claims and postentitlement workloads for SSA. On the other hand, there would be some decrease in the disability determination workload.

As a result of this option, people who become eligible for SSI could become eligible for Medicaid in the same way current aged SSI recipients do now, unless Congress specified otherwise.

2. Lower the Age Requirement to Age 60

Under this option, needy individuals could be eligible to receive benefits upon attainment of age 60, without having to meet the tests for disability or blindness.

The considerations listed under option 1 also apply here. The number of people affected would be larger (and, therefore, the workload for SSA would be larger).

Accounting Issues

The following five subsections of this paper address issues which have been raised regarding the benefit computation period and the frequency of computing benefits.

Test Annual Prospective Accounting Model(s)

Current Approach: SSA now uses a system known as retrospective monthly accounting when determining SSI payment amounts. Generally, the current month's payment amount is based on the recipient's income from two months earlier. (There are special rules for new eligibles and recipients who lost eligibility for one or more months.)

Summary of Testimony From Public Hearings: Witnesses alleged that—

Termination of Income and Triple Counting of Income

Because the retrospective monthly accounting computation bases payment on income received two months earlier, the SSI payment continues to be reduced for two months after countable income is terminated or reduced. There are particular problems when the income being charged is noncash, in-kind support or income deemed from a spouse or parent, since the income is not cash and there is no opportunity for the recipient to save income to carry him/her through the shortfall months.

Five paydays. Recipients who have other income that is paid weekly or biweekly have benefits cut off in months with five or three paydays. While they are able to get an SSI benefit in the next month, this creates problems in maintaining Medicaid eligibility.

Annual accounting. Annual accounting would eliminate the problems peculiar to retrospective monthly accounting and could offer other advantages. For example, it might be possible to rely more completely on the Internal Revenue Service's income data rather than having to contact the SSI recipient's employer for month-by-month breakouts of wage data.

Benefit amounts are hard to understand. People cannot understand how benefits are computed.

Option for Change

Test one or more methods of annual accounting, beginning with prospective annual accounting, by running a computer simulation of the method or methods proposed. Prospective annual accounting would involve obtaining an estimate of annual income based in part on income in the previous year and basing monthly payments on this estimate. Payments would be reconciled against actual income after the close of the year. Provision would be made for making adjustments during the year if income changed by a certain percentage.

The computer simulation of the model would be designed to provide information regarding the potential costs of annual accounting. It will identify that part of the SSI population most affected by annual accounting and the extent to which they are affected. It will identify any inequities or complexities in the computation of benefits and the maintenance of that computation.

Triple Counting and Termination of Income

Current Approach: Under the rules of retrospective monthly accounting, the current month's payment amount is usually based on the recipient's income from two months earlier. However, when a recipient becomes initially eligible or reeligible for SSI benefits, the countable income received in the first

month of eligibility or reeligibility is used to compute the payment amount for the first, second, and third months. This is true even when income terminates after the first month. In initial eligibility cases, the individual must choose between delaying the month of eligibility or taking the reduced benefit for three months. There is no way to avoid the benefit reduction in reeligibility situations.

When countable income terminates or is reduced, the retrospective feature of the current accounting system yields the following result. Because the computation bases payment on income received two months earlier, the SSI payment continues to be reduced for two months after the income terminates or is reduced.

Summary of Testimony From Public Hearings: Witnesses alleged that—

There is a problem with income continuing to affect the benefit amount even after it has been terminated or reduced. This can create difficulties for the recipients in meeting expenses for months before the SSI benefit is increased to reflect the lower income level.

Option for Change

Change the computation method from retrospective monthly accounting to prospective monthly accounting. Under prospective monthly accounting both eligibility for and the amount of payment would be based on the current (payment) month's income as contained in SSA records. Triple counting would not occur since an increased benefit resulting from a decrease in income would be effective for the month in which the income decreased. Also, payment increases resulting from reduction or termination of income would occur in the same month the income change was effective.

If the change were to stop here, the negative effect of triple counting would be resolved but the overpayment prevention advantages of retrospective monthly accounting would be lost. Therefore, as part of the change, a "payment effectuation period" could be established. Under this concept, when a change will result in a reduction in payment, that change will be effectuated two months later than the month in which the income changed. This will have the same two month's lead time for preventing overpayments that now exists under retrospective monthly accounting.

Five Paydays

Current Approach: A recipient (or a parent or spouse whose wages are deemed as income to a child or spouse recipient) earning wages close to the cut-off point may be paid once a week. For those four-payday months, income remains under the eligibility limit. However, the extra earnings in a five-payday month are enough to result in ineligibility.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The five paydays phenomenon is most serious when it results in the loss of Medicaid coverage. Disabled recipients who are working and would be eligible except for their earned income continue to be entitled to Medicaid under the provisions of section 1619(b) of the act. However, this protection is not available to others or in unearned income cases.

Month-by-month income changes resulting in month-by-month changes from eligibility to ineligibility and vice versa are inevitable features of a monthly process. However, the problem is not with the dollar payment changes, which in a true five paydays case tend to be rather small since the payment is already close to the cut-off point, but rather with the loss of Medicaid eligibility.

Option for Change

Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation.

Monthly Verification of Wages

Current Approach: Because eligibility is determined monthly and benefits are computed monthly, the beneficiary's monthly earnings must be obtained. The law states: "relevant information will be verified from independent or collateral sources * * *." Monthly wage information is obtained from employers when the beneficiary does not have copies of pay slips. SSA data show that fluctuating wages are one of the most frequent causes of overpayments and underpayments.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The verification requirement has proved burdensome, particularly for employers of SSI recipients who may not maintain records in the correct format. Since employers provide wage information to the Internal Revenue Service, why must they provide the same information to SSA?

Option for Change

When it is not cost-effective, verification would not be required. SSA would test a system that relies on regular recipient reporting. Regular computer matching with timely wage data would provide backup to identify recipients who do not report or report incorrectly. Other verification would not be done routinely.

State Supplementation Payments Computation

Current Approach: SSA administers State supplementary payments for some States. However, persons whose incomes are too high to receive federal SSI benefits but low enough to permit federally-administered State supplementary payments are not "eligible" for federal SSI under the law. This can lead to some unusual payment computations that are very difficult to explain either orally or in written notices.

For example, a recipient may be receiving both a partial federal payment and a full State supplementary payment. This individual's income may increase in a month to the point at which it exceeds the Federal benefit rate but is below the combined federal plus State supplementary payment level. In this instance, the recipient will receive no federal payment because he/she is not eligible for a federal payment, but he/she will still receive a full State supplementary payment, because the computation for the State supplement will be based on income from two months ago. Only after two months will the State payment be reduced. In this situation, one change in income produces two payment changes.

Summary of Testimony From Public Hearings: Witnesses alleged that—

These payment changes and other complications resulting from the way eligibility is defined result in confusing notices in States where SSA administers the supplement.

Option for Change

Eligibility for SSI could be defined in terms of income below the total federal plus State supplementary payment level for recipients in States for which SSA administers the supplement. This would remove the double payment change effect described above. As long as the recipient's income remained below the total federal plus State supplementary level, the recipient would remain eligible, and the payment would change once (usually two months after the income change under retrospective monthly accounting).

Linkage of the SSI and Medicaid Programs

Current Approach: All States provide Medicaid to at least some SSI recipients. Current law permits the States to limit the number of aged, blind and disabled cash assistance recipients who receive Medicaid coverage.

Under Medicaid law, States must provide Medicaid for their mandatory categorically needy. Most States define that group as cash assistance recipients and individuals who are by law considered to be receiving cash assistance for Medicaid purposes. Twelve States use a more restrictive eligibility standard or set of standards than the SSI program does to define their mandatory categorically needy aged, blind and disabled. The law allows States to employ more restrictive standards if the standards are not more stringent than those used in the predecessor programs immediately before the SSI program. States which have more restrictive eligibility criteria than those of the SSI program may use some or all of the following: lower income limits, lower resources limits, and more stringent definitions of disability. A State which elects the more restrictive option must deduct incurred medical expenses from countable income in its eligibility process.

States may elect to provide Medicaid to all persons who meet the SSI requirements. Seven States and the Northern Mariana Islands use the SSI standards to determine Medicaid eligibility, but require a separate Medicaid application. Thirty-one States and the District of Columbia have agreements for SSA to make Medicaid eligibility determinations for SSI recipients.

Testimony: Witnesses alleged that—

States which take their own Medicaid applications have fewer Medicaid eligibles. States which require separate Medicaid applications, especially those States which use more restrictive Medicaid eligibility criteria than those of the SSI program, have significantly fewer Medicaid eligibles than SSI eligibles.

In some cases, individuals who file for the Federal benefit fail to file for Medicaid with their State agencies. In others, a State's more restrictive criteria may result in Medicaid ineligibility.

Medical coverage should not depend on small changes in income. Relatively small changes in income which result in a loss of SSI can also result in Medicaid ineligibility.

In these situations, the recipient has acquired replacement income for the cash assistance. However, there is frequently no analogous replacement for Medicaid based upon the receipt of cash assistance. A loss of SSI can result in a temporary or permanent loss of all medical coverage. It is not unusual for a recipient's interest in SSI to be actually driven by a need for medical assistance. The loss of SSI in and of itself may be of relatively little consequence to the recipient; however, the resulting Medicaid loss can be devastating.

Options for Change

(Variability of income and other income changes which can affect SSI eligibility and Medicaid based on that eligibility are addressed in the Benefit Adequacy and Annual Prospective Accounting Model sections.)

1. Eliminate More Restrictive Criteria

This option would require States to use eligibility criteria no more restrictive than those of the SSI program. States could still retain the option to require separate Medicaid applications and could still limit their categorically needy by choosing not to provide Medicaid to recipients of only optional State supplementary payments.

In order for this option to be equitable, States which now use the deduction of incurred medical expenses from countable income in lieu of some optional Medicaid categories would have to continue their deductions to the extent that those deductions would also exceed any higher SSI benefit.

2. Mandate Federal Determinations for All States That Use the SSI Criteria

This intermediate option would require SSA determinations of Medicaid eligibility in all States currently using the SSI eligibility criteria. No separate application for Medicaid would be required.

3. Mandate Federal Determinations for All States

This option would extend SSA determinations of Medicaid eligibility using SSI criteria to all States.

Linkage of the SSI and Food Stamp Programs

Current Approach: Food Stamp law requires SSA offices to inform SSI applicants and recipients they may be able to get food stamps. SSA offices assist applicants and recipients who are members of a household in which all members are applicants or recipients of SSI (referred to as a pure SSI household) in making application for food stamps. Recipients in pure SSI households in most cases are automatically eligible for at least a minimum food stamp benefit of $10. Some, however, may not be eligible for anything, depending on household size and the resources and income of others in the household. Also, before their eligibility can be established, members of pure SSI households often have to go to the food stamp office in order to provide the necessary household verification documentation.

SSI applicants and recipients who are not members of a household in which all members are applicants or recipients of SSI benefits (referred to as a mixed household) have to meet the food stamp program resource and income eligibility requirements to be eligible for food stamps. Recipients in mixed households must file for benefits at the food stamp office.

Food stamp offices make eligibility determinations and issue food stamp coupons.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Application Process. The current application processes for filing for SSI and food stamps are confusing, too time consuming and needlessly complicated. Application forms and instructions are too complicated and should be written in easy to understand language. The processes should be streamlined to ensure recipients receive their benefits in a timely manner. A short food stamp application form would improve the SSI participation rate in the food stamp program.

Individuals referred to State agencies for food stamps often do not follow through on the referral due to a lack of understanding of how the system works, inability to access appropriate transportation and fear that disclosure of information to another office will jeopardize other program benefits.

Application forms. Effective SSA processing of food stamp applications is impeded by the form itself. Many States use a multi-program type application form. These forms cover all the assistance programs they administer, making it difficult to complete for just food stamps. Also, States are being urged to go to an on-line automated application process. States may find it difficult to transcribe the application SSA sends them to their on-line process.

Categorical Eligibility for Program Benefits. Establishing categorical eligibility for food stamps for SSI recipients would be a simple way to link the two programs. This would be similar to the linkage of Medicaid eligibility to SSI eligibility.

Options for Change

1. Social Security Offices Complete a Short Food Stamp Application for all Interested Applicants

SSA would complete a short food stamp application and mail it to the food stamp office within a 24 hour period. The short-form application would contain minimal information and the applicant's signature. Although this would be incomplete for determining

food stamp eligibility, it would establish the individual's intent to file a claim.

2. Treat SSI Recipients as Separate Food Stamp Households and Establish a Flat Food Stamp Allotment for SSI Recipients

The food stamp program would treat all SSI recipients as being categorically eligible for food stamps regardless of the household makeup. However, in some instances, the flat food stamp allotment could be a smaller amount than certain individuals receive today.

3. Cash Out the Food Stamp Benefit

SSI recipients would be considered categorically eligible to receive food stamps. Anyone receiving SSI and/or a federally administered State supplement would have their SSI check increased by a flat amount in lieu of receiving food stamps. In some instances, the flat food stamp allotment to be included in the SSI check would be a smaller amount than individuals receive today.

Representative Payment

Current Approach: Some Social Security and SSI beneficiaries are paid through representative payees who manage the funds for them. Representative payment occurs when a beneficiary is not able to manage his or her own funds adequately. It applies to anyone who has been declared legally incompetent and to most children under 18. In addition, it is mandatory for anyone whose SSI disability entitlement is based on alcoholism or drug addiction.

Under all its programs, SSA pays 1.6 billion dollars each month to some 5 million beneficiaries through representative payees.

Payee Responsibility. A representative payee is required to use the benefits solely in the best interests of the beneficiary. The payee must also act on behalf of the beneficiary in dealing with SSA. For example, the payee must report changes and decide whether to appeal any SSA decisions.

Payee Recruitment. Many beneficiaries have payees who are family members or close friends. However, SSA experiences difficulty in finding volunteer payees for those who do not have such traditional sources of support or are disabled by substance abuse or serious mental illness. Some individuals are reluctant to try to cope as payees for certain beneficiaries. In many States, social service agencies are precluded by law or policy from serving as payees. In others, budget constraints prevent the agencies from serving.

Payment for Services. Beginning July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect a fee for expenses incurred in performing payee services. Such organizations may deduct from a beneficiary's social security and/or SSI monthly payment the lesser of 10 percent of that payment or $25. This is a first-time authority to collect fees of any kind for payee services. It is also a temporary authority which expires on July 1, 1994.

Payee Monitoring. Certain State institutions are subject to onsite reviews of their payee functions. All other payees are required to submit an annual accountability report. There is no routine audit of these reports and there are questions about their effectiveness in detecting misuse. However, use of sampling techniques to audit use of funds by payees has shown little misuse.

When a payee misuses a beneficiary's funds, the payee is liable to the beneficiary for restitution. In these cases, SSA usually appoints a new payee and tries to recover the misused funds from the former one. Cases may be referred for prosecution but success levels are low.

Study. SSA has commissioned the Administrative Congress of the United States, an independent Federal agency, to review the representative payee program. The results of that study will be published in the **Federal Register.**

Summary of Testimony From Public Hearings: Witnesses alleged that—

Payment for Services. When families are not available or willing to serve as payees, private agencies may best fill the need. However, there are no incentives for agencies to provide this service. SSA should either pay agencies directly or increase payments to beneficiaries to cover fees to agency payees.

"There must be a way for SSA to pay for payee services directly. This payment should not come out of an individual recipient's check." (Advocate, drop-in center for homeless people)

Even when family is available, a paid payee may be a better choice since relationships can deteriorate because of verbal and physical assaults directed toward the payee resulting in the payee's acting simply as a conduit for funds. For the same reasons, volunteers are not appropriate payees for beneficiaries with a history of abusive behavior.

Payee Training. Representative payees should be trained to understand their responsibilities both for disbursing funds and for making appropriate reports to SSA. If the payee is not a social service professional, the training should include how to work with difficult persons such as substance abusers and those with serious mental illnesses.

Payee Monitoring. SSA should monitor more closely payees' use of funds, including contacting payees for documentation of expenditures and conserved funds. If a payee misuses funds, SSA should be able to enforce restitution.

"Strong financial penalties should be applied to the [abusive] payee * * *." (Mental health commissioner)

"[T]he most flagrant abusers should be tried for fraud." (Elder abuse council director)

Reevaluate Capability. SSA should provide for periodic formal reevaluations of capability of all beneficiaries with payees to ensure that none is unnecessarily deprived of the right to receive and manage benefits without interference.

Option for Change

Develop legislation that would mandate specific recruitment, training and monitoring of representative payees and authorize the appropriation of funds to implement the program.

Under this option, Congress would state its expectations for program administration. Given those expectations, legislation would establish an appropriate funding level to support them.

The following capsulizes some provisions that might be part of a broad-based representative payment program.

(a) Payments by the Federal Government of reasonable compensation to representative payees for their services.

(b) Contracting by SSA with agencies to provide payee services at Government expense when suitable volunteers are not available. Alternatively, if an SSI beneficiary is required to pay some or all of the fees of a representative payee, he or she would be reimbursed for them.

(c) Requirement for payees, other than parents with custody of minor children, to provide periodic documentation to support their annual accountings. This would supplement the existing annual payee reports and would not require legislation.

(d) Recovery of misused funds by SSA from the monthly payment of any representative payee currently receiving benefits in his or her own rights. Under current law, SSA cannot attach a payee's own benefits and a beneficiary has little recourse when a payee refuses to make restitution.

(e) Prosecution of representative payees who have misused funds, regardless of the amount. At present,

SSA can refer a case to the U.S. Attorney only if the amount involved is $3,000 or more.

Funding for Outreach Activities

Current Approach: SSA has undertaken an outreach campaign through its field offices, working with community based agencies. For example, offices have used other agencies' lists to send letters to potentially eligible individuals; workers regularly visit homeless shelters, facilities for the elderly, and other sites where needy individuals would be found; and computer matches between SPA and other agencies identify potential recipients. Information and referral agreements with advocacy and service groups have been a key aspect of outreach. However, many groups within the population, including the homeless, the frail isolated elderly, children, and Native Americans, have been underserved. (For additional discussion on this issue, see the "Homelessness" and "Information and Referral" sections.)

In Fiscal Year 1990, Congress appropriated $3 million for SSI outreach demonstrations. Currently, there are 25 research demonstration projects operating in 34 sites nationwide which are testing methods of overcoming the barriers that prevent potentially eligible individuals from filing for SSI. In Fiscal Year 1991, Congress appropriated $6 million to continue this outreach program, and SSA will fund additional cooperative agreements based on what has been learned from the first group of projects. The most successful methods from all of the projects will be incorporated into future outreach initiatives.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Problems With Documents

"We are dealing with patients who have limited education. Among the older clients, some have no birth certificates, no Social Security card, no other legal documents to prove their age or status, yet they come to us asking for help. We need a troubleshooter that we could call to cut the red tape." (Outreach Worker)

SSA Not Accessible

"One of the things that has happened as a result of cutback in travel, too, local offices used to at least monthly go into each rural community * * *. If the district office was supposed to cover 16 counties, they would go in, they would be available for consultation, and they were always at an accessible location, and they did a good job of publicizing their arrival so people could ask the kinds of questions they should * * *. Since that no longer exists, we are finding a lot of people technically falling through the so-called loopholes. This also applies to the mentally disabled and the homeless who are also mentally disabled * * *" (Legal Services Attorney) (For additional discussion on this issue, see "Service" section.)

Language Barriers

"The language barriers for Indian elders with limited English proficiency are complicated by the fact that Indian languages are typically not written languages, thus bilingual written notices and communications are not possible. There are, however, interpreters available who could be hired to do outreach work to tribal elders with limited English reading skills. I have seen no effort by SSI to assure that information is conveyed to tribal elders in their own language * * *" (Legal Services Attorney)

"National studies estimate that only 44% of eligible Hispanics receive SSI. Despite high need, Hispanic elders are less likely to receive SSI than the rest of the eligible population. There may be many reasons for the low participation of Hispanics in SSI, but it is my estimation that lack of outreach is a primary cause." (Advocacy Program Director)

"If an outreach position was instituted as was suggested by Dr. Flemming, one area in which it would be most helpful would be for patients in the State Mental Hospitals." (Community Mental Health Center Official)

Many Techniques Needed

"SSI outreach should be an ongoing, expanded priority, and should be funded to allow for a wide range of outreach techniques. An establishment of information sharing networks between the various methods would serve as a means to develop the most successful techniques." (Local SSI Outreach Director)

Option for Change

Establish Specific Funding for Outreach

If this option were adopted, a percentage of the SSI administrative budget would be dedicated solely to outreach. (For example, 5 percent for FY 91 would be $30 million.) These funds could not be used for other purposes.

Information and Referral Services

Current Approach: When Congress established the SSI program, it separated responsibility for income maintenance and social services. The new program placed cash assistance payments delivery in SSA and kept social service assessment and delivery in the hands of State, local, and private nonprofit agencies. This separation of payment delivery and social service delivery was consistent with the operation of most State programs in the early 1970's. SSA initiated information and referral activities to help link claimants and beneficiaries with other public and private agencies that could meet other needs, as it had previously done for Social Security claimants/beneficiaries. The Social Security Act also requires SSA to provide referral to vocational rehabilitation programs for certain categories of SSI and Social Security disability beneficiaries.

Other than mandatory vocational rehabilitation referrals, SSA does not follow up with the individual or the organization to determine if the requested service was received or if the need was met.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Claimants/beneficiaries need assistance. Outside SSA there is a proliferation of programs and services available but it is difficult to negotiate this system of services without the assistance of an advocate or professional social worker. Many poor people are not in contact with other agencies that can help them negotiate the system. Different providers are not aware of the various available resources for the mentally ill client. There should not be a way of centralizing the available resources and require all providers to know what's available.

Process creates stress. Clients experience stress because of fragmented services in the community and the accompanying process which they have difficulty negotiating alone.

SSA can perform this function. Many SSI recipients are in need of social services; and SSI workers, if properly trained, could provide the linkage/referral for the SSI individual to the appropriate services.

Clients should be asked if they object to having their names referred to designated agencies that could provide resources and services. SSA could then make a direct contact and ask the agency to contact the client. This is a way to resolve the problem of reluctance on the part of clients to contact other organizations for help.

SSA Needs To Dedicate Staff To Provide Assistance

Increased coordination by SSA field office personnel with other community organizations is needed and more human resources should be provided to

accomplish this task. SSA field offices need a specific employee on staff responsible for working with community agencies, facilitating cooperative activity and ensuring that clients make the right connections.

Information and Referral Services Are Available Outside SSA

"We hope that the information and referral services and case management offered by professionals in the community will be seen as vital components of the SSI system of the future. If the technical interpretations of SSI can be the continued focus of SSA, the Aging Network can provide the presence and support needed in helping SSI beneficiaries" (Area Agency on Aging).

SSA should not perform social service functions. SSA has been forced, inappropriately, to assume a number of social service functions. Problems could result if SSA becomes a social service agency or becomes involved in general case management. Problems arise, such as conflicts of interest and questions of confidentiality, when entitlement agencies perform social service functions. The need for additional human resources to provide these services would be great. Case management is available from many other organizations and SSA would be duplicating such service.

Options for Change

1. The Expanded Community Liaison Model

The Expanded Community Liaison Model would broaden the scope of the functional statement for Social Security Administration field offices to include more in-depth community liaison activities. This model would provide expanded linkage with community organizations. It would not provide case management services, but would try to ensure that clients who need such services receive them through another organization, e.g., the mental health system, local charity or cultural groups, state agencies, etc.

SSA field offices would dedicate additional staff resources to contact community agencies and institutions and to work with them on a continuing basis. The goal would be to use community organizations in concert with the local SSA office. SSA would ask organizations to help individuals apply for SSI, to help applicants and recipients deal with any problems that arise and to provide case management when needed. Special emphasis would be placed on assisting the homeless to make meaningful connections with organizations that could provide other assistance and services. (Refer to the section labeled "Homeless.") In order for this model to be effective, an increase in human resources in SSA field offices would be necessary and the resources would have to be dedicated specifically to this function.

2. The Case Manager Model

In this model, SSA would work closely with claimants and beneficiaries and their families and care givers, taking responsibility for the progress of each person trying to overcome the obstacles and problems presented by disability, blindness or age. SSA would provide an active and ongoing link between clients who want or need social services and organizations who provide those services. SSA would develop and maintain a network of providers, employers, and other public agencies with which it would collaborate to improve the health, work status and quality of life of clients. Specialized assistance would be provided to the homeless in order to ensure that they are able to complete the SSI application process and connect with organizations that provide other assistance and services. (Refer to the topic labeled "Homelessness".) Case management is very labor intensive and would require a major increase in staff for field offices.

Homelessness

Current Approach: Homelessness makes the SSI application process more difficult. This population is usually not connected to any of the social agencies which routinely refer people to Social Security offices. Their lack of a fixed mailing address makes them difficult to reach. They also lack transportation to SSA offices, and their lack of identification and other evidence needed to establish eligibility makes the application process slower.

SSA district offices have homeless coordinators who work with local service and advocacy groups. As a result, many local social service agencies, soup kitchens, shelters, churches, etc., screen homeless people for possible SSI eligibility, refer them to the local SSA office, and help them through the system. Also, in many areas of the country local SSA offices, sometimes assisted by the Disability Determination Service, visit homeless shelters, clinics, and hospitals to take applications. SSA is investigating methods of continuous funding for these activities. (For additional discussion on this issue, see the sections on "Outreach," "Services Provided by the Social Security Administration," and "Information and Referral.")

In addition, SSA does not require a fixed mailing address before issuing a check; homeless individuals can pick up their checks at the local Social Security office, or at a shelter. Benefits are usually paid when a person lives in a privately operated shelter. Although an individual generally is not eligible for SSI benefits for any month throughout which he or she is a resident of a public institution, there is an exception for public emergency shelters. In any nine month period, an individual may be eligible for SSI for any six months throughout which he or she resides in a public emergency shelter.

Further, SSI payments are made for certain individuals who are admitted to a public medical institution or a facility in which Medicaid is paying more than 50 percent of the cost of care. A physician must certify that the individual will be confined for 90 days or less, and the individual needs to pay some or all of the expenses of maintaining the home or living arrangement to which he may return after discharge.

SSA has also instituted a policy to ensure that an individual's payments are not inappropriately terminated because of failure to respond to a request for evidence. SSA recognizes that a person's age or medical condition, or homelessness, may make it impossible for him or her to respond on a timely basis. Failure to furnish this information does not automatically result in a loss of benefits. SSA makes every effort to locate the individual, including contacting homeless shelters, to assist them in obtaining the necessary documents.

Another effort to prevent homelessness is the pre-release program which begins payments to persons as soon as possible after discharge from public institutions or private institutions where Medicaid pays over half the cost of care. Each SSA office establishes agreements with all appropriate public and private institutions. The institutions identify individuals who appear likely to meet the criteria for SSI eligibility, and who could be released within 30 days. The SSA office takes claims from these individuals, and potential eligibility and payment amount are determined based on the individual's anticipated living arrangement upon release. The payment starts upon release from the institution when possible.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The Application Process. The application process should be simplified so that processing time is shortened. Frequently, by the time the decision is

reached, the claimant's whereabouts are unknown.

The Disability Process. SSA should make decisions based on lay evidence (e.g., observations of shelter workers and mental health workers) when medical records are non-existent and the applicant refuses to see a doctor for fear of institutionalization.

Third Party Assistance. Agencies involved with the homeless mentally ill should be educated regarding the disability application process. Further, the homeless mentally ill should be provided with advocates to help them through the system. (For additional discussion on this issue, see the "Information and Referral" section.)

Payees. SSA should identify a pool of reputable people who are willing to serve as representative payees for the homeless mentally ill. This would assure that the individual is using the payments for basic needs. (For additional discussion on this issue, see the "Representative Payment" section.)

Hospitalization/Institutionalization. SSA should allow indefinite SSI payment for individuals residing in public emergency shelters for the homeless. Further, a means should be found to maintain a person's rent while he/she is hospitalized.

Outreach. SSA should increase outreach activities, especially to the homeless mentally ill. (For additional discussion on this issue, see the "Outreach" section.)

Options for Change

1. Provide Emergency Payments to Individuals With Mental Illness

Under this provision, emergency payments would be provided to individuals who file an application and:

(a) Are homeless, as defined by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77), and

(b) In the judgment of a qualified mental health professional, exhibit symptoms of severe mental illness.

The McKinney Act defines a homeless person as someone without a fixed, adequate nighttime residence or whose primary nighttime residence is a shelter, a temporary holding place for individuals intended to be institutionalized, or a place not intended as sleeping accommodation for human beings.

These applications would be processed for a final decision within 30 days, *or* benefits would be continued until a final decision is reached. These payments would not be considered overpayments if it is decided that these individuals are not disabled or blind.

2. Provide Continued Payment Protection for All Hospitalized Individuals

The law would be changed to remove current restrictions. A physician would no longer be required to certify that the eligible individual is expected to stay for three months or less. Further, the individual would no longer be required to demonstrate that the SSI payment is needed to maintain the living arrangement to which he or she may return upon discharge. Payments could be made to all individuals for the first three months of hospitalization.

3. Pay SSI Benefits to Individuals in Public Emergency Shelters for the Homeless Without any Time Limit

Residents of these shelters would be eligible for SSI indefinitely.

4. Provide, Nationwide, Outreach Services Now Being Tested

SSA is testing models for helping the homeless through the application process. Travelers and Immigrants Aid in Chicago, with funding from SSA, provides all necessary application processing services during a single interview, including on-the-spot consultative examinations. It also provides case management throughout the application process, and assists the homeless individual in arranging representative payee services.

SSA is beginning an initiative with the Department of Veterans Affairs' successful Homeless and Chronic Mentally Ill Program. The initiative will involve SSA and Disability Determination Service staff in Homeless and Chronic Mentally Ill sites working as a team to take and develop applications.

Under this option, SSA would expand these integrated services models across the country. (For additional discussion on this issue, see the "Outreach" section.)

Advisory Council Review

Current Approach: Although the SSI program has undergone numerous refinements and modifications since enactment, the basic structure has not changed. Over the years, a number of reviews have been done, but not on a regular basis and few involved independent experts who reported to the Secretary, as is the case with the Advisory Council on Social Security.

Congress authorized the Social Security Board to appoint the first Social Security Advisory Council in 1937 to study the advisability of amending the program to ensure that its benefits were adequate and equitable and that its financing was sound. The Advisory Council consisted of representatives of employees, employers, and the general public. In 1969, the Advisory Council's charter was expanded to reflect a broader scope of review. Currently, under the law, a new Council is appointed every four years and submits a comprehensive report to the Secretary on designated issues. At the time of the statutory mandate, the SSI program had not yet been established, and the Act has never been modified to specifically include review of the SSI program. Only one Social Security Advisory Council has addressed SSI program issues.

Summary of Testimony From Public Hearings: Witnesses alleged that—

There are fundamental differences between the Social Security trust fund programs and SSI. Some of the differences involve issues that require extensive review and consideration of other social and domestic programs.

The SSI program would benefit from a periodic, independent review, similar to but separate from the process afforded the four trust fund programs by the Social Security Advisory Council, because of the fundamental differences between the SSI and trust fund programs, and because the scope of the review would be too great to be manageable if it were combined with a review of the trust fund programs.

Options for Change

1. Amend the Social Security Act to Include SSI in Social Security Advisory Council Jurisdiction

This option would include the SSI program as an integral part of the Advisory Council's mandate. While this approach would not guarantee that the SSI program would be reviewed every four years, it would, nevertheless, include SSI in the Council's jurisdiction and allow the program to be reviewed singly or jointly with the trust fund programs, as determined by the Secretary.

2. Establish a Separate Advisory Council on SSI

This option would guarantee that the SSI program receives a regular, comprehensive review by an independent group of experts who would report to the Secretary. The mandate could include a very broad charter, in which SSI would be

considered with other Federal and State income maintenance programs (other than trust fund programs). A separate Advisory Council would be expected to take into account actions of the most recent or existing Advisory Council on Social Security on issues of mutual interest.

[FR Doc. 91–17990 Filed 7–30–91; 8:45 am]
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federal register

Wednesday
July 31, 1991

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133C, 84.133F, and 84.133G]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1992

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Field Initiated Research—34 CFR parts 350 and 357.

Rehabilitation Research Fellowships—34 CFR part 356.

Innovation Grants—34 CFR parts 350 and 358.

Applications Available: July 31, 1991.

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH—INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER CERTAIN PROGRAMS FOR FISCAL YEAR 1992

CFDA No.	Program title	Deadline for transmittal of applications	Estimated available funds	Estimated No. of awards	Estimated average awards	Project period
84.133C	Innovation Grants	3/16/92	$750,000	15	$50,000	12
84.133F	Rehabilitation Research Fellowships	12/15/91	400,000	10	40,000	12
84.133G	Field-Initiated Research	10/15/91	2,500,000	20	125,000	36

Title of Program: Innovation Grants.

CFDA No: 84.133C

Purpose: This program is designed to provide financial support to projects that: (a) Test new concepts and innovative ideas; (b) demonstrate research results of high potential benefits; (c) purchase and evaluate prototype aids and devices; (d) develop and test unique rehabilitation training curricula; and (3) conduct feasibility, planning, and evaluation studies and conferences, and other activities to disseminate specific research findings as described in program regulations at 34 CFR part 358.

The Secretary is particularly interested in applications that meet the following invitational priority: Projects that will facilitate implementation of the Americans with Disabilities Act, including but not limited to curriculum development for training of affected parties on issues related to the ADA, development and testing of assessment and measurement surveys, related to job accommodations for persons with disabilities, and development of adaptive devices.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over the applications.

Selection Criteria: The Secretary uses the following selection criteria, 34 CFR 358.32, to evaluate applications under this program.

(a) *Importance of the project (50 points):* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purposes of this part.

(b) *Project or methodology (25 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation (25 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

Eligible Applicants: State and public agencies, private agencies or organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for award in this program.

Program Authority: 29 U.S.C. 762(b)(13).

Program Title: Rehabilitation Research Fellowships.

CFDA No: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons as described in program regulations at 34 CFR part 356:

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30:

(a) Quality and level of formal education, previous work experience, and recommendations, of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Rehabilitation Act and the mission of the National Institute on disability and Rehabilitation Research (NIDRR).

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under the program.

Program Authority: 29 U.S.C. 761a(d).

Program Title: Field-Initiated Research.

CFDA No: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations at 34

CFR part 357 that address important activities not supported by Institute-funded research or that complement that research in a promising way.

The Secretary is particularly interested in applications that meet the following invitational priorities: Projects that facilitate awareness, understanding, implementation, and assessment of the impact of the Americans with Disabilities Act (ADA); projects that address the successful rehabilitation, improved family relationships, or enhanced employability of persons with epilepsy; projects that address the successful rehabilitation and continued employment of individuals with repetitive motion syndrome; projects to develop strategies that promote employment and independent living for adults with autism. Projects that address socialization skills, family relations, and employment for individuals with attention deficit disorders; projects to develop innovative strategies for rehabilitation counselors to enhance job placement, career choice and independence of clients; and strategies to increase the number of persons with disabilities who pursue careers in science and math and to increase the career opportunities available to them.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over the applications.

Selection Criteria: The Secretary uses the following criteria, 34 CFR 357.32, to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target populations;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: State and public agencies, private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room # 3633, Regional Office Building # 3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this notice is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden

Assurances—Non-Construction Program (Standard Form 42B). Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Work-place Requirements (ED Form 80–0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received. Include general letters of support or endorsement in the application.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (200) 732–1141; deaf and hearing impaired-persons may call (202) 732–5372 for TDD services.

Authority: 29 U.S.C. 760762.

Dated: July 25, 1991.

Philip S. Link,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this section.

Frequent Questions

1. Can I get an extension of the due date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

2. What must be included in the application?

The application must include a project narrative, requirements of 75.112, vitae of key personnel, and a budget, as well as the Assurances forms included in the package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years must include requirements in 34 CFR 75.117.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies or publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific programs, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, and Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profit-making businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. Individuals may apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements for the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How soon after submitting my application can I find out if it will be funded.

The time from the closing date to the grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from

the closing date, but no later than the following September 30th.

11. Can I call NIDRR to find out if my application is being funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ▪ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Completion of Part III National Institute of Disability and Rehabilitation Research Project Narrative for New Applications

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

The successful narrative should include the basic information described below and, excluding resumes of key personnel, should be limited to:

- 40 pages for application under the Field-Initiated Research programs
- 20 pages for applications under the Innovation Grants program
- 12 pages, which is the regulatory limit, for applications under the Fellowship program

Should the proposed project be funded, the information provided in the "project narrative" will form the basis for evaluating progress for continuation funding. The narrative for continuation applications must include the accomplishments, unanticipated obstacles and future plans of the project. The applicant must also revise budget statements for the program. Please refer to 34 CFR 75.118(b).

The narrative for new applications may be organized under the major heading in the regulations governing the specific programs. The applicant must respond to the selection criteria for each program listed below:

Innovation Projects—34 CFR 358.32;
Research Fellowships Program—34 CFR 356.30;
Field-Initiated Projects—34 CFR 357.32.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information Public reporting burden for these collections of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Innovation Grants Program (CFDA No. 84.133C) 34 CFR parts 350 and 358.

Rehabilitation Research Fellowships (CFDA No. 84.133F) 34 CFR part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR parts 350 and 357.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11 Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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Wednesday,
July 31, 1991

Part V

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility; Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AB18

Institutional Eligibility; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as Amended (HEA), and the Student Assistance General Provisions regulations. These regulations implement the Secretary's initiative to improve the monitoring and accountability of institutions participating in the student financial assistance programs authorized under title IV of the HEA (title IV, HEA programs). The purpose of these regulations is to reduce the potential for abuse in the title IV, HEA programs by strengthening the means of enforcing the title IV, HEA program requirements.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of § 600.30. Section 600.30 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the **Federal Register**. After § 668.51 becomes effective, that section applies to award years beginning July 1, 1991, or later. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John De Cleene, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4318, ROB-3), Washington, DC 20202, (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended (34 CFR part 600), apply to all postsecondary educational institutions that seek to participate in programs administered under the HEA (HEA programs) by the Department of Education. The Student Assistance General Provisions regulations (34 CFR part 668) apply to all institutions that seek to participate in the title IV, HEA programs.

The changes in these regulations result from a review of current policies and procedures. The review identified possible legislative, regulatory, and administrative changes necessary to protect, enhance, and improve the integrity of the title IV, HEA programs.

On March 17, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for parts 600 and 668 in the **Federal Register** (54 FR 11354). On November 3, 1989, the Secretary published as final regulations § 668.12 of the Student Assistance General Provisions regulations (54 FR 46536). Under the changes in § 668.12, certain officials of educational institutions seeking to begin participation in a title IV, HEA program for the first time are required to complete title IV, HEA program training provided by the Secretary. The November 3, 1989, regulations were published separately from these regulations so that the changes in § 668.12 would be effective for the 1989-90 and subsequent award years.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

New reporting requirements in § 600.30 for certain institutional ownership changes (page 11354);

A new § 600.32 governing the eligibility of additional locations of an institution (pages 11354 and 11355);

A requirement in § 668.7 for students to furnish credible identification to their institutions in certain circumstances (page 11355);

Changes in § 668.13 affecting the factors of financial responsibility governing an institution that undergoes a change in ownership that allows a person to own at least 25 percent of the stock of the institution or the institution's parent corporation (page 11355);

A requirement in § 668.20 that to be eligible under the title IV, HEA programs, remedial education must be provided at least at the secondary educational level (page 11355);

Clarifications in § 668.23 concerning access by certain Federal officials to institutional records and personnel involved in the administration of title IV, HEA program funds (page 11356); and

New provisions in § 668.90 governing the procedures for the termination of the participation of institutions in the Title IV, HEA programs (page 11356).

Major Changes to the NPRM

As a result of the comments received in response to the NPRM, the Secretary has made several major changes to the proposed regulations. The reporting requirements in § 600.30 and the factors of financial responsibility in § 668.13 are revised to reflect those circumstances (explained in detail in the Analysis of Comments and Changes) other than the ownership by a person of at least 25% of the stock of an institution or an institution's parent corporation that enable a person to affect substantially the actions of that institution. The Secretary has removed the proposed requirement in § 668.7 for an eligible student to furnish credible identification to his or her institution when he or she is about to receive cash for the first time from the title IV, HEA programs. Courses in English as a second language (ESL) are exempted from the requirement in § 668.20 that remedial education must be provided at least at the secondary level to be included in title IV, HEA program eligibility. The requirements in proposed § 668.23 have been expanded to require an institution to cooperate with independent auditors in the conduct of audits, investigations, and program reviews. The Secretary has modified the provisions in proposed § 668.90 concerning a termination action against an institution for missing an audit report deadline and either having a history of missing audit report deadlines or ignoring the Department of Education's attempts to obtain an explanation or impose a fine. The modification now requires an administrative law judge to uphold any termination action taken against an institution for a violation of § 668.23(c)(4) (governing the timely submission of audit reports). A more detailed discussion of these changes is found in the *Analysis of Comments and Changes*.

These regulations also contain technical changes in §§ 600.32, 668.1, 668.2, 668.7, 668.13, 668.44, and 668.95 that conform to changes made by regulations for the Guaranteed Student Loan and PLUS programs published in the **Federal Register** on November 10, 1986 (51 FR 40886), and June 5, 1989 (54 FR 24114); the Student Assistance General Provisions published in the **Federal Register** on December 1, 1987 (52 FR 45712); Institutional Eligibility under the Higher Education Act of 1965, as Amended, published in the **Federal**

Register on April 5, 1988 (53 FR 11208); and the Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program, published in the **Federal Register** on June 20, 1989 (54 FR 26006).

With respect to the changes concerning the Byrd Scholarship Program, the Secretary is amending §§ 668.1 and 668.2 to remove the definition of the Byrd Scholarship Program and to reflect that the program is not covered by the Student Assistance General Provisions regulations. Although the Byrd Scholarship Program is authorized by title IV of the HEA, the program bears no relationship to the other title IV, HEA programs. It provides a one-time prize to those high school seniors who demonstrate outstanding academic achievement and show promise of continued academic achievement. Furthermore, while the Student Assistance General Provisions regulations implement the requirements that are general to all the title IV, HEA programs, only two provisions of the Student Assistance General Provisions regulations appropriately apply to the Byrd Scholarship Program—that an eligible student must be a U.S. citizen, national, or eligible noncitizen as defined in § 668.7(a)(4), and that he or she must complete a Statement of Selective Service Registration Status. Both of these requirements have been incorporated into the Byrd Scholarship Program regulations (34 CFR 654.41(a)(3) and (4)).

In addition, these regulations include technical changes in § 668.51 to extend the Institutional Quality Control Project through the 1993–94 award year and to reflect that the Secretary no longer considers the project to be a "pilot" program. The project, which establishes a methodology that participating institutions use to assess their management practices in the delivery of title IV, HEA program aid, measure their error rates, and design corrective actions aimed at the reduction of error, was introduced as a pilot project in 1985. The Secretary's most recent evaluation showed that some of the institutions that were studied have implemented corrective actions and planned for long-term corrective actions to reduce error in potential problem areas that might not have been addressed or even discovered through the standard regulatory procedures for verification of information submitted by applicants for student aid. The Secretary extends the project for an additional three years to continue to evaluate the success of this management approach.

Paragraphs (c) through (f) of § 668.44, governing an institution's disclosure of information on State licensure and certification requirements for occupations, pass rates on State licensure or certification examinations, placement rates, graduation or completion rates, and the procedures for an institution to report that information to the institution's students, are removed. Appendix A, containing the Track Record Disclosure Forms required for reporting the applicable information in § 668.44 (c) through (f) is also removed. These changes are required by the Student Right-to-Know and Campus Security Act (Pub. L. 101–542), signed by the President on November 8, 1990. However, the Secretary reminds readers that an institution is still required, under section 487(a)(8) of the HEA, to make available to prospective students, at or before the time that those prospective students apply for admission, the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the institution's advertisements, if the institution advertises job placement rates as a means of attracting students to enroll in the institution.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 95 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 600.30 Institutional Changes Requiring Review by the Secretary

Comments: Several commenters asked whether the reporting requirements in this section apply to institutions owned by partnerships as well as institutions in which individuals own stock. A commenter urged the Secretary to ensure that this reporting requirement applies to institutions owned by publicly traded corporations.

Discussion: The reporting requirement in this section applies to any institution that is subject to the Institutional Eligibility regulations, regardless of whether the institution is owned by an individual, partnership, or publicly traded corporation. However, the Secretary agrees that a modification is necessary to clarify that this reporting requirement does not apply only to institutions in which persons own stock.

The Secretary recognizes that persons who do not own stock in an institution may have the ability to affect substantially the actions of the institution. Therefore, the Secretary believes that it is more accurate to refer to holders of an ownership interest in an institution, rather than to owners, and to define an ownership interest. The Secretary also recognizes that certain persons may have the ability to affect substantially the actions of an institution without actually holding an ownership interest in the institution. Institutions must be held accountable for those persons, as well as holders of an ownership interest, if those persons were also responsible for incurring unpaid liabilities of HEA program funds at defunct institutions, as defined in § 668.13. Therefore, an institution must report any change (described below) under which a person acquires the ability to affect substantially the actions of the institution. A more detailed description of the reasons for inclusion of these changes is found in the discussion of the changes made in § 668.13.

The Secretary agrees that another modification is necessary to clarify that an institution owned by a publicly traded corporation must also report any changes under which a person acquires the ability to affect substantially the actions of the institution, even though the executive officers of a publicly traded corporation may not learn of the changes at the time that those changes occur.

Changes: The Secretary has removed the proposed requirement for an institution to report changes in ownership that result in the ownership of at least 25% of the stock of the institution or the institution's parent corporation. Instead, the Secretary has added a requirement that an institution report any change under which a person obtains the ability to affect substantially the actions of the institution. The Secretary has listed those circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. Accordingly, the revised regulations require an institution to report:

(1) Any change under which a person holds at least a 25% ownership interest in the institution, if the person did not previously do so (§ 600.30(a)(6)(i));

(2) Any change under which a person and any member or members of his or her family together hold at least a 25% ownership interest in the institution, if

they did not previously do so (§ 600.30(a)(6)(ii));

(3) Any change under which a person may represent under a voting trust, power of attorney, proxy, or similar agreement others who hold at least a 25% ownership interest in the institution, if the person previously did not have that authority (§ 600.30(a)(6) (iii) and (iv)). Note that an institution must report not only the new authority of a person to vote for others, but also the existing authority of that person, at the point at which those represented in the voting authority acquire enough interest to constitute at least a 25% ownership interest in the institution;

(4) Any change under which a person, together with any member or members of his or her family, may vote on behalf of others who hold at least a 25% ownership interest, if the person previously did not have that authority (§ 600.30(a)(5)(v)); and

(5) Any change under which a person becomes a member of the board of directors, chief executive officer, or other executive officer of the institution, or of an entity that has at least a 25% ownership interest in the institution (§ 600.30(a)(5)(vi)).

The Secretary has added a new paragraph (b), in response to comments on § 668.13, to provide that an institution owned by a publicly traded corporation must report, within ten days of the date that the corporation learns of the change, the applicable change in a person's ability to affect substantially the actions of the institution.

The Secretary has also added a new paragraph (e) to define ownership interest. An "ownership interest" is a share of the legal or beneficial ownership or control of an institution or institution's parent corporation or a right to share in the proceeds of the operation of the institution or institution's parent corporation. The term includes (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust.

The Secretary has excluded from that definition any share or right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded; (2) an institutional investor; or (3) a profit-sharing plan, provided that all employees are covered by the plan.

Finally, the Secretary has added a new paragraph (f) to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter contended that these requirements should not apply to public stock corporations regulated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 and the Securities and Exchange Act of 1934, because such corporations already provide to the SEC the information required by this section. Another commenter suggested that as an additional safeguard, each institution should be required annually to furnish the Secretary with a list of the institution's owners. A commenter requested the Secretary to clarify whether this reporting requirement is triggered by the acquisition of at least 25% ownership or the acquisition of any percentage of ownership, however small, that results in at least 25% of the ownership. Another commenter asked for clarification on whether an institution that undergoes this type of ownership change is subject to the same procedures as those required for an institution that undergoes a change in ownership that results in a change of control.

Discussion: The SEC requires owners of stock in public corporations to report acquisitions of stock but does not require the reporting of other acquisitions of ownership interest that enable a person to affect substantially the actions of an institution. An annual reporting requirement would be too burdensome for institutions, especially in view of the relatively few institutions whose abuses have prompted the adoption of these provisions. Any increase in a person's ownership interest that results in a person's holding at least a 25% ownership interest in an institution must be reported under this requirement. For example, if a person owns 24% of an institution and acquires an additional 1% of the institution, thus totalling 25%, the institution must report that change to the Secretary. However, unless that change also results in a change of control, the change does not cause the institution to be regarded as a new institution under § 600.31.

Under the Department's current policy, with respect to the ownership of stock or interest in an institution or the institution's parent corporation, the acquisition of any stock or interest that results in the ownership of a controlling interest constitutes a change in ownership that results in a change of control. The institution must report that change under § 600.30(a)(4). Under the provisions of parts 600 and 668, the institution is considered a new institution unless the institution: (1) Submits an application for confirmation of the institution's eligibility under the new ownership; (2) meets the applicable requirements of § 600.31 and all other applicable requirements of part 600; and (3), with regard to the institution's participation in the title IV, HEA programs, reapplies for certification, demonstrates again the institution's financial responsibility and administrative capability, and enters into a new participation agreement with the Secretary.

However, as noted in the preamble to the NPRM (52 FR 11355), there are circumstances under which the Secretary considers a person to have the ability to affect substantially the actions of an institution even when that person does not have a controlling interest in that institution or the institution's parent corporation. A person's ability to affect substantially the actions of an institution is one factor in the Secretary's determination of whether an institution satisfies the factors of financial responsibility contained in § 668.13. In particular, the Secretary does not consider an institution to be financially responsible if a person who was previously associated with a defunct institution that owes a liability on title IV, HEA program funds or refunds of institutional charges to students (1) Acquires the ability to affect substantially the actions of the institution and (2) otherwise meets the conditions of § 668.13. Therefore, any change in a person's relationship with an institution that enables the person to have the ability to affect substantially the actions of the institution must be reported to the Secretary so that the Secretary may evaluate whether circumstances exist that would cause an institution not to be considered financially responsible.

The following example illustrates an institution's responsibilities under the new reporting requirements in this section and how the reported information will affect the institution's eligibility for and participation in HEA programs. A stockholder owns 22% of the stock of a proprietary institution of higher education. The stockholder purchases an additional 4% of the stock of the institution and now owns 26% of the stock. Within ten days of that purchase, the institution must notify the Division of Eligibility and Certification (DEC), preferably in writing, of the purchase. DEC furnishes the institution with a new application for eligibility (ED Form E40–34P). However, assuming that the stock purchase did not result in a change of control of the institution, the institution need not complete the entire application nor reapply for eligibility. The change at this point has not affected the institution's eligibility for participation in any HEA program.

In addition to the general data in Part I and the certification in Item 31, the institution completes only Item 11, providing the name of each stockholder that owns at least 5% of the stock of the institution. The institution must also report which stockholder purchased the 4% of stock that resulted in the ownership of 26%. The institution returns the application to DEC. Until the institution is informed otherwise, it may assume that the purchase has had no impact either on the institution's eligibility or on the institution's participation in any HEA program.

DEC compares the information reported by the institution with information available to the Department on defunct institutions. The Department reviews its records to identify, for example, whether the stockholder or any member of the stockholder's family had the ability to affect substantially the actions of a defunct institution and whether the stockholder, family member, or defunct institution owes a liability on title IV, HEA program funds or refunds of institutional charges to students. If the Department's records do not contain information that might call into question the institution's financial responsibility for purposes of participation in the title IV, HEA programs, DEC notifies the institution that no further action is necessary.

If, however, the Department's records show that the institution might not be considered financially responsible under the new provisions in § 668.13, DEC requests further information from the institution and notifies the institution that the institution may be subject to a fine, or the limitation, suspension, or termination of the institution's participation in the title IV, HEA programs.

Changes: None.

Comments: Two commenters requested clarification on the effective date of any determination that an institution is not financially responsible under § 668.13 as a result of the information provided under this section (§ 600.30). They were particularly concerned that the Secretary might suspend the participation of the institution in the title IV, HEA programs beginning with the date that the Secretary receives the information under this section.

Discussion: As noted in the preceding discussion, the mere reporting of the information required under this section does not affect an institution's participation in any HEA program. If an institution participates in a title IV, HEA program, and the information reported under this section leads the Secretary to determine that an institution is not financially responsible under § 668.13, that determination is grounds for a fine, limitation, suspension, or termination proceeding under subpart G of the Student Assistance General Provisions regulations; subpart G also contains procedures for institutions to appeal decisions of an administrative law judge.

Changes: None.

Section 600.32 Eligibility of Additional Locations

Comments: Several commenters supported the addition of this section. A few commenters expressed concern that the provisions governing the acquisition of a closed institution that owes a liability on improperly expended or unspent HEA funds would discourage the practice of "teaching out" or would otherwise have an adverse impact on students or potential students at the acquired site. A few other commenters claimed that it is unfair to require the acquiring institution in such situations to assume the liabilities of the previous owner. Another commenter recommended that in situations subject to the provisions of this section, liabilities incurred under the previous owner should remain the responsibility of the closed institution unless the acquiring institution agrees to be responsible for those liabilities jointly with the closed institution.

Discussion: A "teach out" is the completion by another institution of an educational program offered, but not completed, by an institution that closes. Students who are being taught-out may receive title IV, HEA program funds only if the institution providing a teach-out has in place eligible programs suitable for completing the education of students of a closed institution and offers those programs at a properly accredited and licensed eligible location. Because those requirements are normally burdensome and time consuming, most institutions that teach-out students do so with the full knowledge that title IV, HEA program funds are usually not available to those students. Thus, the fact that an acquired site might not qualify for eligibility under the provisions of this section for two years will have virtually no impact on the ability of the acquiring institution to provide teach-out services.

The Secretary recognizes that delaying the eligibility of a location affected by these provisions may have some adverse impact on prospective students who might otherwise consider enrolling at that location if title IV, HEA program assistance were available there. However, the Secretary believes that this potential adverse impact is outweighed by the need to address serious abuses of the type described in the preamble to the NPRM (54 FR 11354) that have involved the misuse of tens of millions of dollars of HEA program funds.

The Secretary does not agree with those commenters who contend that it is unfair for an institution to be required to assume the liabilities of a closed institution in order to acquire the closed institution and establish its immediate eligibility as an additional location. Under § 600.31, the purchaser of an eligible or previously eligible institution is required to assume sole responsibility, or joint responsibility with the previous owner, for all liabilities resulting from the improper administration of HEA program funds at the institution in order for that institution to continue to qualify for eligibility. However, as explained in detail in the preamble to the NPRM, if that purchaser already owns another eligible institution, he or she can avoid assuming responsibility for the liabilities by converting the newly acquired institution into an additional location of the currently eligible institution. Therefore, the Secretary is merely applying to individual locations essentially the same rules that, under § 600.31, he applies to institutions. In addition, under § 600.31, the new owner of an institution must also agree to be liable for refunds of institutional charges to students. The Secretary recognizes the need to revise the proposed regulations to be consistent with the requirements of § 600.31 and to clarify that an institution's liabilities under the HEA programs are not limited to misspent or unspent HEA funds, but encompass any liabilities for refunds of institutional charges to students.

Furthermore, a responsible purchaser should be well aware of the liabilities of an institution before acquiring that institution and take those liabilities into account in agreeing on the terms of the purchase. The Secretary has consistently advised those interested in acquiring an institution to ascertain the financial condition of that institution through such measures as obtaining an audit of the institution's administration of HEA programs and contacting appropriate officials of the Department of Education and guarantee agencies for information on whether the institution owes any liabilities resulting from program or audit reviews.

The last recommendation virtually restates the existing situation—a situation that led to the abuses described in the NPRM and that these regulations are designed to correct.

Changes: The Secretary has revised paragraph (c)(3)(i) and added paragraph (d)(2) to include references to liabilities owed for refunds of institutional charges. The Secretary has added a similar reference to § 668.13(c)(5)(iii)(A).

Comments: A number of commenters recommended that the Secretary take additional steps to prevent unscrupulous owners from escaping responsibility for the liabilities incurred at those owners' institutions. A commenter suggested that the Secretary require an institution to post a performance bond against liabilities incurred in the event that the institution closes. Other commenters suggested that the Secretary should simply require all liabilities owed by a closed institution on HEA program funds to be settled before that institution may qualify as an eligible additional location, without permitting the alternative of a two-year delay in eligibility. Another commenter suggested that the Secretary apply the requirements of § 600.32(c) to situations involving the acquisition of an institution that has not closed but that owes a liability on the misuse of HEA program funds.

One commenter suggested that the Secretary assign a separate vendor code number for each eligible location of an institution to facilitate the monitoring of HEA program funds used at each location. Another commenter recommended that the Secretary establish a two-year probationary period for those locations that may become eligible without being in existence for two years. During that period, the Secretary would monitor the use of HEA funds at those locations through the review of regularly submitted reports and other information. Another commenter suggested that the Secretary conduct a title IV, HEA program review at each institution that closes or is sold and require each institution to disclose all HEA program fund liabilities and the results of audit and program reviews in the event that an individual or organization contemplates the purchase of the institution.

Discussion: Many of these suggestions are well-taken, but none of them requires the Secretary to modify the proposed regulations. The Secretary currently requires both fidelity bonds and, where financial responsibility is not clearly demonstrated, performance bonds, to guard against liabilities incurred in the event that institutions close (see 34 CFR 668.13(d) and (g)). The alternative of the two-year delay in eligibility has served as an effective incentive for new owners to assume responsibility for the liabilities owed by previous owners in situations involving changes in ownership that result in a change of control. The Secretary expects that alternative to be an equally effective incentive for an acquiring institution to assume responsibility for liabilities in the parallel circumstances governed by these new regulations.

In most instances in which an eligible institution acquires another eligible institution that is still open, the acquired institution undergoes a change of ownership that results in a change of control. Therefore, in most cases the owner of the acquiring institution must, under the provisions of § 600.31, assume responsibility either alone or jointly with the owner of the other institution for the liabilities owed by the acquired institution. If that assumption of liability does not occur, the acquired institution remains ineligible for at least two years. In the few instances in which the acquisition does not involve a change in ownership that results in a change of control, the requirements of § 600.32(c) do not apply. However, the Secretary is continuing to examine all of the Department's policies concerning the acquisition by eligible institutions of additional locations and may propose further regulations governing the acquisition of open institutions as part of the contemplated NPRM mentioned at the end of this discussion.

With regard to the suggestion concerning the assignment of a separate Office of Postsecondary Education identification number (OPE ID number—formerly called the vendor code number) to each eligible location of an institution, the Secretary is examining methods, other than regulatory approaches, for identifying and monitoring the use of HEA program funds at individual eligible locations. While the Secretary does not now have a formal requirement for a two-year probationary period for newly eligible additional locations, the Secretary may at any time request information from an institution concerning the administration of HEA program funds at any of the institution's locations. In addition, the Secretary has established new safeguards to control the availability of HEA program funds at additional locations through such measures as a requirement for the reexamination of an institution's administrative capability and financial responsibility each time that the institution applies for eligibility for a new location.

The Secretary already requires an institution that closes or loses eligibility to arrange for an audit report of all title IV, HEA program funds that the institution has received (see 34 CFR 668.25). The Secretary may conduct a program review at any institution that changes ownership resulting in a change of control. A person interested in purchasing all or part of an eligible or previously eligible institution may obtain from the Department of Education information on any HEA-program-related liabilities owed by that institution or the results of audits or program reviews of that institution.

These regulations essentially restate the Department's current policy that to be included in an institution's eligibility, an additional location need not be in existence for two years. In light of the serious abuses connected with the practices of some closed institutions that contrive to become eligible additional locations of participating institutions while avoiding responsibility for liabilities incurred at those closed institutions, the Secretary considers it critical to revise his current policy to require such an additional location to wait two years to qualify for eligibility, unless the acquiring institution assumes the liabilities incurred at the closed institution. However, the Secretary is concerned over other serious abuses that can be related directly to the general policy exempting additional locations from the two-year rule. Therefore, while the Secretary considers these regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current policy of generally exempting additional locations from the two-year rule and soon intends to publish an NPRM to request public comment on proposals to place strict limitations on that exemption.

Changes: None.

Comments: Several commenters objected to the concept in § 600.32(c) that to qualify an acquired location of a closed institution for immediate eligibility, an acquiring institution must be responsible for liabilities of the closed institution even if the assets of the closed institution were acquired indirectly. Specifically, these commenters recommended that the two-year delay in eligibility not be applied to indirect acquisitions of assets of the closed institution. They also identified the criteria that they consider to constitute a direct acquisition, and they described the steps that an institution should take to ensure the responsible administration of student aid funds at a directly acquired location. They suggested that direct acquisitions by institutions that take those steps be exempt from the two-year delay. According to these suggestions, a direct

acquisition would occur only if any transfer of assets is through a contractual relationship between the buyer and the seller, actual money or other consideration is paid by the buyer to the seller, and the assets are not obtained through a third party. The steps that an institution would take to exempt that acquisition from the two-year delay would include an arrangement for the buyer to teach out the seller's students and a requirement that the buyer provide at the acquired location generally the same educational program as the one provided by the seller at that location.

Discussion: The Secretary does not agree with these commenters. These regulations are intended to prevent situations in which a buyer can acquire the assets of a closed institution, either directly or indirectly, without assuming responsibility for the institution's liabilities and still qualify that institution for immediate eligibility. The commenters recommend establishing criteria that would permit a continuation of the current practice through which owners of closed institutions too easily attempt to escape responsibility for liabilities at those institutions, and buyers of those institutions also avoid that responsibility. For example, under the commenters' suggested criteria, a seller could avoid a direct acquisition by refusing to enter into a contractual relationship with a buyer, arranging for the transfer of assets through a third party, and arranging that no money be given directly by the buyer to the seller. The buyer could then acquire the additional site, under the commenters' suggested criteria, without accepting responsibility for the seller's liabilities and without waiting two years for the new acquisition to qualify for eligibility.

The Secretary is convinced, however, that a modification is necessary to clarify that even if an acquired institution did not own the facility in which the institution was located, the provisions of this section must be satisfied before the institution may qualify for eligibility as a component of another institution.

Changes: The reference in paragraph (c)(3) is changed from an institution that previously owned a location to an institution from which the applicant institution acquired the assets of a location.

Comments: One commenter, concluding that the provisions in § 600.32(c) are aimed at proprietary institutions, urged the Secretary to clarify that these provisions would not be used to inhibit the ability of public institutions to develop additional locations to serve widespread populations.

Discussion: While it is true that the acquisitions that are the subject of these regulations are most common among proprietary institutions, public institutions are also affected. A public institution that meets the definition of a postsecondary vocational institution or a vocational school, as those terms are defined in the HEA and these regulations, is required to be in existence for at least two years. Thus, if a public institution were to acquire a closed institution and request eligibility for that location, the public institution would have to satisfy the requirements of this section. While these provisions may inhibit some institutions, whether they are public, private nonprofit, or proprietary, from acquiring certain institutions with substantial HEA program liabilities, these provisions do not prevent an institution from undertaking most types of expansion to serve the needs of its population. The Secretary believes that these provisions are necessary as a means of preventing a particular abuse under which some institutions that have mismanaged HEA program funds avoid repaying liabilities for those funds and contrive to continue to participate in HEA programs as additional locations of, and with the full knowledge of the owners of, other institutions. Any institution seeking to acquire a closed institution with the intention of qualifying that location for eligibility need only exercise the ordinary responsible precautions of ascertaining the financial condition of the closed institution and whether the closed institution owes liabilities related to the administration of the HEA programs. In those instances where such a closed institution owes liabilities, the acquiring institution may either accept responsibility for those liabilities or defer eligibility for two years.

Changes: None.

Section 668.7 Eligible Student

Comments: The proposed revisions to this section drew the largest number (71) of comments on the NPRM. Some commenters supported the changes, but many questioned the need for, or potential effectiveness of, the changes. Some commenters doubted that there is a problem that needs to be addressed through regulation. Some commenters suggested that rather than implement regulations affecting all participating institutions, the Secretary take appropriate action against those few that do not administer the title IV, HEA programs properly. One commenter suggested that before implementing regulations in this area, the Secretary conduct a quality control study to identify the extent and severity of fraudulent receipt of title IV, HEA program funds through the use of false identities. Two commenters suggested that the Secretary recommend these procedures for establishing the identity of recipients of title IV, HEA program aid rather than require them through regulations.

A large number of commenters objected to the provision that would require an institution to document that a student had presented credible identification. They contended that the documentation requirement would impose an unnecessary additional administrative burden on institutions that are already required under existing regulations to document the same type of information on applicants for title IV, HEA program aid (for example, the requirement in 34 CFR 690.82 governing records of a student's name and social security number). Many commenters similarly objected that this documentation burden would be a recurring administrative burden disguised as a one-time requirement by language referring only to the first time that a student receives cash from the title IV, HEA programs. They claimed that, in effect, an institution would be required to search the student's records for documentation to confirm that initial identification each time that the institution disburses or delivers cash from the title IV, HEA programs to the student. Many other commenters opposed the provisions because the provisions would prevent them from delivering checks to students, including students abroad and correspondence students, through the mail. Other commenters opposed these provisions as duplicative of other requirements, such as those required for identification of eligible noncitizens. Many commenters observed that the need to have students report for a cash disbursement or delivery in person, the need to review records each time a student is about to receive cash, and the requirement to review and document the student's identification would contribute to delays in the delivery of title IV, HEA program aid to all students.

Discussion: The Secretary recognizes the additional administrative burden that would be imposed on institutions by the adoption of this proposal. The Secretary believes that the potential benefits resulting from the additional safeguards established by this proposal do not outweigh the considerations offered by these commenters. The Secretary, after further review, has concluded that existing statutes,

regulations, and procedures provide sufficient safeguards against individuals receiving title IV, HEA program aid through false identities. In those few instances where violations have occurred, the Secretary finds that enforcement measures taken against violators have been effective.

Changes: Section 668.7(a)(11) of the NPRM is withdrawn from these final regulations.

Section 668.13 Factors of Financial Responsibility

Comments: Most of those who commented on the changes in this section supported those changes. Several commenters expressed concern that the threshold of 25% of ownership as indicative of the ability to affect substantially the actions of an institution is too high. Some of those commenters urged the Secretary to adopt a threshold of 10% instead, maintaining that that is the percentage relied upon by the SEC. One commenter recommended that the Secretary not use any precise percentage as an indicator of that ability. One commenter suggested that instead of 25%, the controlling interest in a corporation, as defined by the SEC, should trigger the application of these changes.

Discussion: As noted in the preamble to the NPRM, the Secretary considers the ownership (modifications in the concept of "ownership" are discussed below) of at least 25% of an institution or its parent corporation generally to constitute the ability to affect substantially the actions of the institution. The Secretary chose the threshold of 25% to serve purely as a guideline for administrative convenience. The percentage, which is relatively conservative, is not intended to be an accurate reflection of all degrees of ownership that could constitute the ability to affect substantially the actions of an institution. However, if actual experience with application of these provisions should reveal that a different percentage is more reflective of that ability, the Secretary would consider changing that percentage.

Changes: None.

Comments: A commenter opposed the concept of holding individuals with substantial ownership responsible for the actions of an institution on the grounds that, for public stock corporations, SEC regulations and some State laws prevent individuals with substantial ownership from exercising control over the actions of the corporation. Another commenter pointed out that certain types of limited partnership arrangements also have legal limitations on the degree of control that the partners may directly or indirectly exercise. One commenter suggested that these provisions conflict with certain SEC regulations and State laws that define corporations as "individuals" and hold the corporations rather than stockholders responsible for the actions of institutions. Another commenter was concerned about the vulnerability of an institution owned by a publicly traded corporation to loss of participation in the title IV, HEA programs when the corporation may have no control over which individuals purchase the corporation's stock.

Discussion: It is not the purpose of SEC regulations to determine whether, or the degree to which, individual stockholders are responsible for the actions of their corporations. Further, it is not true that State laws never hold individual stockholders responsible for the actions of their corporations or the institutions owned by those corporations. These regulations reflect the natural consequences of the ownership of substantial percentages of stock in a corporation. Obviously, shareholders elect a corporate board of directors. The board of directors hires the corporation's or institution's executive officials. Control or substantial influence in choosing the board of directors therefore does confer control or influence over the actions of the corporation itself or the institutions owned by that corporation.

If the Secretary determines an institution not to be financially responsible under these new provisions, the institution may respond with evidence that applicable Federal and State statutes and regulations limiting the control of owners over the actions of their institutions have not been violated and other convincing evidence that owners lack the ability to affect substantially the actions of the institution or lacked that ability at a defunct institution. DEC's procedures for determining an institution's financial responsibility provide an opportunity for the institution to respond with that evidence. If the proceedings in subparts G and H apply, the institution may also provide that evidence through those proceedings.

Finally, the Secretary has provided alternatives to loss of participation in the title IV, HEA programs for any institution, including an institution owned by a publicly traded corporation, that the Secretary considers not to be financially responsible as a result of a person's acquisition of the ability to affect substantially the actions of the institution. The institution may demonstrate that the person who would normally be considered to have the ability to affect substantially the actions of the institution nevertheless could not affect substantially the actions of either the defunct institution or the currently participating institution in which the person acquired that ability. Alternatively, the person may repay the appropriate percentage of the liability incurred by the defunct institution.

Changes: None.

Comments: One commenter suggested that, instead of adopting this proposal, the Secretary pursue a course of seizing the assets of a defunct institution that owes liabilities on mishandled title IV, HEA program funds. Another commenter was concerned that the application of these provisions would interrupt the delivery of aid in the same manner that a change of ownership resulting in a change of control interrupts the delivery of aid. Another commenter was concerned that these provisions are seriously weakened by allowing an institution to show that a person did not have the ability to affect substantially the actions of the defunct institution or does not have the ability to affect substantially the actions of the current participating institution. That commenter maintained that the proper use of title IV, HEA program aid is endangered any time that an institution permits 25% ownership by a person so strongly affiliated with an institution that owes liabilities on improperly administered title IV, HEA program aid. The applicable proportion of those liabilities ought, in this commenter's view, be repaid in every such instance. Two commenters were concerned that these provisions leave an opening for a person who was responsible for the actions of a defunct institution to avoid the consequences of liabilities resulting from those actions. They contended that such a person could continue to benefit from the title IV, HEA programs by using family members to purchase ownership in a participating institution.

Discussion: The Secretary adopts this rule because defunct institutions have ordinarily had no attachable assets from which outstanding liabilities could be satisfied. Moreover, existing regulations did not prevent a person who was responsible for incurring those liabilities from acquiring control of another institution and jeopardizing the administration of title IV, HEA programs there.

As noted in the discussion on § 600.30, there is no interruption in the delivery of aid to an institution's students during the period in which a reported acquisition of ability to affect substantially the institution's actions is

under review by the Secretary. While the Secretary believes that a person holding at least a 25% ownership interest in an institution generally has the ability to affect substantially the actions of the institution, the Secretary recognizes that this may not always be true. The Secretary believes that, under some circumstances, a person who held a greater than 25% ownership interest in a defunct institution may not have had sufficient influence or authority over the institution to bear responsibility for the mishandling of title IV, HEA program aid there. The Secretary believes that it is possible for a currently participating institution to safeguard against the exercise of such influence or authority by a person who was probably in a position to affect substantially the actions of a defunct institution that owes a liability on the misuse of title IV, HEA program funds. Thus, the Secretary believes that there must be an opportunity for an institution whose participation may ultimately be affected by these provisions to show that that person lacked or lacks that influence or authority with respect to either the defunct institution or the currently participating institution.

The Secretary agrees with those commenters who are concerned that a person who had the ability to affect substantially by the actions of a defunct institution may circumvent these provisions by having family members acquire an ownership interest in a participating institution or by authorizing someone else to represent him or her by proxy. For example, a woman might have held a 25% ownership interest in a defunct institution that owes liabilities on improperly spent title IV, HEA program aid. Her husband, alone or together with his wife, may subsequently purchase at least 25% of a currently participating institution. The Secretary believes that it is reasonable to expect the woman to be able, through her husband, to have an ability to affect substantially the actions of the participating institution.

Similarly, a person who did not own stock in a defunct institution that owes liabilities on improperly spent title IV, HEA program funds might, nevertheless, have had the ability substantially to affect the actions of the institution by obtaining the authority to vote on behalf of a group of other persons who owned at least 25% of the stock of the institution. The person who had that authority could subsequently purchase at least 25% of a currently participating institution, acquire similar authority on behalf of persons who own 25% of the participating institution, or arrange to have a relative purchase at least 25% of the participating institution.

Finally, the Secretary notes that a member of the board of directors of an institution clearly has the ability to influence the actions of the institution. Further, the chief executive officer, or another executive officer, of a defunct institution that owes liabilities on misspent title IV, HEA program funds may, without the knowledge or even the authority of the owner or board of directors of the institution, have influenced the activities of a defunct institution to a degree that resulted in the assessment of those liabilities, even if that officer did not hold an ownership interest in the institution. That person could be appointed to the same position at a currently participating institution, obtain at least a 25% ownership interest in the participating institution, or in one of the other ways described above acquire the ability to affect substantially the actions of the participating institution.

In any of these instances, the Secretary believes that it is reasonable to expect that the person who had the authority in the defunct institution will have an important influence in the actions of the participating institution. The Secretary therefore agrees that revisions in the proposed regulations are necessary to reflect not only the holding of a 25% ownership interest as an indicator of a person's ability to affect substantially the actions of an institution, but also related circumstances involving the holding of an ownership interest by family members, the exercise of voting authority on behalf of others who hold an ownership interest, or the exercise of executive authority.

In addition, the Secretary is aware that a person who had the ability to affect substantially the actions of a defunct institution may attempt to circumvent these provisions by disassociating himself or herself from the institution prior to the date that the institution becomes defunct. Therefore, to prevent a person from undermining the intent of these provisions, the Secretary recognizes the need to clarify that these provisions are applicable to those persons who had the ability to affect substantially the actions of a defunct institution within a reasonable period of time prior to the date that the institution became defunct. The Secretary considers that reasonable period to be 90 days.

The Secretary recognizes that there are many instances in which a person may have the ability to affect substantially the actions of an institution without owning at least 25% of the stock of the institution or the institution's parent corporation. Therefore, the Secretary believes that, for purposes of considering ability to affect substantially the actions of an institution, it is important to refer to the more inclusive term "ownership interest," rather than "ownership." The Secretary considers an "ownership interest" to be a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. The Secretary considers it useful to provide a list of examples of possible kinds of ownership interest, although that list is not exhaustive.

Obviously, one type of ownership that need not be listed is a sole proprietorship. An example that is listed includes three kinds of tenancy (combinations of two or more persons). A tenancy in common includes two or more persons who have an undivided interest in the whole, and whose heirs have the right to inherit the interest in the tenancy. A joint tenancy is similar to a tenancy in common except that the tenants' heirs do not have the right to inherit the interest in the tenancy, but instead the tenants themselves have the right of survivorship. A tenancy by the entireties is a joint tenancy by a husband and wife. A second example of an ownership interest is a partnership, which is a combination of two or more persons to conduct a business for profit. A third example includes the beneficiary of a trust.

The Secretary also believes that the term "ownership interest" must exclude interest in certain investments in which the investors, while clearly beneficiaries, have no control over the investments. Thus, for example, a person may have a right to share in the proceeds of mutual funds that are regularly and publicly traded. However, those funds may be invested in a corporation that owns an institution that subsequently becomes defunct while owing liabilities on misspent title IV, HEA program funds. The Secretary does not believe that that person had the ability to affect substantially the actions of the institution, even if those mutual funds constituted at least 25% of the stock of that corporation. Similarly, the Secretary does not consider an ownership interest to include shares in the ownership of, or the right to share in the proceeds of the operation of, institutional investors or a profit-sharing plan that covers all employees.

Changes: The Secretary has made major revisions in proposed

§ 668.13(c)(5) that remove the references to the ownership by an individual of at least 25% of the stock of an institution or institution's parent corporation and replace those references with references to a person who has the ability to affect substantially the actions of an institution. The Secretary considers the institution not to be financially responsible if the person acquires that ability and the following conditions also exist:

(1) On or before the date that the person acquired that ability, he or she or any member or members of his or her family had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the institution became defunct.

(2) The person, family member, or defunct institution owes a liability on mishandled Title IV, HEA program funds or for refunds of institutional charges to students, and any agreement to repay that liability is not being honored.

Proposed § 668.13(d)(3) is revised to reflect that even if an institution would not be considered financially responsible because of the existence of the conditions described in paragraph (c)(5), the Secretary may determine the institution to be financially responsible, provided that the institution properly notifies the Secretary of the existence of those conditions and either—

(1) The liability incurred at the defunct institution is being properly repaid;

(2) The person who is generally considered to have the ability to affect substantially the institution's actions repays a portion of the defunct institution's liability proportionate to the ability of that person or those family members to affect substantially the actions of the defunct institution; or

(3) The institution can demonstrate either that the person who would generally be considered to have the ability to affect substantially the institution's actions nevertheless does not have that ability, or that neither the person nor any member of his or her family had that ability at the defunct institution.

The changes in paragraph (d)(3) require that the proportion described in item 2 above must equal or exceed the greater of—

(1) The total percentage of the ownership interest held in the defunct institution either alone or together by that person or any member or members of that person's family;

(2) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(3) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(4) Twenty-five percent, if that person or any member of that person's family was a member of the board of trustees, chief executive officer, or other executive officer of the defunct institution or of an entity holding at least a 25% ownership interest in the defunct institution.

The definition of a defunct institution has been moved from proposed paragraph (d)(4) to a new paragraph (h). The Secretary has added two new paragraphs (i) and (j), the former to define "ownership interest" for the purposes of § 668.13, and the latter to list examples of the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution.

Paragraph (i) defines an "ownership interest" as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution. That term includes, but is not limited to (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust. The term "ownership interest" specifically excludes any share of the ownership or control of, or any right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded, (2) an institutional investor, and (3) a profit-sharing plan, provided that all employees are covered by the plan.

Under paragraph (j), the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds, either alone or together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(2) Is authorized to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution;

(3) Is authorized, together with another member or members of his or her family, to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution; or

(4) Is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity holding at least a 25% ownership interest in the institution.

Finally, paragraph (k) has been added to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter asked the Secretary to clarify what constitutes "ability to affect substantially the actions of an institution." Another commenter asked the Secretary to clarify who is considered to be legally responsible for the liabilities of a defunct institution, especially in institutions where there is more than one owner or more than one campus.

Discussion: The Secretary agrees that clarification is needed to explain the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. The discussion immediately preceding this one contains information on that matter. However, the Secretary emphasizes that it is the responsibility of the institution to demonstrate that for some other reason a particular person whom the Secretary considers to have or to have had that ability nevertheless lacks or lacked that ability.

The Secretary considers the person (whether an individual or a corporation) who executes the institution's participation agreement with the Secretary to be the party liable for an institution's debts arising out of the title IV, HEA programs. That liability may be shared or passed on to other persons by subsequent agreements with the Secretary. If the institution becomes defunct, that liability is retained by the person or persons who assumed the liability under the institution's most recent agreement.

The person with the responsibility for an institution's liabilities under the institution's agreement is responsible for all liabilities incurred by the institution through the administration of title IV, HEA program funds at any of the institution's campuses. If ownership of a particular campus is transferred to another institution, the responsibility for any liabilities incurred at that campus before the transfer remains with the owner of the institution that relinquished that campus. Even if the owner of the acquiring institution repays a portion of those liabilities, the ultimate responsibility of the original owner for those liabilities is not excused. If more than one person has assumed that responsibility, and one of those persons repays a portion of the liability in order

to qualify a newly purchased institution for eligibility, he or she continues to share the responsibility of repaying the remaining liabilities.

Changes: Paragraph (j) has been added to describe the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of the institution (see the preceding discussion).

Section 668.20 Limitations on Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance

Comments: A few commenters supported these provisions. Many more objected. A number of commenters claimed that the requirement for remedial coursework to be at least at the secondary level to qualify for title IV, HEA program eligibility represents an unwarranted intrusion on institutional policies governing curriculum. Other commenters complained that this provision would have the effect of restricting access to postsecondary education by adults, students who received inadequate elementary and high school training, and economically disadvantaged students. Others claimed that these provisions conflict with efforts to improve adult literacy. One commenter claimed that because these provisions inhibit the ability of institutions to provide remedial education, and because remedial education encourages students to remain enrolled and reduces attrition rates, these provisions conflict with efforts to reduce default rates.

Discussion: The Secretary did not propose these provisions with the intention of inhibiting institutions from providing remedial education, nor of restricting access to postsecondary education by any group of students. The Secretary has always considered the title IV, HEA programs to be programs of aid for postsecondary education and has permitted such aid for a minimal amount of remedial education only as an adjunct to postsecondary education. The need for remedial training at the elementary level indicates to the Secretary a need for more than a minimal amount of remedial training.

The Secretary is concerned that funds appropriated for the title IV, HEA programs, which are intended by the Congress to be used for postsecondary education, not be misdirected to provide elementary training. The Congress has emphasized that postsecondary purpose by requiring, in the "Student Loan Reconciliation Amendments of 1989" and the Higher Education Technical Amendments of 1991, a student to obtain a high school diploma or the equivalent before qualifying for eligibility for Supplemental Loans for Students (SLS). In addition, the Congress elsewhere has already appropriated funds that are specifically intended to provide aid to elementary, secondary, and adult literacy programs. The Secretary supports the goal of reducing adult illiteracy but recognizes that many of the efforts in this area are being and need to be addressed by local communities and the providers of elementary and secondary education. The Secretary also notes that aid for elementary educational purposes from a variety of sources other than the title IV, HEA programs is available to postsecondary institutions. Therefore, the Secretary does not believe that these provisions will significantly reduce any institution's ability to provide remedial education for those who can benefit from that education.

With regard to the impact of these provisions on reduction of default rates, in the regulations published on June 5, 1989 (54 FR 24114), and in other communications provided to institutions, the Secretary has indicated that an institution has an obligation to take necessary steps to prevent or to reduce high default rates. If the institution is convinced that providing elementary remedial education will achieve this result, then the institution may do so. However, title IV, HEA program funds intended for postsecondary purposes may not be used for that remedial education.

Changes: None.

Comments: Two commenters supported these provisions and suggested further that the Secretary should propose regulations to provide aid for remedial coursework that is at least at the secondary level and leads to the General Education Development certificate (GED). Two commenters suggested that the one-academic-year limitation on remedial coursework is a more effective limitation than any attempt to restrict remedial education to at least the secondary level. One commenter proposed that the Secretary conduct a study to determine appropriate goals and objectives of remedial education before imposing the new limitation. Another commenter suggested that the Secretary eliminate these provisions and replace them with a requirement for institutions to have counselors to evaluate whether students in remedial education have the ability to succeed at the postsecondary level within one academic year. One commenter asked how this provision applies to coursework that begins at the elementary level but ends at the secondary level. Several commenters suggested that title IV, HEA program assistance be available for a single or a limited number of elementary courses if the student is deficient in a single subject or limited number of subjects, or if the student's remedial needs are predominantly at the secondary level. A large number of commenters recommended that ESL coursework be exempted from these provisions.

Discussion: The Secretary does not intend to propose that title IV, HEA program assistance be available for a course solely because that course leads to the GED. The purpose of such a course is to provide a student with the equivalent of a high school diploma, not to enable a student to pursue a postsecondary degree or certificate program. The one-academic-year limitation on remedial coursework has been established to allow a limited amount of remedial coursework to be included in a student's postsecondary education. The Secretary believes, however, that the remedial coursework that the student pursues during that one-year period still needs to be sufficiently close to the postsecondary level that funds appropriated for postsecondary education are not used to finance coursework aimed at the elementary or secondary educational level. Coursework at the elementary level does not fulfill this requirement. Outside the very limited allowable uses described above, funds intended for postsecondary education cannot be diverted to other types of education, including remedial education, regardless of the results of any research on the goals and objectives of remedial education.

With respect to the recommendation for a requirement for an institutional evaluation of a remedial student's ability to pursue postsecondary education within one academic year of the student's enrollment, this concept already exists in § 668.20(c)(2). Under § 668.20(c)(2), title IV, HEA program assistance may not be used for any remedial coursework for a student if it would take more than one academic year's worth of that coursework to bring the student to the postsecondary level. These new provisions do not permit any remedial coursework below the secondary level to be included for purposes of eligibility for title IV, HEA program assistance. Thus, if coursework begins at the elementary level and ends at the secondary level, only that portion that is provided at the secondary level may be included for purposes of that assistance. The Secretary does not agree that even a limited amount of elementary coursework should be

eligible for funds intended for postsecondary education, unless that coursework is in ESL.

The Secretary agrees with those commenters who suggested that ESL coursework should be excluded from the new provisions. The purpose of ESL coursework is to enable students to pursue postsecondary education when the major obstacle to that pursuit is the student's inability to speak English. The Congress expressed a similar intent when it authorized, under limited circumstances, Pell Grants for students enrolled solely in ESL courses. Since many non-English speakers may have the skills to pursue postsecondary education, but may be required to begin their English instruction at a very elementary level, the Secretary believes that the use of postsecondary funds for that purpose does not violate the intended purpose of those funds.

Changes: Courses in ESL are excluded from the requirement that remedial education be at least at the secondary level to qualify for title IV, HEA program assistance.

Comments: Several commenters suggested that the distinction between elementary and secondary education is often difficult to define and may vary from State to State. Two commenters asked how these provisions will apply if an institution's nationally recognized accrediting agency considers a remedial course to be secondary, but the institution's State licensing body considers the course to be elementary. Two other commenters wanted the Secretary's assurance that an institution's determination concerning the level of remedial education will be respected by the Department of Education and will not be questioned by the Department's program reviews and audits.

Discussion: The Secretary acknowledges that it may be difficult at times to distinguish between elementary and secondary education. For this reason, the Secretary has generally left those determinations in the hands of those most qualified to do so: State education officials and officials of the nationally recognized accrediting agencies and associations. If an institution's accrediting agency considers a remedial course to be secondary and the institution's State licensing body considers the course to be elementary, or vice versa, the Secretary, under these regulations, accepts the judgment of the body that considers the course to be below the secondary level. In cases where neither body judges the level of the course, the Secretary accepts the judgment of the institution. Department of Education officials charged with enforcing regulations may question any determination made by an institution concerning the administration of title IV, HEA program funds, and the institution must be prepared to demonstrate satisfactorily to those officials the institution's rationale for making that determination. Of course, if the institution disagrees with an audit or program review finding, the institution may appeal that finding.

Changes: None.

Section 668.23 Audits, Records, and Examination

Comments: A few commenters supported the changes in this section. Several commenters suggested that the Secretary should recognize the right of an institution to have representatives present at or tape recordings made of interviews with the institutions's personnel. One commenter suggested that the Secretary should permit either the attendance of representatives or tape recordings. Several commenters claimed that the clarification concerning institutional cooperation and the changes concerning the presence of institutional representatives at or tape recordings of interviews are unconstitutional or illegal. Some commenters asserted that the appropriate route for the Secretary to obtain access to records and personnel is through subpoena. One commenter claimed that having an institutional representative present during an interview does not restrict or deny access. Two commenters were concerned that denying institutional representation or tape recording at interviews increases the potential for Federal officials to intimidate employees. Two commenters claimed that an interviewer might obtain incorrect or incomplete information by interviewing an employee without the presence of a more knowledgeable institutional representative. One commenter expressed the concern that an institution would be unable to challenge inaccuracies without having the presence of an institutional representative during an interview. Another commenter asked the Secretary to clarify that an individual has the right to be represented by legal counsel during an interview.

Discussion: These changes are neither illegal nor unconstitutional. These regulations generally articulate current Department policy that the effective monitoring of expenditures of public funds requires routine and direct access to those employees, agents, and records that pertain in any way to the administration of the title IV, HEA programs. Obviously, any examination of an institution's records and staff entails some amount of inconvenience, which is a reasonable and necessary incident of accepting the benefits of public support by Federal student aid. The Secretary agrees that subpoenas are an appropriate method of seeking access to institutional personnel and records. However, the Secretary notes that in its participation agreement, an institution agrees to comply with all applicable title IV, HEA program regulations, including those governing access. Accordingly, there is no need for the Department to seek subpoenas for documents and testimony unless refusal to cooperate by an institution makes recourse to compelled production necessary.

The commenters voice an understandable concern that the information secured by Department reviewers and auditors from subordinate institutional employees be accurate. That concern is shared completely by the Department, and the audit and review process affords management both informal and formal opportunities to learn the substance of any representation on which the Department would rely in any proposed adverse action or finding, and to correct or rebut any statements deemed inaccurate. These opportunities include the routine informal dialogue that accompanies the conduct of the review on-site, the more formal exit interview, opportunities to respond to draft audit reports before the Department issues a final determination, and the opportunity for a hearing on the record before an administrative law judge at which the institution may contest any such finding and submit its own evidence.

In light of these procedural protections, the Department does not believe that an institution's interest in presenting its position requires that it be permitted to deny access to its records or employees unless an attorney or other representative of institutional management is present or the interview is recorded. On the contrary, the potential threat of retaliatory dismissal or demotion posed by such presence or recording can reasonably be expected to have a chilling effect on a subordinate's desire to disclose important facts. The Secretary regards this rule, which forbids such interference in the fact-gathering process, as on balance a reasonable means of avoiding an intolerable restriction on the Department's responsibility to oversee administration of public funds.

Those comments that assert that the institutional management has a legal right to be present at any interview with

a subordinate and to demand a record of such an interview rest on a misunderstanding of the nature of the inquiry and the applicable law. The rule addresses institutional responsibilities at a relatively early stage in the audit or program review process, a stage that is exclusively devoted to fact-gathering. Moreover, at this stage, the Department has not compelled the testimony of any employee or the production of any documents; the Department could compel testimony or document production only by the issuance of a subpoena, a power generally reserved to the Office of Inspector General. The case law is clear that neither the Constitution nor applicable statutes assure a person either the right to legal representation at this stage in an administrative review, or the right to a record of the information disclosed. These rights clearly apply when a person is served with a subpoena, or when the person is appealing an audit or program review to a formal hearing on the record, but not at these early, fact-gathering stages of the process.

Changes: None.

Comments: Two commenters recommended that representatives of guarantee agencies be given access to records and personnel to the same degree that representatives of the Secretary, Inspector General, and Comptroller General of the United States are given access. A commenter suggested that the provisions of § 668.23(e) and 34 CFR 682.515(c) be modified to conform to the changes proposed in these regulations. A commenter was concerned that these regulations might authorize unrestricted access by a contracted auditor who may not be sufficiently qualified in matters concerning the title IV, HEA programs, or who may be overzealous. Several commenters asked that the term "timely access" be clarified. Some of these proposed various time frames, including advance written notice from the Secretary of five days, two weeks, or 30 days. One commenter urged the Secretary to recognize that certain inconvenient periods, such as registration, might justify advance notice to the institution. A commenter suggested that the term "reasonable access" is ambiguous and suggested that the terms of reasonable access be arranged between the institution and the Department of Education several days in advance of a visit by the Secretary's representatives. Two commenters suggested that an exit interview should be required when an institutional representative is not permitted to attend an interview with an employee. Several commenters recommended that access to student records be accompanied by an appropriate written request from the Secretary identifying names and titles of investigators or reviewers, their agency, their legal authority, and the process by which the institution is informed of the results of the review or investigation. A commenter was concerned that agents of the Federal Bureau of Investigation or the Immigration and Naturalization Service who are representing the Secretary be required to Present proper identification.

Discussion: The Secretary agrees with those commenters concerning access by guarantee agencies and, in an NPRM published on November 20, 1990 (55 FR 48324), proposed amendments to §§ 682.414, 682.515, and 682.610 of the GSL and PLUS program regulations that conform to the changes in these final regulations. Similarly, in a future NPRM, the Secretary will propose amendments that will consolidate paragraphs (b) and (e) of § 668.23. The Secretary recognizes that the fact-gathering responsibilities discussed earlier require an addition to these provisions to emphasize that a contracted auditor be given the same access to an institution's records and personnel available to the Secretary, the Inspector General, and the Comptroller General of the United States. These regulations do not authorize unrestricted access to an institution's records and personnel; rather, these regulations require access to the extent necessary to monitor compliance with applicable statutes, regulations, special arrangements, agreements, and limitations. With regard to the commenter's concern about the competence of independent auditors, determining the adequacy of an auditor's qualifications is the responsibility of the institution that engages the auditor.

The Secretary is not defining "timely access" or establishing rigid time frames. Ordinarily, program reviews and audits are conducted according to an established schedule. If an institution is on that schedule, the Department contacts the institution in advance and requests access to the institution's personnel and records. Every effort is made to accommodate the institution's own schedule. However, at times immediate access to an institution is warranted. An institution is expected to have its records organized and readily available and should not object to providing prompt access to those records, even during periods when a financial aid, admissions, or other office of the institution experiences increased activity. It is often during just such periods that irregularities in the administration of title IV, HEA program funds are most likely to occur, and the institution's administrative capability is best measured. It is essential to proper accountability that the Secretary, the Inspector General, the Comptroller of the United States, or their representatives have immediate access to institutional records and personnel. Exit interviews are a routine part of all program and audit reviews. Access to student records for purposes of these regulations is authorized under the Family Educational Rights and Privacy Act and its implementing regulations. Authorized representatives of the Secretary, the Inspector General, or the Comptroller General of the United States are routinely prepared with documentation to substantiate their identities and the purpose of their reviews or examinations.

Finally, the Secretary notes that the intention of these regulations is to ensure that an institution give Federal officials and independent auditors reasonable access to all personnel who are associated with the institution's administration of the title IV, HEA programs. The Secretary is concerned that the term "institutional personnel" could be misinterpreted to apply only to an institution's immediate employees. The Secretary accordingly clarifies the current Department policy that reasonable access must be given not only to institutional personnel, but also to the personnel of those independent contractors and servicers who have been retained by the institution to administer or provide specific services related to the title IV, HEA programs.

Changes: Section 668.23(b) is revised to include an independent auditor among those to whom the institution is required to give cooperation in the conduct of audits. Section 668.23(b) is also revised to clarify that reasonable access must be given to any personnel associated with the institution's administration of the title IV, HEA programs, and not just "institutional" personnel.

Section 668.90 Initial and Final Decisions—Appeals

Comments: The majority of those who commented on the changes in this section supported those changes. Two commenters opposed the requirement for an administrative law judge to uphold terminations as unfair. A number of commenters maintained that the provisions for termination of institutions that repeatedly miss the deadline dates for filing audit reports and for the administrative law judge to uphold

those terminations are too severe. They also maintained that these provisions do not take into account factors beyond the control of institutions, such as unfair deadline dates for submission of audit reports, deadline dates that conflict with the dates that Pell Grant closure reports are provided, difficulties in engaging private auditors during the times that audit reports are due, and numerous administrative changes in the Department's audit report requirements and procedures. Some of these commenters suggested instead that an institution be allowed to demonstrate to an administrative law judge that its failure to meet a deadline was beyond the control of the institution, or that the Secretary devise alternative penalties such as fines. One commenter claimed that failure to take into account those factors, coupled with the severity of the penalty imposed by these provisions, could leave these provisions open to legal challenge. Two commenters suggested that in view of the 1,500 institutions that had missed audit report deadline dates, there is a widespread problem for which termination is not a realistic solution.

Discussion: The proposed § 668.90, while not actually providing for the automatic termination of an institution for a violation of the audit report deadlines in § 668.23 if the institution had a history of missing those deadlines or if the institution failed to respond to the Department's reminders or fine notices, gave the impression that the Secretary would frequently be bringing termination actions against such institutions. The Secretary is hopeful, however, that failure to submit audit reports will soon become rare. The Secretary has taken additional steps, including improvements in monitoring, to encourage institutions to submit audit reports in a timely manner. However, the Secretary is persuaded that the fine, limitation, suspension, and termination proceedings in §§ 668.83, 668.84, 668.85, and 668.86 provide a broad and effective range of sanctions to deal with violations of the deadlines in § 668.23 for submission of audit reports. Both the Department's routine procedures for the review of audit reports and the more formal proceedings in subpart G offer ample opportunity for an institution to demonstrate that factors beyond the institution's control contributed to a failure to meet a regulatory deadline. The proceedings in subpart G give the Secretary discretion to impose sanctions suitable to the severity of a violation ranging from the fining of an institution to its termination from participation in the title IV, HEA programs.

The Secretary anticipates that rarely will violations of those deadlines be so flagrant as to justify the termination of an institution's participation. However, should the Secretary find it necessary to take a termination action against an institution for such a violation, the Secretary considers that type of violation to be sufficiently detrimental to effective monitoring of an institution's title IV, HEA program activities to merit the placing of restrictions on an administrative law judge's discretion to modify the decision to terminate the institution's participation. The Secretary considers the fact that a large number of institutions have ignored deadlines and refused to take the simple steps to explain why those deadlines were ignored is a strong justification for adopting the changes in this section.

Changes: Section 668.90(a)(3)(iv) is revised to provide that an administrative law judge must uphold any termination action imposed against an institution for a violation of the deadlines for submission of audit reports in § 668.23(c)(4).

Comments: A commenter suggested that instead of amending regulations, the Secretary improve the Department's internal monitoring procedures to prevent future situations in which approximately 1,500 institutions could fail to submit audit reports within required deadlines and remain undetected. Another commenter asked the Secretary to include provisions to notify an institution of its failure to submit an audit report within a required deadline and to provide the institution an opportunity to appeal corrective action. Another commenter suggested that the effective date for § 668.90(a)(3)(iv)(B) be delayed for four years beyond the effective date for the rest of this section. Two commenters asked for clarification that an institution will not be subject to termination for a single late submission of an audit report. Two commenters recommended that the Secretary apply these provisions or emergency limitation, suspension, or termination action to instances in which an institution fails to provide timely access to records and personnel under the provisions of § 668.23. One commenter asked the Secretary to apply these provisions to schools that fail to cooperate with guarantee agencies under the provisions of 34 CFR 682.610(e) in the conduct of program reviews.

Discussion: The Department of Education's internal procedures for tracking institutions that have failed to meet the audit report deadlines have been improved, as was noted in the preamble for the NPRM. That improvement was a factor in the Secretary's decision to make the changes noted above. The provisions governing fine, limitation, suspension, and termination actions by the Secretary already require the Secretary to notify institutions concerning the basis for those actions and the institutions' appeal rights. Because most institutions are able to comply with the deadline dates, the Secretary sees no reason to delay the effective date of these new provisions. As noted above, proposed § 668.90 seemed to state that a termination action would result whenever an institution missed a deadline and neglected to respond to the Department's attempts to obtain an explanation and ignored the imposition of a fine for that violation. Under the changes made to the proposed § 668.90, the requirement for an administrative law judge to uphold a termination could apply to an institution that misses a single audit report deadline, but only if the Secretary believes that the circumstances surrounding the violation justify the Secretary's bringing a termination action against the institution. Ordinarily, disputes concerning violations of that nature are resolved long before the dispute reaches the stage of a proceeding under subpart G. The Secretary believes that current regulations provide sufficient authority to initiate administrative proceedings against institutions that fail to comply with the provisions in § 668.23 concerning timely access. Under the provisions of § 682.410 of the GSL and PLUS regulations, a guarantee agency is required to take appropriate measures to ensure the enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program. Specifically, the guarantee agency is required to conduct on-site program reviews and report any allegations and indications having a substantial basis in fact and the scope, progress, and results of the agency's investigations to the Secretary. The Secretary believes that the provisions of § 682.401 of the GSL and PLUS program regulations provide guarantee agencies with sufficient authority to establish effective standards and procedures for the limitation, suspension, or termination of school and lender participation in those programs.

Changes: None.

Comments: A commenter opposed § 668.90(a)(3)(v) on the grounds that it does not take into consideration the impact of the new provisions of § 668.13 on public corporations. Another commenter claimed that this provision

was weakened by permitting an institution to establish that a person who owns a substantial part of an institution does not have the ability to affect substantially the actions of that institution or the institution of which he previously was a substantial owner.

Discussion: Similar concerns are addressed in the discussion on § 668.13.

Changes: None.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes made in §§ 668.1, 668.2, 668.7, 668.44, and 668.95 and the changes in §§ 600.32 and 668.13 pertaining to refunds of institutional charges are merely technical corrections or changes made to bring the Student Assistance General Provisions regulations into conformity with the regulations for the GSL and PLUS programs published in the **Federal Register** on November 10, 1986 (51 FR 40886); regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, published in the **Federal Register** on April 5, 1988 (53 FR 11208); regulations for the Robert C. Byrd Honors Scholarship Program, published in the **Federal Register** on June 20, 1989 (54 FR 26006); and the Student Right-to-Know and Campus Security Act (Pub. L. 101–542), signed on November 8, 1990. The changes made in § 668.51 are also technical changes that reflect merely that the Secretary is extending the Institutional Quality Control Project for an additional three years and no longer considers the project a "pilot" program. The changes affect neither the participants in the project nor the requirements for participation in the project. Public comment could have no effect on the content of these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 25, 1991.

Lamar Alexander,

Secretary of Education.

Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Program; 84.185 Robert C. Byrd Honors Scholarship Program; and 84.226 Income Contingent Loan Program.

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

2. In § 600.30, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively; paragraph (a) introductory text is revised; and new paragraphs (a)(6), (b), (e), and (f) are added to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary at the same time that it notifies its accrediting agency or association, but not later than ten days after the change occurs, of any change in the following information provided in the institution's eligibility application:

* * * * *

(6) A person's ability to affect substantially the actions of the institution, if the person did not previously have that ability. The Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(i) Holds at least a 25% ownership interest in the institution;

(ii) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(iii) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(iv) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(v) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(vi) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution; or

(B) An entity that holds at least a 25% ownership interest in the institution.

(b) In the case of any change in the information that is described in paragraph (a)(6) of this section, an eligible institution that is owned by a publicly traded corporation shall notify the Secretary at the same time that the institution notifies the institution's accrediting agency or association, but not later than ten days after the corporation learns of the change.

* * * * *

(e) For the purposes of this section, an *ownership interest* is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term *ownership interest* includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to

share in the proceeds of the operation of—

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor; or

(iii) A profit-sharing plan, provided that all employees are covered by the plan.

(f) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

3. A new § 600.32 is added to read as follows:

§ 600.32 Eligibility of additional locations.

(a) If an eligible institution seeks to establish eligibility for an additional location, the institution shall apply under § 600.20 for a determination of whether the location qualifies as an eligible location.

(b) Except as provided in paragraphs (c) and (d) of this section, to qualify as an eligible location, the additional location must satisfy the applicable requirements of this section and §§ 600.4 through 600.7.

(c) To qualify as an eligible location, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7(a)(5)(i), unless—

(1) The location is a facility of an institution that has closed or ceased to provide educational programs (except during normal vacation periods);

(2) The applicant institution acquired, either directly from the institution that has closed or ceased to provide educational programs or through an intermediary, the assets at that location; and

(3) The institution from which the applicant institution acquired the assets of the location—

(i) Owes a liability on improperly expended or unspent HEA program funds or for refunds of institutional charges to students; and

(ii) Is not making payments in accordance with an agreement to repay that liability, if the institution has entered into such an agreement.

(d) Notwithstanding paragraph (c) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), 600.6(a)(6), or 600.7(a)(5)(i) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent HEA program funds received by the institution that has closed or ceased to provide educational programs; and

(2) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(e) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under § 600.21.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

5. In § 668.1, paragraph (c)(4) is removed; paragraphs (c)(5) through (c)(11) are redesignated as paragraphs (c)(4) through (c)(10) respectively; paragraph (c)(3) is amended by removing, after the semicolon, the number "4"; redesignated paragraph (c)(9) is amended by removing the term "1087aa" and adding, in its place, the term "1087a"; redesignated paragraph (c)(10) is amended by removing the term "1087a" and adding, in its place, the term "1087aa"; and paragraph (b) is revised to read as follows:

§ 668.1 Scope.

* * * * *

(b) As used in this part, an "institution" includes—

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution as defined in 34 CFR 600.6; and

(4) A vocational school as defined in 34 CFR 600.7.

* * * * *

6. Section 668.2 is revised to read as follows:

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Institution of higher education
Nationally recognized accrediting agency or association
One-Year training program
Postsecondary vocational institution
Program of study by correspondence
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Secretary
Six-month training program
Vocational school

(b) The following definitions apply to all title IV, HEA programs:

Academic year: (1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (1) The Perkins Loan Program (34 CFR part 674);

(2) The College Work-Study (CWS) Program (34 CFR part 675); and

(3) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR part 676).

College Work-Study (CWS) Program: The part-time employment program for students authorized by title IV–C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

Consolidation Loan Program: The loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1078–3)

Defense loan: A loan made before July 1, 1972, under title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under title IV–E of the HEA after June 30, 1972, that does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of

tuition and fees) at the institution he or she is attending; or

(2) Has been admitted into a program of study by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Guaranteed Student Loan (GSL) Program: The student loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1071 *et seq.*)

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*)

Income Contingent Loan (ICL) Program: The student loan program authorized by title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other title IV, HEA programs.

(Authority: 20 U.S.C. 1070a–6; 20 U.S.C. 1087vv).

National Defense Student Loan Program: The student loan program authorized by title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by title IV–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by title IV–A–1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Perkins loan: A loan made under title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under title IV–E of the HEA.

(Authority; 20 U.S.C. 1087aa *et seq.*)

Perkins Loan Program: The student loan program authorized by title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

PLUS Program: The loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1078–2)

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

State: Each State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d–32)

State Student Incentive Grant (SSIG) Program: The grant program authorized by title IV–A–3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by title IV–A–2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Supplemental Loans for Students (SLS) Program: The loan program authorized by title IV–B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078–1)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 20 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

§ 668.7 [Amended]

7. In § 668.7 the authority citation is amended by removing the term "078–1–3" and adding, in its place, the term "1078–1–3".

8. Section 668.13 is amended by removing the word "or" after the semicolon in paragraph (c)(3); removing the period in paragraph (c)(4)(iii)(B) and adding, in its place, a semicolon; and adding new paragraphs (c)(5), (d)(3), (h), (i), (j), and (k) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(5) A person acquires the ability to affect substantially the actions of the institution, and the following conditions apply:

(i) On or before the date that the person acquired that ability—

(A) The person had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; or

(B) Any member or members of the person's family, alone or together, had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; and

(ii) The person, any family member referred to in paragraph (c)(5)(i) of this section, or the defunct institution—

(A) Owes a liability on improperly expended or unspent title IV, HEA program funds received by the defunct institution or for refunds of institutional charges to students of the defunct institution; and

(B) If that person, family member, or defunct institution has agreed to repay that liability, is not making payments in accordance with that agreement.

(d) * * *

(3) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(5) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person acquired the ability to affect substantially the actions of the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the defunct institution by that person and any member or members of that person's family;

(*2*) The total percentage of the ownership interest held in the defunct institution by any member or members of that person's family;

(*3*) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(*4*) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*5*) Twenty-five percent, if that person or any member of that person's family was a member of the board of directors, chief executive officer, or other executive officer of the defunct institution or of an entity holding at

least a 25% ownership interest in the defunct institution;

(B) The applicable liability described in paragraph (c)(5)(iii) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who acquired the ability to affect substantially the institution's actions should nevertheless be considered to lack that ability; or

(*2*) The person who acquired the ability to affect substantially the institution's actions and each member of that person's family nevertheless lacked the ability to affect substantially the actions of the defunct institution within 90 days of the date that that institution became defunct.

* * * * *

(h) For purposes of this section, a "defunct institution" is an institution that permanently closed or ceased to provide educational programs (except during normal vacation periods).

(i) For the purposes of this section, an "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term *ownership interest* includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(2) The term *ownership interest* does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan.

(j) For the purposes of this section, the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds at least a 25% ownership interest in the institution;

(2) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(3) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(4) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(5) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(6) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(i) The institution; or

(ii) An entity that holds at least a 25% ownership interest in the institution.

(k) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

9. Section 668.20 is amended by removing the word "or" after the semicolon in paragraph (c)(1); removing the period in paragraph (c)(2) and adding, in its place, the term "; or"; and revising the section heading and adding a new paragraph (c)(3) to read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(c) * * *

(3) Except for a course in English as a second language, the educational level of instruction provided in that course is below the secondary level. For purposes of this section, the Secretary considers a course to be below the secondary level if any of the following entities determine that course to be below the secondary level:

(i) The State agency that legally authorized the institution to provide postsecondary education.

(ii) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution.

(iii) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution.

(iv) The institution.

* * * * *

10. In § 668.23, paragraph (b) is revised to read as follows:

§ 668.23 Audits, records, and examination.

* * * * *

(b) An institution that participates in any title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Education Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel that are not tape recorded by the institution.

* * * * *

§ 668.44 [Amended]

11. In § 668.44, paragraphs (c) through (f) are removed, and paragraph (a)(3) is amended by removing the term "§ 668.21" and adding, in its place, the term "§ 668.22".

§ 668.51 [Amended]

12. Section 668.51 is amended by removing the words *"Pilot"* and "Pilot" everywhere that they appear in paragraph (c), and removing the term "1990–91" in paragraph (c)(1) and adding, in its place, the term "1993–94".

13. Section 668.90 is amended by removing the word "or" after the semicolon in paragraph (a)(3)(i); removing the period at the end of paragraph (a)(3)(ii) and adding, in its place, a semicolon; removing the period at the end of paragraph (a)(3)(iii) and adding, in its place, a semicolon; and adding new paragraphs (a)(3) (iv) and (v) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iv) In a termination action taken against an institution based on the grounds that an institution has failed to comply with the requirements of § 668.23(c)(4), the administrative law judge must find that the termination is warranted; or

(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(5), the administrative law judge must find that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.13(d)(3) have been met.

* * * * *

§ 668.95 [Amended]

14. In § 668.95, paragraph (b)(1)(ii) is amended by removing the term "or 683".

Appendix A to Part 668 [Reserved]

15. Appendix A to part 668 is removed and reserved.

[FR Doc. 91–18052 Filed 7–30–91; 8:45 am]
BILLING CODE 4000–01–M

federal register

Wednesday
July 31, 1991

Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Treatment of Partnership Liabilities; Temporary Regulations and Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8355]

RIN 1545-AH26

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations, relating to treatment of partnership liabilities, that amend § 1.752–4T. The temporary regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The amendments to § 1.752–4T are effective as of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Berman at (202) 566–3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989 ("temporary regulations"). This document amends the temporary regulations in response to comments with respect to the temporary regulations. New proposed regulations are issued concurrently with this amendment to the temporary regulations. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Explanation of Provisions

The effective dates in the temporary regulations are amended in three respects. First, partnerships are given another opportunity to elect to apply the temporary regulations as of the first taxable year of the partnership ending after December 29, 1988, to all liabilities to which the temporary regulations did not otherwise apply. The election is made by filing a statement with an amended partnership return for the first taxable year of the partnership ending after December 29, 1988. As a result, if a partnership makes the election, adjustments may be necessary on subsequent partnership returns.

Second, a transitional election has been added for partnerships to elect to apply the temporary regulations to liabilities incurred or assumed by the partnership on or after December 28, 1991 and before January 1, 1992.

Finally, for purposes of applying the effective date rules, the temporary regulations clarify that a termination of a partnership under section 708(b)(1)(B) will not cause any partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Drafting Information

The principal author of these regulations is Mary A. Berman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.751–1 Through 1.755–2T

Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.752–0T [Amended]

Par. 2. Section 1.752–0T is amended as follows:

1. The captions listed under "*§ 1.752–4T Effective dates and transition rules (temporary)*" are revised to read as follows:

§ 1.752–4T Effective dates and transition rules (temporary).

(a) In general.
(b) Partner loans and guarantees.
(c) Duty of consistency.
(d) Election.
(1) In general.
(2) Transitional election.
(3) Time and manner of election.
(e) Coordination with amendments to section 704(b) regulations.
(f) Effect of sections 708(b)(1)(B) termination on determining date liabilities are incurred.
(g) Cross reference.

§ 1.752–4T [Amended]

Par. 3. Section 1.752–4T is amended as follows:

1. Paragraph (d)(2) is redesignated as paragraph (d)(3) and revised and new paragraph (d)(2) is added as set forth below.

2. Paragraph (f) is redesignated as paragraph (g) and the following new paragraph (f) is added as set forth below.

§ 1.752–4T Effective dates and transition rules (temporary).

* * * * *

(d) * * *

(2) *Transitional election.* A partnership may elect to apply the provisions of §§ 1.752–1T, –2T, and –3T to liabilities incurred or assumed by the partnership on or after December 28, 1991 but before January 1, 1992.

(3) *Time and manner of election.* An election under paragraph (d)(1) of this section is made by attaching a written statement to the amended partnership return for the first taxable year of the partnership ending after December 29, 1988. An election under paragraph (d)(2) of this section is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. A written statement required pursuant to this paragraph (d)(3) must include the name, address, and taxpayer identification number of the partnership making the statement and contain a

declaration that an election is being made under this paragraph (d).

* * * * *

(f) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of a partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) continues to read as follows:

"1.752–4T	1545–1090 "

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: July 12, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury

[FR Doc. 91–17945 Filed 7–26–91; 2:27 pm]
BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-229-84]

RIN 1545-AP75

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register,** the Internal Revenue Service is issuing temporary regulations concerning the treatment of partnership liabilities. The temporary regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments must be received by September 9, 1991. Requests to appear and outlines of oral comments for the public hearing scheduled for September 17, 1991, at 10 a.m. must be received by September 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-229-84), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Felicia Daniels, Regulations Unit (202) 377-9231 (not a toll-free number); concerning a particular regulation section, Mary A. Berman at (202) 566-3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.752-4T. This information is required by the Internal Revenue Service to administer section 752. This information will be used to determine whether partners or partnerships are complying with section 752 and the regulations thereunder. The respondents are partnerships who wish to make the election under § 1.752-4T(d).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 417 hours.

The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

Estimated number of respondents: 5,000.

Estimated frequency of responses: 1.

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986.

For the text of the temporary regulations, see T.D. 8355, published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the amendments to the regulations.

Proposed regulations (PS-49-91) issued concurrently with this amendment to the temporary regulations are to be effective for liabilities incurred or assumed on or after December 28, 1991. When the proposed regulations are finalized, the Internal Revenue Service intends to withdraw the temporary regulations effective December 27, 1991.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on September 17, 1991, beginning at 10 a.m. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-17946 Filed 7-26-91; 2:27 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

26 CFR Part 1

[PS-49-91]

RIN 1545-AP76

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of partnership liabilities. The proposed regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The proposed regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments must be received by September 9, 1991. Requests to appear and outlines of oral comments for the public hearing scheduled for September 17, 1991, at 10 a.m. must be received by September 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-229-84), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111

Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Felicia Daniels, Regulations Unit, (202) 377–9231 (not a toll-free number); concerning a particular regulation section, Mary A. Berman at (202) 566–3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in § 1.752–5. This information is required by the Internal Revenue Service to administer section 752. This information will be used to determine whether partners or partnerships are complying with section 752 and the regulations thereunder. The respondents are partnerships who wish to make the election under § 1.752–5(b).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 417 hours.

The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

Estimated number of respondents: 5,000.

Estimated frequency of responses: 1.

Introduction

This document proposes to add new regulation §§ 1.752–0 through 1.752–5 to the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986 and to remove existing §§ 1.752–0T through 1.752–4T.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989 ("temporary regulations"). This document simplifies the temporary regulations and addresses several issues raised by commentators with respect to the temporary regulations. The major substantive changes incorporated in the proposed regulations are discussed in part III of the explanation section of this document.

Explanation of Provisions

I. Sharing Recourse Liabilities

The proposed regulations provide that a partnership liability is a recourse liability to the extent that any partner bears the economic risk of loss for that liability, and a partner's share of any recourse liability of the partnership equals the portion, if any, of the economic risk of loss for the liability that is borne by the partner. The proposed regulations also provide that a partner bears the economic risk of loss for a partnership liability to the extent that the partner or related person would be obligated to make a payment with respect to a partnership liability (and would not be entitled to be reimbursed for the contribution or payment by another partner, a person related to another partner, or the partnership) if the partnership constructively liquidates. In a constructive liquidation the following events are deemed to occur: (A) all of the partnership's liabilities become due and payable in full, (B) all of the partnership's assets (including money) become worthless, (C) the partnership disposes of all of its assets in a fully taxable transaction for no consideration (other than relief from certain liabilities), (D) the partnership allocates its items of income, gain, loss, deduction, and credit for the year among the partners, and (E) the partnership completely liquidates. The constructive liquidation is a means of testing who bears the economic risk of loss for a partnership liability taking into account the manner in which the partners have agreed to share economic losses relating to the liabilities of the partnership under all the arrangements among the partners, related persons, and the partnership.

II. Sharing Nonrecourse Liabilities

The proposed regulations provide that, if no partner bears the economic risk of loss for a partnership liability, the liability is a nonrecourse liability of the partnership. The partners generally share nonrecourse liabilities in accordance with their interests in partnership profits. However, the proposed regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain (within the meaning of section 704(b)) and any tax gain that would be allocated to the partners under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration.

III. Modifications To Temporary Regulations

The proposed regulations reflect several modifications of rules found in the temporary regulations in response to comments received on the temporary regulations.

A. General Anti-abuse Rules

A new section, "Anti-abuse rules," has been added which provides a general rule that an obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person if the facts and circumstances indicate that a principal purpose of an arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise.

B. Guarantee of Interest Rule

Section 1.752–1T(d)(3)(v) of the temporary regulations contains a guarantee of interest rule. This rule generally provides that if one or more partners guarantee the payment of more than 20 percent of the total interest that accrues on an otherwise nonrecourse partnership liability during its term, the loan is deemed to be recourse to those partners to the extent of the present value of the guaranteed future interest payments. The proposed regulations retain the guarantee of interest rule, but increase the threshold percentage from 20 percent to 25 percent to better coordinate the general rule with the safe harbor discussed below. The guarantee of interest rule applies when a partner or related person has guaranteed more than 25 percent of the total interest that accrues, and the rule continues to apply even if the total guaranteed interest falls below the initial 25 percent threshold. The proposed regulations also add a safe harbor, providing that a guarantee

of interest for a period not in excess of the lesser of five years or one-third of the term of the loan is not subject to the general rule. Finally, the rule is clarified with respect to its application when the interest rate varies.

C. Valuation of Pledged Property

The proposed regulations revise the rule concerning the valuation of pledged assets in § 1.752–1T(d)(3)(ii) of the temporary regulations. Under the temporary regulations, the value of property with a readily ascertainable fair market value is recomputed from time to time over the life of the loan, but the value of property without a readily ascertainable fair market value is computed only at the time of the pledge. Under the proposed regulations, the value of all pledged property is the fair market value of the property at the time of the pledge.

D. De Minimis Rule

The de minimis rule in § 1.752–1T(d)(3)(vii) of the temporary regulations provides an exception to the general economic risk of loss rule. Under the de minimis rule, a partner is not treated as bearing the economic risk of loss with respect to a nonrecourse loan made by the partner or related person if the partner owns a ten percent or less interest in each item of income, gain, loss, deduction, or credit of the partnership and the loan constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed). The proposed regulations expand this rule to include certain guarantees by partners or related persons. Under the expanded rule, a partner is not treated as bearing the economic risk of loss with respect to a guarantee of a partnership nonrecourse loan by the partner or related person if the guarantor's interest in each partnership item of income, gain, loss, deduction, or credit for any taxable year is ten percent or less, and the loan would meet the requirements of section 465(b)(6) (determined without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

E. Partner's Share of Nonrecourse Liabilities

The proposed regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain, then to reflect any tax gain that would be allocated to the partners under section 704(c), and finally in accordance with the partners' interest in partnership profits. Section 1.752–1T(e) of the temporary regulations provides, in part, that the partnership agreement may specify the partners' interests in partnership profits provided the interests so specified are reasonably consistent with allocations (which have substantial economic effect under the section 704(b) regulations) of some significant item of partnership income or gain. The proposed regulations retain this provision, but also provide an alternative under which nonrecourse liabilities in excess of those allocated to reflect partnership minimum gain and section 704(c) gain may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

F. Effective Dates

Amendments to the effective dates of the temporary regulations are being issued concurrently with the proposed regulations. One amendment provides a transitional election allowing partnerships to elect to apply the temporary regulations to liabilities incurred or assumed by the partnership on or after December 28, 1991 and before January 1, 1992.

The proposed regulations are effective for liabilities incurred or assumed by the partnership on or after December 28, 1991. The proposed regulations provide taxpayers with the opportunity to elect to apply the regulations as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991. In addition, the proposed regulations clarify that a termination of a partnership under section 708(b)(1)(B) will not cause any partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments must be received by September 9, 1991. A public hearing will be held on September 17, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by September 3, 1991. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments, requests to speak, and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS–49–91), room 5228, Washington, DC 20044. See notice of hearing published elsewhere in this issue of the **Federal Register**.

List of Subjects in 26 CFR 1.751–1 Through 1.755–2T

Income taxes.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

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

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 1.752–0T through 1.752–4T [Removed]

Par. 2. Sections 1.752–0T through 1.752–4T are removed.

Par. 3. Sections 1.752–0 through 1.752–5 are added to read as follows:

§ 1.752–0 Table of Contents.

This section lists the captions that appear in §§ 1.752–1 through 1.752–5.

§ 1.752–1 Treatment of partnership liabilities.

(a) Definitions.
(1) Recourse liability defined.
(2) Nonrecourse liability defined.
(3) Related person.
(b) Increase in partner's share of liabilities.
(c) Decrease in partner's share of liabilities.
(d) Assumption of liability.
(e) Property subject to a liability.
(f) Netting of increases and decreases in liabilities resulting from same transaction.
(g) Sale or exchange of partnership interest.
(h) Bifurcation of partnership liabilities.

§ 1.752–2 Partner's share of recourse liabilities.

(a) In general.
(b) Obligation to make a payment.
(1) In general.
(2) Treatment upon deemed disposition.
(3) Obligations recognized.
(4) Contingent obligations.
(5) Reimbursement rights.
(6) Deemed satisfaction of obligation.
(c) Partner or related person as lender.
(1) In general.
(2) Wrapped debt.
(d) De minimis exceptions.
(1) Partner as lender.
(2) Partner as guarantor.
(e) Special rule for nonrecourse liability with interest guaranteed by a partner.
(1) In general.
(2) Computation of present value.
(3) Safe harbor.
(f) Examples.
(g) Time-value-of-money considerations.
(1) In general.
(2) Valuation of an obligation.
(3) Satisfaction of obligation with partner's promissory note.
(h) Partner providing property as security for partnership liability.
(1) Direct pledge.
(2) Indirect pledge.
(3) Valuation.
(4) Partner's promissory note.
(i) Treatment of recourse liabilities in tiered partnerships.
(j) Anti-abuse rules.
(1) In general.
(2) Arrangements tantamount to a guarantee.
(3) Plan to circumvent or avoid the regulations.
(4) Example.

§ 1.752–3 Partner's share of nonrecourse liabilities.

(a) In general.
(b) Examples.

§ 1.752–4 Special rules.

(a) Tiered partnerships.
(b) Related person definition.
(1) In general.
(2) Person related to more than one partner.
(i) In general.
(ii) Natural persons.
(iii) Related partner exception.
(iv) Special rule where entity structured to avoid related person status.
(A) In general.
(B) Ownership interest.
(C) Example.
(c) Limitation.
(d) Time of determination.

§ 1.752–5 Effective dates and transition rules.

(a) In general.
(b) Election.
(1) In general.
(2) Time and manner of election.
(c) Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.

§ 1.752–1 Treatment of Partnership Liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(3) *Related person.* Related person means a person having a relationship to a partner that is described in § 1.752–4(b).

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner.

(d) *Assumption of liability.* Except as otherwise provided in paragraph (e) of this section, a person is considered to assume a liability only to the extent that:

(1) The assuming person is personally obligated to pay the liability; and

(2) If a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability immediately after the assumption.

(3) *Property subject to a liability.* If property is contributed by a partner to the partnership or distributed by the partnership to a partner and the property is subject to a liability of the transferor, the transferee is treated as having assumed the liability, to the extent that the amount of the liability does not exceed the fair market value of the property at the time of the contribution or distribution.

(f) *Netting of increases and decreases in liabilities resulting from same transaction.* If, as a result of a single transaction, a partner incurs both an increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities), only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction.

(g) *Sale or exchange of a partnership interest.* If a partnership interest is sold or exchanged, the reduction in the transferor partner's share of partnership liabilities is treated as an amount realized under section 1001 and the regulations thereunder. For example, if a partner sells an interest in a partnership for $750 cash and transfers to the purchaser the partner's share of partnership liabilities in the amount of $250, the seller realizes $1,000 on the transaction.

(h) *Bifurcation of partnership liabilities.* If one or more partners bears the economic risk of loss as to part, but not all, of a partnership liability represented by a single contractual obligation, then that liability is treated as two or more separate liabilities for purposes of section 752. The portion of the liability as to which one or more partners bear the economic risk of loss is a recourse liability and the remainder of the liability, if any, is a nonrecourse liability.

§ 1.752–2 Partner's share of recourse liabilities.

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. The determination of the extent to which a partner bears the economic risk of loss for a partnership liability is made under the rules in paragraphs (b) through (j) of this section.

(b) *Obligation to make a payment*—(1) *In general.* Except as otherwise provided in this section, a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner or related person would be obligated to make a payment to any person (or a contribution to the

partnership) because that liability becomes due and payable and the partner or related person would not be entitled to reimbursement from another partner or person that is a related person to another partner. Upon a constructive liquidation, all of the following events are deemed to occur simultaneously:

(i) All of the partnership's liabilities become payable in full;

(ii) With the exception of property contributed to secure a partnership liability (see § 1.752–2(h)), all of the partnership's assets, including cash, have a value of zero;

(iii) The partnership disposes of all of its property in a fully taxable transaction for no consideration (except relief from liabilities for which the creditor's right to repayment is limited solely to one or more assets of the partnership);

(iv) All items of income, gain, loss, or deduction are allocated among the partners; and

(v) The partnership liquidates.

(2) *Treatment upon deemed disposition.* For purposes of paragraph (b)(1) of this section, gain or loss on the deemed disposition of the partnership's assets is computed in accordance with the following:

(i) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis in those assets.

(ii) A loss is recognized equal to the remaining tax basis of all of the partnership's assets not taken into account in paragraph (b)(2)(i) of this section.

(3) *Obligations recognized.* The determination of the extent to which a partner or related person has an obligation to make a payment under paragraph (b)(1) of this section is based on the facts and circumstances at the time of the determination. All statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying this section, including:

(i) Contractual obligations outside the partnership agreement such as guarantees, indemnifications, reimbursement agreements, and other obligations running directly to creditors or to other partners, or to the partnership;

(ii) Obligations to the partnership that are imposed by the partnership agreement, including the obligation to make a capital contribution and to restore a deficit capital account upon liquidation of the partnership; and

(iii) Payment obligations (whether in the form of direct remittances to another partner or a contribution to the partnership) imposed by state law, including the governing state partnership statute. To the extent that the obligation of a partner to make a payment with respect to a partnership liability is not recognized under this paragraph (b)(3), paragraph (b) of this section is applied as if the obligation did not exist.

(4) *Contingent obligations.* A payment obligation is disregarded if, taking into account all the facts and circumstances, the obligation is subject to contingencies that make it unlikely that the obligation will ever be discharged. If a payment obligation would arise at a future time after the occurrence of an event that is not determinable with reasonable certainty, the obligation is ignored until the event occurs.

(5) *Reimbursement rights.* A partner's or related person's obligation to make a payment with respect to a partnership liability is reduced to the extent that the partner or related person is entitled to reimbursement from another partner or a person who is a related person to another partner.

(6) *Deemed satisfaction of obligation.* For purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss, it is assumed that all partners and related persons who have obligations to make payments actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate a plan to circumvent or avoid the obligation. See § 1.752–2(j).

(c) *Partner or related person as lender*—(1) *In general.* A partner bears the economic risk of loss for a partnership liability to the extent that the partner or a related person makes (or acquires an interest in) a nonrecourse loan to the partnership and the economic risk of loss for the liability is not borne by another partner.

(2) *Wrapped debt.* If a partnership liability is owed to a partner or related person and that liability includes (*i.e.*, is "wrapped" around) a nonrecourse obligation encumbering partnership property that is owed to another person, the partnership liability will be treated as two separate liabilities. The portion of the partnership liability corresponding to the wrapped debt is treated as a liability owed to another person.

(d) *De minimis exceptions*—(1) *Partner as lender.* The general rule contained in paragraph (c)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for any taxable year is 10 percent or less, makes a loan to the partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed).

(2) *Partner as guarantor.* The general rule contained in paragraph (b)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for any taxable year is 10 percent or loss, guarantees a loan that would otherwise be a nonrecourse loan of the partnership and which would constitute qualified nonrecourse financing within the meaning of section 465(b)(6) (without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

(e) *Special rule for nonrecourse liability with interest guaranteed by a partner*—(1) *In general.* For purposes of this section, if one or more partners or related persons have guaranteed the payment of more than 25 percent of the total interest that will accrue on a partnership nonrecourse liability over its remaining term, and it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if the partnership fails to do so, then the liability is treated as two separate partnership liabilities. If this rule applies, the partner or related person that has guaranteed the payment of interest is treated as bearing the economic risk of loss for the partnership liability to the extent of the present value of the guaranteed future interest payments. The remainder of the stated principal amount of the partnership liability constitutes a nonrecourse liability. Generally, in applying this rule, it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if, upon a default in payment by the partnership, the lender can enforce the interest guaranty without foreclosing on the property and thereby extinguishing the underlying debt.

(2) *Computation of present value.* The present value of the guaranteed future interest payments is computed using a discount rate equal to either the interest rate stated in the loan documents, or if

interest is imputed under either section 483 or section 1274, the applicable federal rate, compounded semi-annually. The computation takes into account any payment of interest that the partner or related person may be required to make only to the extent that the interest will accrue economically (determined in accordance with section 446 and the regulations thereunder) after the date of the interest guarantee. If the loan document contains a variable rate of interest that is an interest rate based on current values of an objective interest index, the present value is computed on the assumption that the interest determined under the objective interest index on the date of the computation will remain constant over the term of the loan. The term "objective interest index" has the meaning given to it in section 1275 and the regulations thereunder (relating to variable rate debt instruments). Examples of an objective interest index include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), and the applicable federal rate under section 1274(d).

(3) *Safe harbor.* Paragraph (e) of this section does not apply to a partnership nonrecourse liability if the guarantee of interest by the partner or related person is for a period not in excess of the lesser of five years or one-third of the term of the liability.

(f) *Examples.* The following examples illustrate the principles of paragraphs (a) through (e) of this section.

Example 1: Determining when a partner bears the economic risk of loss. A and B form a general partnership with each contributing $100 in cash. The partnership purchases an office building on leased land for $1,000 from an unrelated seller, paying $200 in cash and executing a note to the seller for the balance of $800. The note is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. The partnership agreement provides that all items are allocated equally except that tax losses are specially allocated 90% to A and 10% to B and that capital accounts will be maintained in accordance with the regulations under section 704(b), including a deficit capital account restoration obligation on liquidation. In a constructive liquidation, the $800 liability becomes due and payable. All of the partnership's assets, including the building, are deemed to be worthless. The building is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	$100	$100
Loss on hypothetical sale	(900)	(100)
Total	($800)	$0

Other than the partners' obligation to fund negative capital accounts on liquidation, there are no other contractual or statutory payment obligations existing between the partners, the partnership and the lender. Therefore, $800 of the partnership liability is classified as a recourse liability because one or more partners bears the economic risk of loss for non-payment B has no share of the $800 liability since the constructive liquidation produces no payment obligation for B. A's share of the partnership liability is $800 because A would have an obligation in that amount to make a contribution to the partnership.

Example 2: Recourse liability; deficit restoration obligation. C and D each contribute $500 in cash to the capital of a new general partnership, CD. CD purchases property from an unrelated seller for $1,000 in cash and a $9,000 mortgage note. The note is a general obligation of the partnership, *i.e.*, no partner has been relived from personal liability. The partnership agreement provides that profits and losses are to be divided 40% to C and 60% D. C and D are required to make up any deficit in their capital accounts. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	C	D
Initial contribution	$500	$500
Loss on hypothetical sale	(4,000)	(6,000)
Total	($3,500)	($5,500)

C's capital account reflects a deficit that C would have to make up of $3,500 and D's capital account reflects a deficit that D would have to make up of $5,500. Therefore, the $9,000 mortgage note is a recourse liability because one or more partners bears the economic risk of loss for the liability. C's share of the recourse liability is $3,500 and D's share is $5,500.

Example 3: Guarantee by limited partner: partner deemed to satisfy obligation. E and F form a limited partnership. E, the general partner, contributes $2,000 and F, the limited partner, contributes $8,000 in cash to the partnership. The partnership agreement allocates losses 20% to E and 80% to F until F's capital account is reduced to zero, after which all losses are allocated to E. The partnership purchases depreciable property for $25,000 using its $10,000 cash and a $15,000 recourse loan from a bank. F guarantees payment of the $15,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. In a constructive liquidation, the $15,000 liability becomes due and payable. All of the partnership's assets, including the depreciable property, are deemed to be worthless. The depreciable property is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	E	F
Initial contribution	$2,000	$8,000
Loss on hypothetical sale	(17,000)	(8,000)
Total	($15,000)	0

E, as a general partner, would be obligated by operation of law to make a net contribution to the partnership of $15,000. Because E is assumed to satisfy that obligation, it is also assumed that F would not have to satisfy F's guarantee. The $15,000 mortgage is treated as a recourse liability because one or more partners bears the economic risk of loss. E's share of the liability is $15,000, and F's share is zero. This would be so even if E's net worth at the time of the determination is less than $15,000, unless the facts and circumstances indicate a plan to circumvent or avoid E's obligation to contribute to the partnership.

Example 4: Partner guarantee with right of subrogation. G, a limited partner in the GH partnership, guarantees a portion of a partnership liability. The liability is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. If under state law G is subrogated to the rights of the lender, G would have the right to recover the amount G paid to the recourse lender from the general partners. Therefore, G does not bear the economic risk of loss for the partnership liability.

Example 5: Bifurcation of partnership liability; guarantee of part of nonrecourse liability. A partnership borrows $10,000, secured by a mortgage on real property. The mortgage note contains an exoneration clause which provides that in the event of default, the holder's only remedy is to foreclose on the property. The holder may not look to any other partnership asset or to any partner to pay the liability. However, to induce the lender to make the loan, a partner guarantees payment of $200 of the loan principal. The exoneration clause does not apply to the partner's guarantee. If the partner paid pursuant to the guarantee, the partner would be subrogated to the rights of the lender with respect to $200 of the mortgage debt, but the partner is not otherwise entitled to reimbursement from the partnership or any partner. For purposes of section 752, $200 of the $10,000 mortgage liability is treated as a recourse liability of the partnership and $9,800 is treated as a nonrecourse liability of the partnership. The partner's share of the recourse liability of the partnership is $200.

Example 6: Wrapped debt. I, an individual, purchases real estate from an unrelated seller for $10,000, paying $1,000 in cash and giving a $9,000 purchase mortgage note on which I has no personal liability and as to which the seller can look only to the property for satisfaction. At a time when the property is worth $15,000, I sells the property to a partnership in which I is a general partner. The partnership pays for the property with a partnership purchase money mortgage note of $15,000 on which neither the partnership nor any partner (or person related to a partner) has personal liability. The $15,000 mortgage note is wrapped debt that includes the $9,000

obligation to the original seller. The liability is a recourse liability to the extent of $6,000 because I is the creditor with respect to the loan and I bears the economic risk of loss for $6,000. I's share of the recourse liability is $6,000. The remaining $9,000 is treated as a partnership nonrecourse liability that is owed to the unrelated seller.

Example 7: Guarantee of interest by partner treated as part recourse and part nonrecourse. On January 1, 1992, a partnership obtains a $4,000,000 loan secured by a shopping center owned by the partnership. Neither the partnership nor any partner has any personal liability under the loan documents for repayment of the stated principal amount. Interest accrues at a 15 percent annual rate and is payable on December 31 of each year. The principal is payable in a lump sum on December 31, 2006. A partner guarantees payment of 50 percent of each interest payment required by the loan. The guarantee can be enforced without first foreclosing on the property. When the partnership obtains the loan, the present value (discounted at 15 percent, compounded annually) of the future interest payments is $3,508,422, and of the future principal payment is $491,578. If tested on that date, the loan would be treated as a partnership liability of $1,754,211 ($3,508,422 × .5) for which the guaranteeing partner bears the economic risk of loss and a partnership nonrecourse liability of $2,245,789 ($1,754,211 + $491,578).

Example 8: Contingent obligation not recognized. J and K form a general partnership with cash contributions of $2,500 each. J and K share partnership profits and losses equally. The partnership purchases an apartment building for its $5,000 of cash and a $20,000 nonrecourse loan from a commercial bank. The nonrecourse loan is secured by a mortgage on the building. The loan documents provide that the partnership will be liable for the outstanding balance of the loan on a recourse basis to the extent of any decrease in the value of the apartment building resulting from the partnership's failure properly to maintain the property. There are no facts that establish with reasonable certainty the existence of any liability on the part of the partnership (and its partners) for damages resulting from the partnership's failure properly to maintain the building. Therefore, no partner bears the economic risk of loss, and the liability constitutes a nonrecourse liability. Under § 1.752–3, J and K shares this nonrecourse liability equally because they share all profits and losses equally.

(g) *Time-value-of-money considerations*—(1) *In general.* The extent to which a partner or related person bears the economic risk of loss is determined by taking into account any delay in the time when a payment or contribution obligation with respect to a partnership liability is to be satisfied. If a payment obligation with respect to a partnership liability is not required to be satisfied within a reasonable time after the liability becomes due and payable, or if the obligation to make a contribution to the partnership is not required to be satisfied before the later of—

(i) the end of the year in which the partner's interest is liquidated, or

(ii) 90 days after the liquidation, the obligation is recognized only to the extent of the value of the obligation.

(2) *Valuation of an obligation.* The value of a payment or contribution obligation that is not required to be satisfied within the time period specified in paragraph (g)(1) of this section equals the entire principal balance of the obligation only if the obligation bears interest equal to or greater than the applicable federal rate under section 1274(d) at the time of valuation, commencing on—

(i) In the case of a payment obligation, the date that the partnership liability to a creditor or other person to whom the obligation relates becomes due and payable, or

(ii) In the case of a contribution obligation, the date of the liquidation of the partner's interest in the partnership.

If the obligation does not bear interest at a rate at least equal to the applicable federal rate at the time of valuation, the value of the obligation is discounted to the present value of all payments due from the partner or related person (*i.e.*, the imputed principal amount computed under section 1274(b)). For purposes of making this present value determination, the partnership is deemed to have constructively liquidated as of the date on which the payment obligation is valued and the payment obligation is assumed to be a debt instrument subject to the rules of section 1274 (*i.e.*, the debt instrument is treated as if it were issued for property at the time of the valuation).

(3) *Satisfaction of obligation with partner's promissory note.* An obligation is not satisfied by the transfer to the obligee of a promissory note by a partner or related person unless the note is readily tradeable on an established securities market.

(h) *Partner providing property as security for partnership liability*—(1) *Direct pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any of the partner's separate property (other than an interest in the partnership) that is pledged as security for the partnership liability.

(2) *Indirect pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of securing a partnership liability. Contributed property is treated as contributed solely for the purpose of securing a partnership liability if substantially all of the items of income, gain, loss, and deduction attributable to the contributed property are allocated to the contributing partner, and this allocation is greater than the partner's share of any other significant item of partnership income, gain, loss, or deduction.

(3) *Valuation.* The extent to which a partner bears the economic risk of loss as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the fair market value of the property at the time of the pledge or contribution.

(4) *Partner's promissory note.* For purposes of paragraphs (h)(1) and (h)(2) of this section, a promissory note of the partner or related person that is pledged or contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.

(i) *Treatment of recourse liabilities in tiered partnerships.* If a partnership (the "upper-tier partnership") owns (directly or indirectly through one or more partnerships) an interest in another partnership (the "subsidiary partnership"), the liabilities of the subsidiary partnership are allocated to the upper-tier partnership in an amount equal to the sum of the following—

(1) The amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and

(2) Any other amount of the liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss.

(j) *Anti-abuse rules*—(1) *In general.* An obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person for purposes of this section if facts and circumstances indicate that a principal purpose of the arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise. Circumstances with respect to which a payment obligation may be disregarded include, but are not limited to, the situations described in paragraphs (j) (2) and (j) (3) of this section.

(2) *Arrangements tantamount to a guarantee.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership

liability, or a portion thereof, to the extent that:

(i) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain a loan;

(ii) The contractual obligations of the partner or related person eliminate substantially all the risk to the lender that the partnership will not satisfy its obligations under the loan; and

(iii) One of the principal purposes of using the contractual obligations is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests. The partners are considered to bear the economic risk of loss for the liability in accordance with their relative economic burdens for the liability pursuant to the contractual obligations. For example, a lease between a partner and a partnership which is not on commercially reasonable terms may be tantamount to a guarantee by the partner of a partnership liability.

(3) *Plan to circumvent or avoid the regulations.* An obligation of a partner to make a payment is not recognized if the facts and circumstances evidence a plan to circumvent or avoid the obligation.

(4) *Example.* The following example illustrates the principle of paragraph (j)(3) of this section.

Example: Plan to circumvent or avoid obligation. A and B form a general partnership. A, a corporation, contributes $20,000 and B contributes $80,000 to the partnership. A is obligated to restore any deficit in its partnership capital account. The partnership agreement allocates losses 20% to A and 80% to B until B's capital account is reduced to zero, after which all losses are allocated to A. The partnership purchases depreciable property for $250,000 using its $100,000 cash and a $150,000 recourse loan from a bank. B guarantees payment of the $150,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. A is a subsidiary, formed by a parent of a consolidated group, with capital limited to $20,000 to allow the consolidated group to enjoy the tax losses generated by the property while at the same time limiting its monetary exposure for such losses. These facts, when considered together with B's guarantee, indicate a plan to circumvent or avoid A's obligation to contribute to the partnership. The rules of section 752 must be applied as if A's obligation to contribute did not exist. Accordingly, the $150,000 liability is a recourse liability that is allocated entirely to B.

§ 1.752-3 Partner's share of nonrecourse liabilities.

(a) *In general.* A partner's share of the nonrecourse liabilities of a partnership equals the sum of paragraphs (a)(1) through (a)(3) of this section as follows—

(1) The partner's share of partnership minimum gain determined in accordance with the rules of section 704(b) and the regulations thereunder;

(2) The amount of any taxable gain that would be allocated to the partner under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration; and

(3) The partner's share of the excess nonrecourse liabilities (those not allocated under paragraphs (a)(1) and (a)(2) of this section) of the partnership as determined in accordance with the partner's share of partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. The partnership agreement may specify the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the interests so specified are reasonably consistent with allocations (that have substantial economic effect under the section 704(b) regulations) of some other significant item of partnership income or gain. Alternatively, excess nonrecourse liabilities may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

(b) *Examples.* The following examples illustrate the principles of paragraph (a) of this section.

Example 1: Partner's share of nonrecourse liabilities. The AB partnership purchases depreciable property for a $1,000 purchase money note that is a nonrecourse liability under the rules of this section. Assume that this is the only nonrecourse liability of the partnership, and that no principal payments are due on the purchase money note for a year. The partnership agreement provides that all items of income, gain, loss, and deduction are allocated equally. Immediately after purchasing the depreciable property, the partners share the nonrecourse liability equally because they have equal interests in partnership profits. A and B are each treated as if they contributed $500 to the partnership to reflect each partners's increase in his or her share of partnership liabilities (from $0 to $500). The minimum gain with respect to an item of partnership property subject to a nonrecourse liability equals the amount of gain that would be recognized if the partnership disposed of the property in full satisfaction of the nonrecourse liability and for no other consideration. Therefore, if the partnership claims a depreciation deduction of $200 for the depreciable property for the year it acquires that property, partnership minimum gain for the year will increase by $200 (the excess of the $1,000 nonrecourse liability over the $800 adjusted tax basis of the property). See § 1.704-1T(b)(4)(iv)(*c*). A and B each have a $100 share of partnership minimum gain at the end of that year because the depreciation deduction is treated as a nonrecourse deduction. See § 1.704-1T(b)(4)(iv)(*b*) and (*f*). Accordingly, at the end of that year, A and B are allocated $100 each of the nonrecourse liability to match their shares of partnership minimum gain. The remaining $800 of the nonrecourse liability will be allocated equally between A and B ($400 each).

Example 2: Excess nonrecourse liabilities allocated consistently with reasonably expected deductions. The facts are the same as in *Example 1* except that the partnership agreement provides that depreciation deductions will be allocated to A. The partners agree to allocated excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those non recourse liabilities will be allocated. Assuming that the allocation of all of the depreciation deductions to A is valid under section 704(b), immediately after purchasing the depreciable property, A's share of the nonrecourse liability is $1,000. Accordingly, A is treated as if A contributed $1,000 to the partnership.

§ 1.752-4 Special rules.

(a) *Tiered partnerships.* An upper-tier partnership's share of the liabilities of a subsidiary partnership (other than any liability of the subsidiary partnership that is owed to the upper-tier partnership) is treated as liabilities of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

(b) *Related person definition*—(1) *In general.* A person is related to a partner if the person and the partner bear a relationship to each other that is specified in sections 267(b) or 707(b)(1), subject to the following modifications:

(i) Substitute "80 percent or more" for "more than 50 percent" each place it appears in those sections;

(ii) A person's family is determined by excluding brothers and sisters; and

(iii) Disregard sections 267(e)(1) and 267(f)(1)(A).

(2) *Person related to more than one partner*—(i) *In general.* If, in applying the related person rules in paragraph (b)(1) of this section, a person is related to more than one partner, paragraph (b)(1) of this section is applied by treating the person as related only to the partner with whom there is the highest percentage of related ownership. If two or more partners have the same

percentage of related ownership and no other partner has a greater percentage, the liability is allocated equally among the partners having the equal percentages of related ownership.

(ii) *Natural persons.* For purposes of determining the percentage of related ownership between a person and a partner, natural persons who are related by virtue of being members of the same family are treated as having a percentage relationship of 100 percent with respect to each other.

(iii) *Related partner exception.* Notwithstanding paragraph (b)(1) of this section (which defines related person), persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership. This paragraph (iii) does not apply when determining a partner's interest under the de minimis rules in § 1.752–2(d).

(iv) *Special rule where entity structured to avoid related persons status*—(A) *In general.* If—

(*1*) A partnership liability is owed to or guaranteed by another entity that is a partnership, an S corporation, a C corporation, or a trust;

(*2*) A partner or related person owns (directly or indirectly) a 20 percent or more ownership interest in the other entity; and

(*3*) A principal purpose of having the other entity act as a lender or guarantor of the liability was to avoid the determination that the partner that owns the interest bears the economic risk of loss for federal income tax purposes for all or part of the liability; then the partner is treated as holding the other entity's interest as a creditor or guarantor to the extent of the partner's or related person's ownership interest in the entity.

(B) *Ownership interest.* For purposes of paragraph (b)(2)(iv)(A) of this section, a person's ownership interest in:

(*1*) a partnership equals the partner's highest percentage interest in any item of partnership loss or deduction for any taxable year;

(*2*) an S corporation equals the percentage of the outstanding stock in the S corporation owned by the shareholder;

(*3*) a C corporation equals the percentage of the fair market value of the issued and outstanding stock owned by the shareholder; and

(*4*) a trust equals the percentage of the actuarial interests owned by the beneficial owner of the trust.

(C) *Example. Entity structured to avoid related person status.* A, B, and C form a general partnership, ABC. A, B, and C equal partners, each contributing $1,000 to the partnership. A and B want to loan money to ABC and have the loan treated as nonrecourse for purposes of section 752. A and B form partnership AB to which each contributes $50,000. A and B share losses equally in partnership AB. Partnership AB loans partnership ABC $100,000 on a nonrecourse basis secured by the property ABC buys with the loan. Under these facts and circumstances, A and B bear the economic risk of loss with respect to the partnership liability equally based on their percentage interest in losses of partnership AB.

(c) *Limitation.* The amount of an indebtedness is taken into account only once, even though a partner (in addition to the partner's liability for the indebtedness as a partner) may be separately liable therefor in a capacity other than as a partner.

(d) *Time of determination.* A partner's share of partnership liabilities must be determined whenever the determination is necessary in order to determine the tax liability of the partner or any other person. See § 1.705–1(a) for rules regarding when the adjusted basis of a partner's interest in the partnership must be determined.

§ 1.752–5 Effective dates and transition rules.

(a) *In general.* Unless a partnership makes an election under paragraph (b)(1) of this section to apply the provisions of §§ 1.752–1 through 1.752–4 earlier, §§ 1.752–1 through 1.752–4 apply to any liability incurred or assumed by a partnership on or after December 28, 1991, other than a liability incurred or assumed by the partnership pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter.

(b) *Election*—(1) *In general.* A partnership may elect to apply the provisions of §§ 1.752–1 through 1.752–4 as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991.

(2) *Time and manner of election.* An election under this paragraph (b) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and contain a declaration that an election is being made under this paragraph (b).

(c) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of the partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–17947 Filed 7–26–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[PS–229–84 and PS–049–91]

RIN 1545–AP75 and 1545–AP76

Treatment of Partnership Liabilities; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the treatment of partnership liabilities. These regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984.

DATES: The public hearing will be held on September 17, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by September 3, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Building, Second Floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–229–84 & PS–49–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 752 of the Internal Revenue Code. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the

hearing on the proposed regulations should submit not later than Monday, September 3, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–17948 Filed 7–26–91; 2:27 pm]

BILLING CODE 4830–01–M

federal register

Wednesday
July 31, 1991

Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one proposed rescission totaling $5,000,000 and one revised deferral of budget authority now totaling $127,036,000. Including the revised deferral, funds reported as withheld now total $10.3 billion.

The proposed rescission affects the Department of Defense. The deferral affects the Department of State. The details of the deferral and proposed rescission are contained in the attached report.

The White House,
July 24, 1991.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Defense:	
	Research, Development, Test, and Evaluation:	
	Research, development, test, and evaluation,	
D91-30	Defense Agencies	-5,000
	Total rescissions	5,000

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of State:	
	Bureau for Refugee Programs:	
	United States emergency refugee and	
D91-6B	migration fund	127,036
	Total deferral	127,036

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Sixth special message:		
New items	5,000	---
Revisions to previous special messages	---	68,000
Effects of the Sixth special message	5,000	68,000
Amounts from previous special messages	4,854,251	10,192,836
TOTAL amount proposed to date in all special messages	4,859,251	10,260,836

R91-30

DEPARTMENT OF DEFENSE - MILITARY

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Defense Agencies

Of the funds made available under this heading in Public Law 101-511, $5,000,000 are rescinded: Provided, That Subsection (g) of Section 822 of P.L. 101-510 is repealed.

Rescission Proposal No. R91-30

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... 9,079,201,000 (P.L. 101-511) Other budgetary resources.. 810,772,202 Total budgetary resources... 9,889,973,202
BUREAU: Research, Development, Test, and Evaluation	
Appropriation title and symbol: Research, development, test, and evaluation, Defense Agencies 971/20400	Amount proposed for rescission..... 5,000,000
OMB identification code: 97-0400-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year September 30, 1992 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The funds proposed for rescission were made available for initial operation of the Critical Technologies Institute, a quasi-governmental organization chaired by the Director of the Office of Science and Technology Policy (OSTP), to conduct analyses of critical technology issues. The funds are proposed for rescission based on the findings and recommendations of the Director of OSTP that the Institute is both: (1) unnecessary, in light of other on-going Administration activities with respect to critical technologies and (2) unworkable, as authorized, because it cannot participate effectively in policy development.

ESTIMATED PROGRAM EFFECT: The DoD's ability to accomplish its mission successfully would not be affected by this rescission proposal because the purpose of the Critical Technologies Institute is not directly related to the DoD mission.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
8,471,060	8,468,460	-2,600	-1,925	-345	-95	...	...

Deferral No. D91-6B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D91-6A transmitted to Congress on January 9, 1991.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from $59,036,000 to $127,036,000. This increase of $68,000,000 results from the withholding of funds made available by the Dire Emergency Supplemental Appropriations Act (P.L. 102-55). Of the $127,036,000 reported as deferred, $54,683,350 has been made available, making the current deferral $72,352,650.

Deferral No. 91-6B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority.....* $ 103,000,000 (P.L. 101-513 and 102-55)
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... * 26,202,650
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... * 129,202,650 Amount to be deferred: Part of year.....2/ * $ 127,036,000 Entire year..... _____
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1990 (D90-6B).

2/ The deferred amount has been reduced to $72,352,650 due to subsequent releases.

* Revised from previous report.

[FR Doc. 91-18157 Filed 7-30-91; 8:45 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. 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, DC 20402 (phone, 202-275-3030).

H.J. Res. 279/Pub. L. 102-74

To declare it to be the policy of the United States that there should be a renewed and sustained commitment by the Federal Government and the American people to the importance of adult education. (July 26, 1991; 105 Stat. 363; 2 pages) Price: $1.00

H.R. 427/Pub. L. 102-75

To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes. (July 26, 1991; 105 Stat. 365; 3 pages) Price: $1.00

H.R. 998/Pub. L. 102-76

To designate the building in Vacherie, Louisiana, which houses the primary operations of the United States Postal Service as the "John Richard Haydel Post Office Building". (July 26, 1991; 105 Stat. 368; 1 page) Price: $1.00

H.R. 2347/Pub. L. 102-77

To redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility", and for other purposes. (July 26, 1991; 105 Stat. 369; 1 page) Price: $1.00

Last List July 30, 1991